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STATE OF IDAHO

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CHAPTER 1
(H.B. No. 426)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1301, IDAHO CODE, TO REVISE THE SHORT TITLE; AMENDING SECTION 72-1302, IDAHO CODE, TO REVISE THE DECLARATION OF STATE PUBLIC POLICY; AMENDING SECTION 72-1303, IDAHO CODE, TO REVISE THE MEANING OF DEFINITIONS; AMENDING SECTION 72-1304, IDAHO CODE, TO REVISE THE DEFINITION OF AGRICULTURAL LABOR; AMENDING SECTION 72-1305, IDAHO CODE, TO REVISE THE DEFINITION OF ANNUAL PAYROLL; AMENDING SECTION 72-1306, IDAHO CODE, TO REVISE THE DEFINITION OF BASE PERIOD; AMENDING SECTION 72-1307, IDAHO CODE, TO REVISE THE DEFINITION OF BENEFITS; AMENDING SECTION 72-1308, IDAHO CODE, TO REVISE THE DEFINITION OF BENEFIT YEAR; AMENDING SECTION 72-1309, IDAHO CODE, TO REVISE THE DEFINITION OF COMMISSION; AMENDING SECTION 72-1310, IDAHO CODE, TO REVISE THE DEFINITION OF BONUS PAYMENT; AMENDING SECTION 72-1311, IDAHO CODE, TO REVISE THE DEFINITION OF CALENDAR QUARTER; AMENDING SECTION 72-1312, IDAHO CODE, TO REVISE THE DEFINITION OF COMPENSABLE WEEK; AMENDING SECTION 72-1313, IDAHO CODE, TO REVISE THE DEFINITION OF COMPUTATION DATE; AMENDING SECTION 72-1314, IDAHO CODE, TO REVISE THE DEFINITION OF CONTRIBUTIONS; AMENDING SECTION 72-1315, IDAHO CODE, TO REVISE THE DEFINITION OF COVERED EMPLOYER; AMENDING SECTION 72-1315A, IDAHO CODE, TO REVISE THE DEFINITION OF COST REIMBURSEMENT EMPLOYER; AMENDING SECTION 72-1316, IDAHO CODE, TO REVISE THE DEFINITION OF COVERED EMPLOYMENT; AMENDING SECTION 72-1316A, IDAHO CODE, TO REVISE THE DEFINITION OF EXEMPT EMPLOYMENT; REPEALING SECTION 72-1316B, IDAHO CODE; AMENDING SECTION 72-1317, IDAHO CODE, TO PROVIDE THAT SEPTEMBER 30 IMMEDIATELY FOLLOWING THE COMPUTATION DATE IS DESIGNATED AS THE CUT-OFF DATE FOR EXPERIENCE RATING PURPOSES; AMENDING SECTION 72-1318, IDAHO CODE, TO REVISE THE DEFINITION OF DIRECTOR; AMENDING SECTION 72-1319, IDAHO CODE, TO REVISE THE DEFINITION OF ELIGIBLE EMPLOYER; AMENDING SECTION 72-1319A, IDAHO CODE, TO REVISE THE DEFINITION OF DEFICIT EMPLOYER; AMENDING SECTION 72-1319B, IDAHO CODE, TO REVISE THE DEFINITION OF TAXABLE WAGE RATE; AMENDING SECTION 72-1320, IDAHO CODE, TO REVISE THE DEFINITION OF CREW LEADER; REPEALING SECTION 72-1321, IDAHO CODE; AMENDING SECTION 72-1322, IDAHO CODE, TO REVISE THE DEFINITION OF EXPERIENCE RATING; AMENDING SECTION 72-1322A, IDAHO CODE, TO REVISE THE DEFINITION OF HOSPITAL; AMENDING SECTION 72-1322B, IDAHO CODE, TO REVISE THE DEFINITION OF EDUCATIONAL INSTITUTION; AMENDING SECTION 72-1322C, IDAHO CODE, TO REVISE THE DEFINITION OF GOVERNMENTAL ENTITY; AMENDING CHAPTER 13, TITLE 72, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 72-1322D, IDAHO CODE, TO PROVIDE A DEFINITION OF NONPROFIT ORGANIZATION; AMENDING SECTION 72-1323, IDAHO CODE, TO REVISE THE DEFINITION OF INTERESTED PARTIES; AMENDING SECTION 72-1324, IDAHO CODE, TO REVISE THE DEFINITION OF PAYROLL; AMENDING SECTION 72-1325, IDAHO CODE, TO REVISE THE DEFINITION OF PERSON; REPEALING SECTION 72-1326, IDAHO CODE; AMENDING SECTION 72-1327, IDAHO CODE, TO REVISE THE DEFINITION OF STATE; AMENDING SECTION 72-1327A, IDAHO CODE, TO REVISE THE DEFINITION OF VALID CLAIM;

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

SECTION 1. That Section 72-1301, Idaho Code, be, and the same is hereby amended to read as follows:

72-1301. SHORT TITLE. This act shall be known ~~and may be cited~~ as the "Employment Security Law."

SECTION 2. That Section 72-1302, Idaho Code, be, and the same is hereby amended to read as follows:

72-1302. DECLARATION OF STATE PUBLIC POLICY. ~~(a) As a guide to the interpretation and application of this act, t~~The public policy of this state is ~~declared to be~~ as follows: Economic insecurity due to unemployment is a serious ~~menace~~ threat to the ~~health, morals and welfare of the~~ well-being of our people. ~~of this state. Involuntary u~~Unemployment is ~~therefore~~ a subject of national and state ~~interest and~~ concern. ~~which requires appropriate action to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life.~~ This ~~can be provided~~ chapter addresses this problem by encouraging employers to ~~provide more~~ offer stable employment and by ~~the systematic accumulation of~~ systematically accumulating funds during periods of employment to ~~provide~~ pay benefits for periods of unemployment~~, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance~~. The legislature~~, therefore,~~ declares that~~, in its considered judgment, the public good,~~ and the general welfare of ~~the~~ our citizens ~~of this state~~ requires the enactment of this measure~~, under the police powers of the state,~~ and ~~for the compulsory setting~~ and sets aside ~~of~~ unemployment reserves to be used for ~~the benefits of persons~~ workers who are unemployed through no fault of their own.

~~(b) This law is enacted for the purpose of securing for this state the maximum benefits of the Act of Congress, approved August 14, 1935, known as the "Social Security Act," as amended, and to enable the workmen of Idaho to benefit from the provisions of said act.~~

SECTION 3. That Section 72-1303, Idaho Code, be, and the same is hereby amended to read as follows:

72-1303. DEFINITIONS. ~~As used in this act, u~~Unless the context clearly requires otherwise, ~~the~~ these terms ~~defined in the following sections 72-1304 to 72-1330, inclusive,~~ shall have the following meanings ~~respectively ascribed to them~~ when used in this chapter.

SECTION 4. That Section 72-1304, Idaho Code, be, and the same is hereby amended to read as follows:

72-1304. AGRICULTURAL LABOR. (~~a~~1) ~~The term~~ "~~a~~Agricultural labor" ~~includes~~ means all services performed:

(~~1~~a) On a farm, in the employ of any person in connection with cultivating the soil, or ~~in connection with~~ raising or harvesting

any agricultural, aquacultural or horticultural commodities, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, fish, poultry, and fur-bearing animals and wildlife~~.~~;

(~~2~~b) 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 of brush and other debris left by a hurricane if the major part of such service is performed on a farm~~.~~;

(~~3~~c) In connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and used exclusively for supplying and storing water for farming purposes~~.~~; and

(~~4~~d) In the employ of any farm operator or group of operators, organized or unorganized, in handling, planting, drying, packing, packaging, eviscerating, 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, aquacultural or horticultural commodities, ~~but only~~ if such operator or group, in both the current and preceding calendar years produced more than one-half (1/2) of the commodities with respect to which such service is performed.

~~(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-in-both the--current--and--preceding-calendar-year-produced-more-than-one-half-(1/2)-of-the-commodities-with-respect-to-which--such--service is--performed.--The--term-"in-the-employ-of-a-group-of-farm-operators"-shall-include-any-group-of--farmers,--organized--or--unorganized,--who--as--a--group-produced-more-than-one-half-(1/2)-of-the crop-for-which-the-services-are-being-performed.~~

~~(6)--The-provisions-in~~ This subsection ~~(a)(4)-and-(a)(5)-shall~~ is not ~~be-deemed-to-be~~ applicable ~~with-respect~~ to services performed in ~~connection-with~~ commercial canning, freezing, or dehydrating, or in connection with any agricultural, aquacultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(~~b~~2) ~~As--used-in-subsection-(a),-the-term~~ "~~f~~Farm" includes stock, dairy, fish, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, hatcheries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural, aquacultural or horticultural commodities, and orchards.

(~~c~~3) ~~For-purposes-of-subsection-(a),--the--term~~ "~~u~~Unmanufactured state" means retention of its original form and substance.

(~~d~~4) ~~For--purposes-of-subsection-(a),-the-term~~ "~~t~~Terminal market" means a place of business to which products are shipped in a sorted, graded, packaged condition, ready for immediate sale.

SECTION 5. That Section 72-1305, Idaho Code, be, and the same is hereby amended to read as follows:

72-1305. ANNUAL PAYROLL. ~~The-term~~ "~~a~~Annual payroll" means total

payroll for a period of twelve (12) consecutive calendar months ending on June 30 of any year.

SECTION 6. That Section 72-1306, Idaho Code, be, and the same is hereby amended to read as follows:

72-1306. BASE PERIOD. (~~a~~1) ~~The--term~~ "~~b~~Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the beginning of a benefit year.

(~~b~~2) ~~The~~ "~~A~~alternate base period" ~~is~~ means the first four (4) of the last five (5) completed calendar quarters immediately prior to the Sunday of the week in which a medically verifiable temporary total disability occurred. To use the alternate base period, a claimant must file within three (3) years of the beginning of the temporary total disability, and no longer than six (6) months after the end of the temporary total disability.

SECTION 7. That Section 72-1307, Idaho Code, be, and the same is hereby amended to read as follows:

72-1307. BENEFITS. ~~The--term~~ "~~b~~Benefits" means the money paid to an individual~~,--as-provided-in-this-act,~~ with respect to his unemployment.

SECTION 8. That Section 72-1308, Idaho Code, be, and the same is hereby amended to read as follows:

72-1308. BENEFIT YEAR. ~~The-term~~ "~~b~~Benefit year" ~~shall~~ means a period of fifty-two (52) consecutive weeks beginning with the first day of the week in which an individual files a new valid claim for benefits; except that the benefit year shall be fifty-three (53) weeks if the filing of a new valid claim would result in overlapping any quarter of the ~~base-year~~ base year of a previously filed new claim. A subsequent benefit year cannot be established until the expiration of the current benefit year.

SECTION 9. That Section 72-1309, Idaho Code, be, and the same is hereby amended to read as follows:

72-1309. COMMISSION. ~~The-term~~ "~~c~~Commission" means the industrial commission.

SECTION 10. That Section 72-1310, Idaho Code, be, and the same is hereby amended to read as follows:

72-1310. BONUS PAYMENT. ~~The-term~~ "~~b~~Bonus payment" means wages paid for employment by an employer which are either~~--~~:

(~~a~~1) ~~in-the-form-of-a~~Additional remuneration for meritorious service and not customarily paid ~~by-him~~ to his employees at regular payroll intervals~~;~~; or

(~~b~~2) ~~a~~Additional remuneration based upon production, length of service, or profits, which at the time paid covers service rendered in two (2) or more calendar quarters. Bonus payments shall be reported by

employers as ~~the--director-may-by-regulation-prescribe~~ prescribed by rule.

SECTION 11. That Section 72-1311, Idaho Code, be, and the same is hereby amended to read as follows:

72-1311. CALENDAR QUARTER. ~~The-term~~ "~~c~~Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, and December 31, in each year~~,-or-the-equivalent-thereof,-as-the-director-may,-by-regulations,-prescribe.~~

SECTION 12. That Section 72-1312, Idaho Code, be, and the same is hereby amended to read as follows:

72-1312. COMPENSABLE WEEK. ~~(a)-A~~ "Compensable week" means a week of unemployment, ~~with-respect-to~~ all of which occurred within the benefit year, for which an eligible ~~benefit~~ claimant ~~shall-be~~ is entitled to benefits ~~shall-be-known-as-a-compensable-week;-provided,-however,-that-no-person-shall-be-deemed-to-be-unemployed-while-he-is--attending school,--during--the-customary-working-hours-of-his-occupation,-except where-the-claimant-is-participating-in-a-job-training-course--in--compliance--with--the--provisions--of--subsection-(h)-of-section-72-1366,-Idaho-Code.~~ and during which:

(~~b~~1) ~~A-compensable-week-of-a-benefit-claimant-shall-be-a-week--of~~ The claimant had either no work or less than full-time work--; and

~~(1)--all-of-which-occurred-within-this-benefit-year;-and~~

(2) ~~with--respect--to-which~~ No benefits have ~~not~~ been paid to ~~him~~ the claimant; and

(3) ~~in-which-he~~ The claimant complied with all of the personal eligibility conditions ~~prescribed-in~~ of section 72-1366, Idaho Code; and

(4) ~~in-which-t~~The total wages payable to ~~him~~ the claimant for less than full-time work performed in such week amounted to less than one and one-half (1 1/2) times his weekly benefit amount; provided, however, that ~~for-the-purpose-of-this-section-all-amounts~~ any benefits which a ~~benefit~~ claimant receives for any week ~~which-begins-after-the effective--date--of--the--pension--deduction--provisions--in---section 3304(a)(15)-of-the-federal-unemployment-tax-act~~ shall be reduced by an amount equal to the amount received as pension, retirement pay, annuity, or any other similar payment which is based on the previous work of such individual which is reasonably attributable to such week~~;-provided-that~~, if the ~~provisions-of-the-federal-unemployment-tax-act-permit,--the--director--may-prescribe-in-regulations-which-are-consistent with-the-federal-unemployment-tax-act-that---~~

~~(A)--the-requirements-of-this-paragraph-shall-only--apply--in--the case--of--a--pension,-retirement-or-retired-pay,-annuity,-or-other similar-periodic~~ payment is made under a plan maintained or contributed to by ~~a~~ the base period ~~or-chargeable~~ employer and the claimant has made no contributions to the plan; and ~~that~~

~~(B)--the-amount-of-any-such-reduction-shall-be--determined--taking into-account-contributions-made-by-the-individual-for-the-pension, retirement--or--retired-pay,-annuity,-or-other-similar-period-payment;-and~~

(5) ~~a~~All of which occurred after a waiting ~~period~~ week as defined in section 72-1329, Idaho Code.

SECTION 13. That Section 72-1313, Idaho Code, be, and the same is hereby amended to read as follows:

72-1313. COMPUTATION DATE. ~~The term~~ "~~c~~Computation date" means the June 30 ~~preceding the commencement of~~ immediately prior to the calendar year for which a covered employer's taxable wage rate is effective. ~~except that the charging of benefits to a covered employer's account shall be made in accordance with the formula as provided in section 72-1351(b), Idaho Code.~~

SECTION 14. That Section 72-1314, Idaho Code, be, and the same is hereby amended to read as follows:

72-1314. CONTRIBUTIONS. ~~The term~~ "~~c~~Contributions" means the ~~money~~ payments required ~~by this act~~ to be paid into the employment security fund by any covered employer pursuant to sections 72-1349 ~~to~~ through 72-1353, Idaho Code~~, inclusive; payments made in lieu of contributions by cost reimbursement employers as provided in section 72-1349A, Idaho Code, are not contributions~~.

SECTION 15. That Section 72-1315, Idaho Code, be, and the same is hereby amended to read as follows:

72-1315. COVERED EMPLOYER. ~~The term~~ "~~c~~Covered employer" means:

(~~a~~1) Any person who, in any calendar quarter in either the current or preceding calendar year paid for services in covered employment wages of one thousand five hundred dollars ($1,500) 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). For purposes of this subsection there shall not be taken into account any wages paid to, or in employment of, an employee performing domestic services referred to in subsection (~~h~~8) of this section.

(~~b~~2) All individuals performing services within this state for an employer who maintains two (2) or more separate establishments within this state shall be deemed to be performing services for a single employer. ~~for all the purposes of this act.~~

(~~c~~3) Each individual engaged to perform or assist in performing the work of any person in the service of an employer shall be deemed to be ~~engaged~~ employed by such employer for all the purposes of this ~~act~~ chapter, whether such individual was engaged or paid directly by such employer or by such person, provided the employer had actual or constructive knowledge of the work.

(~~d~~4) 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.

(~~e~~5) In the case of agricultural labor, any person who:

(~~1~~a) During any calendar quarter in the calendar year or the pre-

ceding calendar year paid wages in cash of twenty thousand dollars ($20,000) or more for agricultural labor~~,~~; or

(~~2~~b) On each of some twenty (20) days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) individuals in employment in agricultural labor for some portion of the day.

(~~3~~c) Such labor is not agricultural labor when it is performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the immigration and nationality act, unless the individual is required to be covered by the federal unemployment tax act.

(~~f~~6) A crew leader who furnishes members of a crew to perform agricultural labor for another person if:

(~~1~~a) ~~Such~~ The crew leader holds a valid certificate of registration under the migrant and seasonal agricultural worker protection act; or

(~~2~~b) Substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by ~~such~~ the crew leader; and

(~~3~~c) ~~If such individual~~ The crew leader is not an employee of such other person. ~~within the meaning of section 72-1316(d), Idaho Code.~~

(~~g~~7) In the case of any individual who is furnished by a crew leader to perform agricultural labor for another person, such other person and not the crew leader shall be treated as the employer of ~~such~~ the individual if ~~such~~ the crew leader is not, under the provisions of subsection (~~f~~6) of this section, considered to be the employer and such other person shall be treated as having paid cash remuneration to ~~such~~ the individual in an amount equal to the amount of cash remuneration paid to ~~such~~ the individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

(~~h~~8) In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, ~~with respect to any calendar year,~~ any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of one thousand dollars ($1,000) or more for such service.

~~(i)~~ A person treated as a covered employer under this subsection (~~h~~8) shall not be treated as a covered employer with respect to wages paid for any service other than domestic service referred to in this subsection (~~h~~8) unless such person is treated as a covered employer under subsection (~~a~~1) or (~~e~~5) of this section, with respect to such other service.

(~~i~~9) Any governmental entity as defined in section 72-1322C, Idaho Code.

(~~j~~10) A nonprofit organization as defined in ~~subsection (a) of~~ section 72-13~~49A~~22D, Idaho Code.

(~~k~~11) An employer who has elected coverage pursuant to the provisions of subsection (~~c~~3) of section 72-1352, Idaho Code.

SECTION 16. That Section 72-1315A, Idaho Code, be, and the same

is hereby amended to read as follows:

72-1315A. COST REIMBURSEMENT EMPLOYER. ~~The term~~ "c~~C~~ost reimbursement employer" means a covered employer who is eligible and elects to reimburse the fund for proportionate benefit costs in lieu of contributions as provided in sections 72-1349A and 72-1349B, Idaho Code.

SECTION 17. That Section 72-1316, Idaho Code, be, and the same is hereby amended to read as follows:

72-1316. COVERED EMPLOYMENT. (~~a~~1) ~~The term~~ "c~~C~~overed 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.

(~~b~~2) Notwithstanding any other provision of state law, 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~~ on such services under 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 if the director determines that as a condition for full tax credit against the tax imposed by the federal unemployment tax act such services are required to be covered under this ~~act~~ chapter.

(~~c~~3) 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 72-1344, Idaho Code, shall be deemed to be covered employment during the effective period of such election.

(~~d~~4) 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~~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~~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) of this section 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;~~

~~(3) Services shall not be deemed to be in covered employment under the provisions of subsection (d)(2) of this section unless the individual's contract of service contemplates that substan-~~

~~tially-all-of-such-services-are-to-be-performed-personally-by-such individual;--except--that--such-individual's-services-shall-not-be deemed-to-be-in-covered-employment-if-such-individual-has--a--substantial-investment-in-facilities-used-in-connection-with-the-performance--of--such-services,-other-than-facilities-for-transportation,-or-if-the-services-are-in-the-nature-of-a-single-transaction not-part-of-a-continuing-relationship-with-the-person-for-whom-the services-are-performed.~~

(~~e~~5) ~~The-term~~ "~~c~~Covered employment" shall include an individual's entire service, performed within or both within and without this state~~,~~:

(~~1~~a) If the service is localized in this state; or

(~~2~~b) If the service is not localized in any state but some of the service is performed in this state, and:

(~~A~~i) 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~~ii) 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~~c) Service shall be deemed to be localized within a state if:

(~~A~~i) The service is performed entirely within such state; or

(~~B~~ii) 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~~d) ~~The-term~~ "~~c~~Covered employment" shall include an individual's service, wherever performed within the United States, or Canada, if:

(~~A~~i) Such service is not covered under the unemployment compensation law of any other state, the Virgin Islands, or Canada~~,~~; and

(~~B~~ii) The place from which the service is directed or controlled is in this state.

(~~f~~6) ~~The-term~~ "~~c~~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) in the employ of an American employer (other than service which is deemed "covered employment" under the provisions of subsection (~~e~~5) of this section or the parallel provisions of another state's law)~~;~~, if:

(~~1~~a) The employer's principal place of business in the United States is located in this state; or

(~~2~~b) The employer has no place of business in the United States; but

(~~A~~i) ~~The-employer-i~~Is an individual who is a resident of this state; or

(~~B~~ii) ~~The--employer--i~~Is a corporation which is organized under the laws of this state; or

(~~C~~iii) ~~The-employer-i~~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~~c) None of the criteria of provision (~~1~~a) or (~~2~~b) of this subsection ~~are~~ is 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~~d) An "American employer" for purposes of this subparagraph means a person who is:

(~~A~~i) An individual who is a resident of the United States; or

(~~B~~ii) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(~~C~~iii) A trust if all of the trustees are residents of the United States; or

(~~D~~iv) A corporation organized under the laws of the United States or of any state~~;~~.

(~~5~~e) For purposes of this subsection, ~~(f)--the--term~~ "United States" means the states, the District of Columbia, ~~and~~ the Commonwealth of Puerto Rico, and the Virgin Islands.

SECTION 18. That Section 72-1316A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1316A. EXEMPT EMPLOYMENT. ~~The-term~~ "~~e~~Exempt employment" means service performed:

~~(a)--Agricultural--labor,--as--defined--by--section-72-1304,-Idaho Code,-unless-after-December-31,-1977,-the-individual's-service-was-for a-person-who:~~

~~(1)--During-any-calendar-quarter-in-the-current-calendar--year--or the--preceding-calendar-year-paid-wages-in-cash-of-twenty-thousand dollars-($20,000)-or-more-for-agricultural-labor;-or~~

~~(2)--On-each-of-some-twenty-(20)-days-during-the-calendar-year--or during--the-preceding-calendar-year,-each-day-being-in-a-different calendar-week,-employed-at-least-ten-(10)-individuals--in--employment--in--agricultural--labor-for-some-portion-of-the-day-in-which case-such-service-shall-be-considered-service-in--covered--employment.~~

~~(b)--Service--performed--as--domestic--service--in-a-private-home, local-college-club,-or-local-chapter-of-a-college-fraternity-or-sorority-unless-after-December-31,-1977,-the-service-was--performed--for--a person-who-paid-wages-in-cash-of-one-thousand-dollars-($1,000)-or-more to-individuals-employed-in-such-domestic-service-in-any-calendar-quarter-in-the-calendar-year-or-the-preceding-calendar-year,-in-which-case such-service-shall-be-considered-covered-employment.~~

~~(c)~~(1) ~~Service--performed--b~~By an individual in the employ of his spouse or child~~;~~.

(2) ~~Service-performed-b~~By a person under the age of twenty-one (21) years in the employ of his father or mother~~;~~.

(3) ~~Service--performed-b~~By an individual under the age of twenty-two (22) who is enrolled as a student in a full-time program at an accredited nonprofit or public education institution for which credit at such institution is earned in a program which combines academic instruction with work experience.~~,--except--that-t~~This subparagraph

shall not apply to service performed in a program established at the request of an employer or group of employers.

(~~d~~4) ~~Service--performed--i~~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~~ chapter.

(~~e~~5) ~~Service-performed-i~~In the employ of a governmental entity in the exercise of duties:

(~~1~~a) As an elected official;

(~~2~~b) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision thereof;

(~~3~~c) As a member of the state national guard or air national guard;

(~~4~~d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(~~5~~e) In a position which, ~~under-or~~ pursuant to the laws of this state, is designated as (i) a major nontenured policy making or advisory position, or (ii) a policy making or advisory position ~~the-performance-of-the-duties-of~~ which ordinarily does not require more than eight (8) hours per week.

(~~f~~6) ~~Prior-to-January-1,-1978,-for-a-hospital-in-a--state--prison or-other-state-correctional-institution-b~~By an inmate of ~~the-prison-or~~ a correctional, custodial or penal institution, ~~and-after-December-31, 1977,--by--an-inmate-of-a-custodial-or-penal~~ if such services are performed for or within such institution.

(~~g~~7) ~~Service-performed:-(i)~~ In the employ of:

(~~i~~a) ~~a~~A church or convention or association of churches~~,~~; or

(~~ii~~b) ~~a~~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

(~~2~~c) In the employ of an institution of higher education, if it is devoted primarily to preparation of a student for the ministry or training candidates to become members of a religious order; or

(~~3~~d) 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~~.

(~~4~~8) By a program participant i~~n~~ a facility ~~conducted--for--the purpose--of-carrying-out-a-program-of~~ that provides rehabilitation for individuals whose earning capacity is impaired by age, ~~or~~ physical or

mental deficiency, or injury or ~~providing~~ provides remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed into the ~~competitive~~ labor market. ~~by an individual receiving such rehabilitation or remunerative work; or~~

(~~5~~9) 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.

(~~h~~10) Service with respect to which unemployment ~~compensation--or~~ insurance is payable under an unemployment ~~compensation~~ insurance system established by an act of congress other than the social security act.

(~~i~~11) ~~Service performed a~~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.

(~~j~~12) ~~Service performed b~~By an individual under the age of eighteen (18) years of age in the delivery or distribution of newspapers or shopping news not including delivery or distribution to any point for subsequent delivery or distribution.

(~~k~~13) ~~Service--performed--b~~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.

(~~l~~14) ~~Service performed b~~By an individual for a real estate broker as an associate real estate broker or as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(~~m~~15) 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~~.

(~~n~~16) ~~Service performed i~~In the employ of a school or college by a student who is enrolled and regularly attending classes at such school or college.

(~~o~~17) ~~Service performed i~~In the employ of a hospital by a resident patient ~~during the time that he is a patient~~ of such hospital.

(~~p~~18) ~~Services performed b~~By a member of an AmeriCorps program.

SECTION 19. That Section 72-1316B, Idaho Code, be, and the same is hereby repealed.

SECTION 20. That Section 72-1317, Idaho Code, be, and the same is hereby amended to read as follows:

72-1317. CUT-OFF DATE. September 30 immediately following the computation date is designated as the cut-off date for experience rat-

ing ~~computation~~ purposes.

SECTION 21. That Section 72-1318, Idaho Code, be, and the same is hereby amended to read as follows:

72-1318. DIRECTOR. ~~The--term~~ "~~d~~Director" means the individual appointed pursuant to section 72-1331, Idaho Code~~,-who-is-charged-with the-responsibility-of-administering-the-Employment-Security-Law~~.

SECTION 22. That Section 72-1319, Idaho Code, be, and the same is hereby amended to read as follows:

72-1319. ELIGIBLE EMPLOYER. (~~a~~1) ~~To-determine-experience--ratings for--the--year--1969--and--every--calendar--year--thereafter,-the-term~~ "~~e~~Eligible employer" means a covered employer who has completed a qualifying period as defined in subsection (~~b~~2) of this section, and who has filed all payroll reports required, has paid, on or before the cut-off date, all contributions and penalties due and has established a record of accumulated contributions in excess of benefits charged to his account. For the purposes of this section, delinquencies of a minor nature may be disregarded if ~~showing-is-made-to-the-satisfaction of~~ the director is satisfied that such covered employer has acted in good faith and that forfeiture of a reduced taxable wage rate because of such minor delinquency would be inequitable.

(~~b~~2) "Qualifying period" shall be the period of three (3) consecutive years ending on the computation date in which, during all of said years, the employer shall be chargeable for benefits under this state law, except, that a new employer shall have a qualifying period of one (1) year ending on the computation date in which, during all of said year, the employer shall be chargeable for benefits under this state law.

~~(c)--If-the-director-finds-that-an-employer's-business--is--closed solely-because-of-the-entrance-of-one-or-more-of-the-owners,-officers, partners,--or--the--majority--stockholder-into-the-armed-forces-of-the United-States,-of-any-of-its-allies,-or-of-the--United--Nations--after January-1,-1951,-such-employer's-account-shall-not-be-terminated;-and, if--the--business--is--resumed--within--2-years-after-the-discharge-or release-from-active-duty-in-the-armed-forces-of-such--person--or--persons,--the-employer's-experience-shall-be-deemed-to-have-been-continuous-throughout-such-period.-The-experience-factor-as-defined--in--section--72-1351(a)(1)--of-any-such-employer-shall-be-the-total-contributions-paid-by-such-employer-minus--all--benefits--(including--benefits paid--to--any--individual--during--the-period-such-employer-was-in-the armed-forces)-based-upon-wages-paid-by-him-prior-to-his-entrance--into such--forces,--divided--by--the-average-of-his-annual-payrolls-for-the number-of-fiscal-years-immediately-preceding-the-computation-date-such employer-has-been-in-business-prior-to-and-after-service-in-the--armed forces,--using-a-minimum-of-two-(2)-fiscal-years-and-a-maximum-of-four (4)-fiscal-years.~~

SECTION 23. That Section 72-1319A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1319A. DEFICIT EMPLOYER. ~~The term~~ "~~d~~Deficit employer" means a covered employer who has established a record of accumulated benefits charged to his account in excess of his accumulated contributions paid as of the cut-off date.

SECTION 24. That Section 72-1319B, Idaho Code, be, and the same is hereby amended to read as follows:

72-1319B. TAXABLE WAGE RATE. ~~The term~~ "~~t~~Taxable wage rate" means the numerical values provided in ~~sub~~section 72-1350(~~g~~7), Idaho Code, for the purpose of establishing contribution rates, training tax rates and reserve tax rates for covered employers.

SECTION 25. That Section 72-1320, Idaho Code, be, and the same is hereby amended to read as follows:

72-1320. CREW LEADER. ~~The term~~ "~~c~~Crew leader" means an individual who:

(~~a~~1) Furnishes individuals to perform agricultural labor for any other person~~;~~;

(~~b~~2) Pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them~~;~~; and

(~~c~~3) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

SECTION 26. That Section 72-1321, Idaho Code, be, and the same is hereby repealed.

SECTION 27. That Section 72-1322, Idaho Code, be, and the same is hereby amended to read as follows:

72-1322. EXPERIENCE RATING. ~~DEFINED. The term~~ "~~e~~Experience rating" means a method of determining variable taxable wage rates allowed to covered employers.

SECTION 28. That Section 72-1322A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1322A. HOSPITAL. ~~DEFINED. The term~~ "~~h~~Hospital" means any institution which has been licensed by, certified, or approved by the state board of health and welfare as a hospital.

SECTION 29. That Section 72-1322B, Idaho Code, be, and the same is hereby amended to read as follows:

72-1322B. EDUCATIONAL INSTITUTION. ~~DEFINED. For purposes of this act,~~ "~~e~~Educational institution" means:

(~~a~~1) An institution of higher education which:

(~~i~~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

(~~2~~b) Is ~~legally~~ authorized ~~in-this-state~~ to provide a program of education beyond high school; and

(~~3~~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 postgraduate-or-post-doctoral-studies,~~ or a program of training to prepare students for gainful employment in a recognized occupation.

(~~b~~2) A primary or secondary school which provides education from preschool and kindergarten through grade twelve (12).

SECTION 30. That Section 72-1322C, Idaho Code, be, and the same is hereby amended to read as follows:

72-1322C. GOVERNMENTAL ENTITY. ~~DEFINED. When-used-in-this-act-the term~~ "~~g~~Governmental entity" means this state or any of its instrumentalities, ~~or-any~~ political subdivisions, ~~thereof-or-its-instrumentalities--or--any-instrumentality-of-more-than-one-of-the-foregoing-or-any instrumentality-which-is-jointly-owned-by-this-state--or--a--political subdivision-thereof-and-one-or-more-other-states-or-political-subdivisions--of--this--or--other-states-provided-that-service-for-such-an~~ or districts of whatever type or nature including, but not limited to, school districts, cities, counties, taxing districts, or other entities, as well as any instrumentality of one (1) or more of the foregoing or that is jointly owned by this state or a political subdivision thereof and one (1) or more other states or political subdivisions of this or other states, if service for any such governmental entity is excluded from "employment" as defined in the ~~F~~federal ~~U~~unemployment ~~T~~tax ~~A~~act, ~~by-section~~ 26 U.S.C. 3306(c)(7). ~~of-that--act--and--is--not excluded-from-"employment"-under-section-72-1316A(e),-Idaho-Code.~~

SECTION 31. 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 72-1322D, Idaho Code, and to read as follows:

72-1322D. NONPROFIT ORGANIZATION. "Nonprofit organization" means 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.

SECTION 32. That Section 72-1323, Idaho Code, be, and the same is hereby amended to read as follows:

72-1323. INTERESTED PARTIES. ~~The-term~~ "~~i~~Interested party" with respect to a claim for benefits means the claimant, the claimant's last regular employer, the ~~covered~~ employer whose account is chargeable for experience rating purposes, the cost reimbursement employer who may be billed for any portion of benefits claimed, and the ~~D~~director or a~~n~~ ~~duly~~ authorized representative of any of them; ~~an~~ "interested party" with respect to proceedings involving employer liability means the employer and the ~~D~~director or a~~n~~ ~~duly~~ authorized representative. ~~of-either-of-them.~~

SECTION 33. That Section 72-1324, Idaho Code, be, and the same is hereby amended to read as follows:

72-1324. PAYROLL. ~~The term~~ "p~~P~~ayroll" means the amount of wages, as defined in section 72-1328, Idaho Code, paid by a covered employer for covered employment~~, except that with respect to years prior to 1947, the term "payroll" means the amount of wages payable for covered employment by a covered employer~~.

SECTION 34. That Section 72-1325, Idaho Code, be, and the same is hereby amended to read as follows:

72-1325. PERSON. ~~The term~~ "p~~P~~erson" means any individual ~~or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation~~ and any other entity recognized by Idaho law, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing, or the legal representative of a deceased person.

SECTION 35. That Section 72-1326, Idaho Code, be, and the same is hereby repealed.

SECTION 36. That Section 72-1327, Idaho Code, be, and the same is hereby amended to read as follows:

72-1327. STATE. ~~The term~~ "s~~S~~tate" includes, in addition to the states of the United States of America, the District of Columbia, the Dominion of Canada, the Commonwealth of Puerto Rico, and the Virgin Islands.

SECTION 37. That Section 72-1327A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1327A. VALID CLAIM. ~~The term~~ "v~~V~~alid claim" ~~shall~~ means any application for benefits which is found to be eligible as provided in section 72-1367, Idaho Code, and which has been filed in accordance ~~and consistent~~ with this ~~act~~ chapter and such rules ~~and regulations~~ as the director may prescribe.

SECTION 38. That Section 72-1328, Idaho Code, be, and the same is hereby amended to read as follows:

72-1328. WAGES. (~~a~~1) ~~The term~~ "w~~W~~ages" shall include:
(~~1~~a) 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~~;
(~~2~~b) All tips received while performing services in covered employment totaling twenty dollars ($20.00) or more in a month, ~~and~~ which are reported in writing to the employer as required under federal law;

(~~3~~c) Any employer contribution under a qualified cash or deferred agreement as defined in 26 U.S.C. 401(k) to the extent such contribution is not included in gross income by reason of 26 U.S.C. 402(a)(8).

(~~b~~2) The term "wages" shall not include:

(~~1~~a) ~~The--amount--of--any--payment~~ Payments (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), made 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), on account of (i) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a ~~workmen's~~ worker's compensation law), or (ii) medical or hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(~~2~~b) ~~The-amount-of-any-payment~~ Payments on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made 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;

(~~3~~c) ~~The--amount--of-any-payment~~ Payments made 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, is a plan described in section 403(a) of the Federal Internal Revenue Code, under a cafeteria plan within the meaning of section 125 of the Federal Internal Revenue Code;

(~~4~~d) ~~The-amount-of-any--payment~~ Payments 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; or

(~~5~~e) Noncash payments for farm work.

(~~c~~3) ~~Except--as--otherwise--provided-in-regulations-prescribed-by the-director;-a~~Any third party which makes a sickness or accident disability payment, which is not excluded from wages under subsection (~~b~~2)(~~1~~a)(i) of this section, shall be treated as the employer with respect to such payment of wages for the purposes of this ~~act~~ chapter.

SECTION 39. That Section 72-1329, Idaho Code, be, and the same is hereby amended to read as follows:

72-1329. WAITING ~~PERIOD~~ WEEK. ~~(a)-The-waiting-period-of-an-eligi-~~

~~ble-benefit-claimant-shall-consist-of-one-(1)-week.~~

~~(b)--A-waiting-period-week-of-a-benefit-claimant-shall-be-a-week:~~

~~(1)--Of-either-no-work-or-less-than-full-time-work;~~

~~(2)--Which-is-the-first-week-claimed-in-each-of-his-benefit-years;~~ ~~and~~

~~(3)--With-respect-to-which-benefits-have-not-been-paid-to-him;-and~~

~~(4)--In-which-he-complied-with-all-the-personal-eligibility-conditions-prescribed-in-section-72-1366,-Idaho-Code;-and~~

~~(5)--In-which-the-total-wages-payable-to-him-for-less--than--full-time--work--performed--in--such-week-amounted-to-less-than-one-and one-half-(1-1/2)-times-his-weekly-benefit--amount~~ "Waiting week" means the first week of a benefit year that meets the criteria for a compensable week in section 72-1312(1) through (4), Idaho Code, but for which no benefits will be paid to the claimant. Every claimant shall have a waiting week each benefit year.

SECTION 40. That Section 72-1330, Idaho Code, be, and the same is hereby amended to read as follows:

72-1330. WEEK. ~~The-term~~ "~~w~~Week" means ~~such~~ a period of seven (7) consecutive days ~~as-the-director-by-regulation-may-prescribe~~ ending at midnight on Saturday.

SECTION 41. That Section 72-1331, Idaho Code, be, and the same is hereby amended to read as follows:

72-1331. ADMINISTRATION. The ~~E~~employment ~~S~~security ~~L~~law shall be administered by the director, ~~of-the-department-of-labor,~~ who shall be appointed by the governor~~,-with-the-advice-and-consent-of-the-senate.~~ ~~The-provisions-of-this-section-shall-become-effective-when-the--office of-director-becomes-vacant-for-any-reason.~~ Any appointments made under ~~the-provisions-of~~ this section shall be confirmed by the state senate. ~~If--an--appointment--is--made-during-the-recess-of-the-legislature,-it shall-be-subject-to-confirmation-by-the-senate-during-its-next-ensuing session.~~

SECTION 42. That Section 72-1332, Idaho Code, be, and the same is hereby amended to read as follows:

72-1332. AUTHORITY AND DUTIES OF THE COMMISSION. The ~~C~~commission ~~shall--have--the--power-and-authority~~ is authorized to hear and decide ~~all~~ matters appealed to it in accordance with the provisions of this ~~act~~ chapter and the ~~F~~federal ~~U~~unemployment ~~T~~tax ~~A~~act. In addition to salaries paid from the industrial administration fund each member of the ~~C~~commission shall receive a salary to be paid from the employment security administration fund in an amount equal to one-half (1/2) of the salary paid from the industrial administration fund. ~~In-addition to-the-amount-paid-to-the--Commission--for--salaries,--p~~Prior to the beginning of each fiscal year, the ~~D~~department ~~of-Employment~~ and the ~~Industrial-C~~commission shall negotiate an amount to be paid the ~~Industrial-C~~commission to reimburse it for the cost of personal and nonpersonal services involved in hearing appeals as provided in section 72-1368(~~f~~6), Idaho Code.

SECTION 43. That Section 72-1333, Idaho Code, be, and the same is hereby amended to read as follows:

72-1333. DEPARTMENT OF LABOR -- AUTHORITY AND DUTIES OF THE DIRECTOR. (~~a~~1) ~~It shall be the duty of t~~The director ~~of the department of--labor to~~ shall administer the employment security law, the minimum wage law, chapter 15, title 44, Idaho Code, the provisions of chapter 6, title 45, Idaho Code, relating to claims for wages, the provisions of section 44-1812, Idaho Code, relating to medical and health standards for paid firefighters, and to perform such other duties relating to labor and workforce development as may be imposed upon him by law. The director shall be the successor in law to the office enumerated in section 1, article XIII, of the constitution of the state of Idaho. The director shall have the ~~power and~~ authority to employ ~~such persons~~ individuals, make ~~such~~ expenditures, require ~~such~~ reports, make ~~such~~ investigations, perform ~~such~~ travel and take ~~such~~ other actions ~~as--he deems~~ deemed necessary. ~~or suitable to that end.~~ ~~He~~ The director shall ~~determine his own organization to be known as~~ organize the "department of labor" which is hereby created, and which shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government. ~~The references in the employment security law--to--"agency,"--and--"employment--security agency,"--are--hereby--deemed--to--be references to the "department of labor."~~ The director shall ~~determine methods of--procedure--and--shall~~ have an official seal which shall be judicially noticed.

(~~b~~2) The director shall have the ~~power and~~ authority pursuant to chapter 52, title 67, Idaho Code, to adopt, amend, or rescind ~~such~~ rules as ~~may--be~~ he deems necessary for the proper ~~administration of this act and the~~ performance of all ~~other~~ duties imposed upon him by law. ~~including, without limitation, administration and implementation of the minimum wage law, chapter 15, title 44, Idaho Code; administration and implementation of the law governing claims for wages, chapter 6, title 45, Idaho Code; and compliance with the provisions of section 44-1812, Idaho Code, relating to medical and health standards for paid firefighters; subject, however, to prior approval by the--governor--of the proposed action.~~

(~~c~~3) Subject to the provisions of chapter 53, title 67, Idaho Code, the director is authorized and directed to provide for a merit system for the department covering all persons, except the director, the division administrators, and ~~one~~ two (~~1~~2) exempt positions to serve at the pleasure ~~and discretion~~ of the director. ~~, and shall have authority, by rule, to provide for all matters which--are--appropriate to--the--establishment--and maintenance of such system on the basis of efficiency and fitness. The director is authorized to adopt such rules as may be necessary to meet personnel--standards--promulgated--by--the secretary of labor pursuant to the Social Security Act, as amended, or other--applicable--federal--laws and to provide for the maintenance of the merit system required under this section in conjunction--with--the merit system applicable to any other department or departments of this state--which meet the personnel standards promulgated by the secretary of labor or other appropriate federal authority.~~

~~(d)--The director shall acquire and disseminate among--the--people of--the--state,--information--on--subjects--connected--with--labor and~~

~~workforce-development,-relations-between-employees,-employers-and--the public,--hours--of-labor,-wages-and-working-conditions,-the-best-means of-minimizing-the-economic-effect--of--disputes--between--workers--and employers,-and-of-promoting-the-welfare-of-all-working-people.~~

(~~e~~4) The director ~~shall-represent-the-state-of-Idaho-in-dealings with-the-federal-mediation-and--conciliation--service--of--the--United States,--the--department-of-labor-of-the-United-States-with-respect-to apprentice-training-programs-and-with-the-veterans--administration--of the-United-States-with-respect-to-job-training-programs.~~

~~(f)--Annually,-not-later-than-the-31st-day-of-December,-the-director--shall-submit-to-the-governor-a-report-covering-the-administration and-operation-of-the-employment-security-law-and-the-other--activities of-the-department-during-the-preceding-fiscal-year-ending-June-30,-and~~ shall make ~~such~~ recommendations for amendments to the employment security law and other laws he is charged to implement as he deems proper.

~~(g)--On--and--after--the--effective--date--of-this-act,-all-of-the powers-and-duties-imposed-upon-or--granted--to--the--director--of--the department--of--employment--or-the-director-of-the-department-of-labor and-industrial-services-by-the-laws-of--the--state--of--Idaho--or--the United--States--or--the--rules--of-the-department-of-employment-or-the department-of-labor-and-industrial-services-or-the-rules--and--regulations-of-the-United-States,-except-those-powers-and-duties-granted-and reserved--to--the--administrator-of-the-division-of-building-safety-by this-act,-are-hereby-transferred-to-the-director-of-the-department--of labor.--The--director--of--the--department-of-labor-shall-have-all-the powers-and-duties-as-may-have-been-or-could-have-been-exercised-by-his predecessors-in-law-and-he-shall-be-the-successor-in-law-to--all--contractual--obligations--entered--into-by-his-predecessor-in-law,-except for-those-contracts-of-the-department-of-labor-and-industrial-services to-be-performed-by-the-division-of-building-safety.~~

SECTION 44. That Section 72-1334, Idaho Code, be, and the same is hereby amended to read as follows:

72-1334. PUBLICATIONS. The director shall ~~cause--to--be--printed~~ print for distribution to the public ~~the-text-of-this-act,-his-rules and-regulations,-his-reports-to--the--governor,~~ labor and workforce development information and any other material ~~he-deems~~ deemed relevant ~~and-suitable~~ and shall furnish the same ~~to-any-person--who--makes~~ upon request. ~~therefor.~~

SECTION 45. That Section 72-1335, Idaho Code, be, and the same is hereby amended to read as follows:

72-1335. PERSONNEL. (~~a~~1) ~~Subject-to-other-provisions-of-this-act,~~ tThe 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~~ chapter, and may, in the time, form and manner ~~as~~ prescribed by chapter 8, title 59, Idaho Code, bond ~~any~~ persons handling moneys or signing checks hereunder, such bond to be paid ~~for-out~~

~~of~~ from the employment security administration fund.

(~~b~~2) (~~1~~a) Subject only to the provisions of this ~~act~~ chapter and such ~~additional--provisions--consistent-therewith-as-the-director shall-by~~ rules as the director may prescribe, the director is authorized and directed to establish and maintain a group pension plan providing retirement, disability, and death benefits for employees of the department ~~of-labor~~ 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~~b) Employees covered by the plan shall include all employees (other than temporary and hourly-rated employees) who are in employee status with the department ~~of--labor-on-or-after-the effective-date-of-the-plan~~ and whose employment commenced before October 1, 1980.

(~~3~~c) Credited service shall mean all service by employees in the employ of the department ~~of-labor~~ (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.

(iii) An employee of the department 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 an agreement approved by the director.

(~~4~~d) For each year of credited service each employee covered under the plan shall receive a monthly pension commencing upon retirement at or after age sixty-five (65) and continuing until death, of not less than~~:~~ one and one-half percent (1 1/2%) of monthly earnings,

~~Pension-as-%~~ ~~of-Earnings~~	~~Monthly-Earnings~~
~~1%~~	~~First-$350~~
~~2%~~	~~Over---350~~

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.-A~~appropriate schedules and conditions for service retirement, early retirement, disability retirement, and contingency annuity options shall be included in the insurance plan. 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 bene-

fits 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-(2)--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).~~

(6e) The cost of past service, future service and disability pensions shall be calculated according to sound actuarial principles. ~~Cost~~ The costs 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~~ administrative funds available to the department. 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:~~ rate paid by the department, but not to exceed seven percent (7%) of monthly earnings.

~~Rate-of-Monthly Contribution~~	~~Monthly-Earnings~~
~~3%~~	~~First-$350~~
~~6%~~	~~Over---350~~

(~~7~~f) Upon termination of service, an employee may elect to receive the refund of his contributions plus interest or may elect to have the tax-deferred contributions and interest directly rolled over to an individual retirement account or annuity or to another qualified retirement plan that accepts the roll over, pursuant to 26 U.S.C. 402(c). 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 made on his behalf, and all other privileges under the plan.

(~~8~~g) 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, subject to survivor benefits as provided in the plan. 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 46. That Section 72-1336, Idaho Code, be, and the same is hereby amended to read as follows:

72-1336. ADVISORY BODY AND SPECIAL COMMITTEES. ~~If-federal-law-or regulations-require-the-establishment-of-an-advisory-body--or--similar entity--for--the-department,-the-governor-shall-establish-an-entity-or appoint-an-existing-body-to-satisfy-the-federal-requirements.-Absent-a federal-requirement-to-establish-an-advisory-body,-t~~The governor ~~may, in--his--sole--discretion,-establish~~ shall appoint an advisory body ~~or appoint-an-existing-body-to-serve-as~~ for the department~~'s--advisory body~~. The governor shall prescribe the duties and functions of the body which shall comply with federal requirements, if any. Members of the body shall serve at the pleasure of the governor and shall be compensated ~~on--a--per-diem-basis~~ at a rate ~~to-be~~ fixed by the governor, and in addition shall be reimbursed for ordinary and actual expenses.
The director may ~~from-time-to-time~~ appoint special committees ~~as may--be--required~~ in connection with the administration of this ~~act~~ chapter.

SECTION 47. That Section 72-1337, Idaho Code, be, and the same is hereby amended to read as follows:

72-1337. RECORDS AND REPORTS. Each employer shall keep ~~true--and~~ accurate records, for such periods of time and containing such information as the director may prescribe. Such records shall be open to inspection and be subject to being copied by the director ~~or-his authorized-representatives~~ at any reasonable time. ~~and-as-often-as-may be-necessary.~~ The director, ~~his-authorized-representative,~~ a member of the commission or an appeals examiner may require from any employer~~, with--respect-to-persons-who-are-performing-or-have-performed-services for-him,~~ any sworn or unsworn reports which are deemed necessary ~~for the--effective--administration--of--this--act~~ in the exercise of their duties.

SECTION 48. That Section 72-1338, Idaho Code, be, and the same is hereby amended to read as follows:

72-1338. OATHS AND WITNESSES. ~~In--the--discharge--of--the--duties imposed--by--this-act,-t~~The director, ~~his-authorized-representative,~~ a member of the commission, and an appeals examiner shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of ~~books,-papers,-correspondence,-memoranda,-and other-records~~ evidence deemed necessary ~~as-evidence~~ in connection with a disputed claim or in the ~~administration--of--this--act~~ exercise of

their duties.

SECTION 49. That Section 72-1339, Idaho Code, be, and the same is hereby amended to read as follows:

72-1339. ~~CHALLENGE--AND~~ ENFORCEMENT OF SUBPOENAS. Any subpoena issued pursuant to section 72-1338, Idaho Code, may be ~~challenged--in, or,--in-case-of-contumacy-or-refusal-to-obey,~~ enforced by the district courts of this state within the jurisdiction ~~of~~ in which the inquiry is being conducted or within the jurisdiction ~~of~~ in which the person to whom the subpoena was issued resides or conducts his business. The court shall have jurisdiction to hear the parties, ~~determine-whether or-not-the-subpoena-should-have-been-issued--in--the--first--instance,~~ determine ~~its~~ the reasonableness of the subpoena, and ~~shall~~ set aside, modify, or enforce the ~~same~~ subpoena by its order in accordance with the ~~testimony-and~~ evidence. ~~therein-heard-and-produced,-and-a~~Any failure to obey such ~~order-of-the~~ court order may be punished by the ~~said~~ court as a contempt thereof.

SECTION 50. That Section 72-1340, Idaho Code, be, and the same is hereby amended to read as follows:

72-1340. PROTECTION AGAINST SELF-INCRIMINATION. No person shall be excused from attending and testifying or from producing ~~books, papers,--correspondence,-memoranda,-and-other-records~~ documentary evidence before the director, ~~his-authorized-representative,~~ the commission, or an appeals examiner, or in obedience to the subpoena of any of them, on the ground that the testimony or documentary evidence~~, documentary--or-otherwise,~~ required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture ~~for-or~~ on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce documentary evidence~~,-documentary-or-otherwise,~~ except that ~~such~~ the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

SECTION 51. That Section 72-1341, Idaho Code, be, and the same is hereby amended to read as follows:

72-1341. FEDERAL-STATE COOPERATION. (a) ~~In-the-administration-of this-act,-t~~The director shall cooperate ~~to-the-fullest-extent,-consistent--with--the-provisions-of-this-act,~~ with the United States department of labor, ~~through-the-secretary-of-labor,~~ and is ~~authorized--and~~ directed to take such action ~~through--the-adoption-of-appropriate rules,-regulations,-administrative-methods-and-standards,~~ as may be necessary to secure to ~~this-state-and-its-citizens~~ Idaho all advantages ~~available~~ under federal laws providing for federal-state cooperation in the administration of unemployment ~~compensation~~ insurance laws, the reduction or prevention of unemployment, and the full development of the ~~manpower~~ workforce resources of this state. The director shall ~~comply~~ cooperate with ~~the--regulations--of~~ the United States department of labor ~~relating~~ with regards to the receipt or expendi-

ture by this state of moneys granted under any ~~of such~~ federal acts and shall ~~make such~~ comply with the requirements of the United States department of labor in preparing reports~~, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure~~ and ensuring the correctness ~~and verification~~ of ~~such~~ the reports. ~~The director may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment compensation or insurance law.~~

(~~b~~2) The director is authorized to make ~~such~~ investigations, secure and transmit ~~such~~ information, make available ~~such~~ services and facilities and exercise ~~such of the~~ other powers provided herein ~~with respect to the administration of this act as he deems necessary or appropriate~~ to facilitate the administration of any state or federal unemployment ~~compensation~~ insurance or public employment service law~~, and in like manner, to accept and~~ The director may utilize information, services and facilities made available to the state by ~~the~~ any agency charged with the administration of ~~any such other~~ an unemployment ~~compensation~~ insurance or public employment service law.

SECTION 52. That Section 72-1342, Idaho Code, be, and the same is hereby amended to read as follows:

72-1342. DISCLOSURE OF INFORMATION. ~~Except as hereinafter otherwise provided, i~~Information obtained from any employer or individual pursuant to the administration of this ~~act~~ chapter, and determinations of the benefit rights of any individual shall be subject to disclosure as provided in chapter 3, title 9, Idaho Code~~. Provided, however, that if all interested parties waive in writing the right to hold said information confidential, said information may be disclosed. Any claimant (or his legal representative) shall be supplied with information from the records available to the director, to the extent necessary for the proper presentation of the claim in any proceedings under this act with respect thereto. Any cost reimbursement employer shall be supplied with information from the records available to the director to the extent necessary to identify or determine actual or potential costs for which it may be required to reimburse the department. Subject to such restrictions and fees as the director may by rule prescribe,~~ except that such information may be made available to public employees in the performance of their public duties~~. The director may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this act, and may in connection with such request transmit any such report or return to the comptroller of the currency of the United States as provided in section 1606(c) of the Federal Internal Revenue Code~~ subject to such restrictions and fees as the director may by rule prescribe.

SECTION 53. That Section 72-1343, Idaho Code, be, and the same is hereby amended to read as follows:

72-1343. PRESERVATION AND DESTRUCTION OF RECORDS. (~~a~~1) The director may ~~cause-to-be-made~~ make such summaries~~,--compilations,--photographs,--duplications,~~ or reproductions of ~~any~~ records~~,-reports,-or transcripts-thereof-as-he-may-deem-advisable~~ in his custody in whatever form for the effective and economical preservation of the information contained therein, and such summaries~~,--compilations,--photographs,--duplications~~ or reproductions, duly authenticated, shall be admissible in any proceeding under this ~~act~~ chapter if the original ~~record-or~~ records would have been admissible. ~~therein.~~

(~~b~~2) The director may ~~provide--by--regulation--for~~ order the destruction or disposition~~,-after-reasonable-periods,~~ of ~~any~~ records~~, reports,-transcripts-or-reproductions-thereof,-or-other-papers~~ in ~~the~~ his custody ~~of-the-director,~~ if the preservation of ~~which~~ such records is ~~no-longer~~ not necessary for the ~~establishment-of-contribution-liability-or-benefit-rights-or-for-any-purpose-necessary--to--the~~ proper ~~administration--of-this-act,-including-any-required-audit-thereof~~ performance of his duties.

SECTION 54. That Section 72-1344, Idaho Code, be, and the same is hereby amended to read as follows:

72-1344. RECIPROCAL ARRANGEMENTS AND COOPERATION. (~~a~~1) 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~~a) ~~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-(1)-of-the-states,~~ An employer of an individual who customarily provides services for the employer in more than one (1) state may elect to have the services deemed performed entirely in one (1) state if the state is one in which: (~~A~~i) ~~in which~~ any part of ~~such~~ the individual's ~~service--is~~ services are performed, or (~~B~~ii) ~~in--which-such~~ the individual has his residence, or (~~C~~iii) ~~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~~ the individual ~~approved-by~~ agrees with the election and 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~~ approves it;

(~~2~~b) 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~~ a substantial loss to the employment security fund~~.~~;

(~~3~~c) The director shall participate in any wage combining plan that the secretary of labor may approve as provided in 26 U.S.C. 3304(a)(9)(B) of the federal unemployment tax act. Other arrange-

ments outside the scope of the federal plan may be entered into if fair and reasonable provisions for reimbursement to the employment security fund for any benefits paid are included. Under such a plan, wWages 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 may be deemed to be wages for covered employment for the purpose of determining his rights to benefits under this act chapter, and wages for covered employment, on the basis of which an individual may become entitled to benefits under this act;--shall chapter, may be deemed to be wages or services on the basis of which unemployment-compensation-or unemployment insurance under such the law of another state or of the federal government is payable;--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

(4d) Contributions due under this act with respect to wages for covered employment shall for the purposes of sections 72-1354 to through 72-1364, inclusive Idaho Code, 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;-nNo 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.

(b2) Reimbursements paid from the employment security fund pursuant to paragraph (3c) of subsection (a1) of this section shall be deemed to be benefits for the purposes of this act chapter. The director is authorized to make and receive reimbursements to and from 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 (a1) of this section.

(c3) To-the-extent-permissible-under-the-laws-and-Constitution-of the-United-States;-tThe director is authorized to enter into or--cooperate--in arrangements whereby facilities and services provided under this act chapter 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 paying 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 55. That Section 72-1345, Idaho Code, be, and the same is hereby amended to read as follows:

72-1345. STATE EMPLOYMENT SERVICE. A state employment service shall be operated as ~~a~~ part of the ~~employment-security-agency~~ department. The director ~~in-the-conduct-of-such-service~~ shall establish and maintain free public employment offices ~~in-such-number-and-in-such places~~ as may be necessary for the proper administration of this ~~act~~ chapter, and for the purposes of performing ~~such~~ the functions ~~as-are within-the-purview-of-the-Act-of-Congress-entitled-"An-Act-to--Provide for-the-Establishment-of-a-National-Employment-System-and-for-Cooperation--with--the--States-in-the-Promotion-of-Such-System,-and-for-Other Purposes,"-approved-June-6,-1933,-(48-Stat.--113;--U.S.C.,--Title--29, Sec.--49(c))--as--amended,--hereinafter-referred-to-as~~ of the "Wagner-Peyser Act, 29 U.S.C. 49." The provisions of said ~~A~~act ~~of-Congress~~ are ~~hereby~~ accepted by this state, and the ~~employment--security--agency~~ department is ~~hereby~~ designated ~~and-constituted~~ the agency of this state for the purposes of said act. ~~For-the--purpose--of--establishing and--maintaining-free-public-employment-offices,-and-promoting-the-use of-their-facilities,-the-director-is-authorized-to-enter--into--agreements--with--the-railroad-retirement-board,-or-any-other-agency-of-the United-States,-or-of-this-or-any-other-state,-charged-with-the--administration--of-any-law,-the-purposes-of-which-are-reasonably-related-to the-purposes-of-this-act,-and-as-a-part-of-such-agreements-may--accept moneys,--services,-or-quarters-as-a-contribution-to-the-maintenance-of the-state-system-of-public-employment-offices-or-as-reimbursement--for services--performed.-The-state-employment-service-provided-for-by-this section-shall-provide-a-teachers'-placement-service,-a-farm--placement service,--and-an-employment~~ The department shall provide priority service for veterans ~~cooperating~~ in cooperation with the United States veterans employment service~~;-provided,-that-in-all-placement-activities-of-said-employment-service,-handicapped--veterans--shall--receive preferential--treatment.-All-moneys-received-for-such-special-purposes shall-be-paid-into-the-employment-security-administration-fund.~~

SECTION 56. That Section 72-1346, Idaho Code, be, and the same is hereby amended to read as follows:

72-1346. EMPLOYMENT SECURITY FUND. (~~a~~1) Establishment and Control. There is ~~hereby~~ established in the state treasury, ~~a-special fund,~~ separate and apart from all ~~public-moneys-or~~ other 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~~ chapter and the ~~Federal-S~~social ~~S~~security ~~A~~act. This fund shall consist of all contributions collected pursuant to this ~~act~~ chapter, payments in lieu of contributions, 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, moneys temporarily deposited in the clearing account, and all other moneys received for the fund from any other source. ~~All moneys in the fund shall be mingled and undivided. All financial transactions of the employment security fund shall be maintained on the account level. The state controller and the state treasurer may prescribe requirements for this purpose.~~

(~~b~~2) Accounts and Deposits. The state controller shall maintain within the fund three (3) separate accounts: (~~1~~i) a clearing account, (~~2~~ii) an unemployment trust fund account, and (~~3~~iii) a benefit account. Upon receipt by the director, a~~A~~ll 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. After clearance, a~~A~~ll 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~~ this state's account ~~of this state~~ in the unemployment trust fund~~,~~ established and maintained pursuant to section 904 of the ~~S~~social ~~S~~ecurity ~~A~~act (42 U.S.C. 1104), ~~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 account, shall be paid only out of such latter account.~~ 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, m~~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~~ and shall be maintained in separate accounts on the books of the depository bank. Such moneys 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.~~

(~~c~~3) 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~~ section 72-1357, Idaho Code, except that Reed act moneys credited to this state's account pursuant to section 903 of the ~~Federal S~~social ~~S~~ecurity ~~A~~act (42 U.S.C. 1103), ~~as amended,~~ shall be used exclusively as provided in subsection (~~c~~4) 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 accounts shall not require the approval of the board of examiners or 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~~. The residual daily balance in the benefit account may be invested in accordance with the cash management improvement act of 1990, and earnings on those investments may be used to pay the related banking costs of maintaining the benefit account. Any earnings in excess of the related banking costs shall be returned to the state's account in the federal unemployment trust fund annually. 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 controller, amounts in the benefit account may be transferred to a revolving account 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~~ subsection~~;-subdivision~~ (b2) of this section. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account or revolving account ~~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~~4) ~~Money~~ Reed act moneys. Reed act moneys credited to ~~the~~ this state's 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-S~~social ~~S~~security ~~A~~act (42 U.S.C. 1103), ~~as amended,~~ may ~~not~~ be ~~withdrawn-or~~ requisitioned and used ~~except~~ for the payment of benefits and for the payment of expenses incurred for the administration of this ~~act.-Such-money~~ chapter. Moneys may only 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~~ chapter if the expenses are incurred and the money is requisitioned after the enactment of ~~an~~ a specific appropriation ~~law~~ by the legislature 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~~a) Such money may not be obligated after the close of the two (2) year period which began on the date of the enactment of the appropriation law; and

(~~2~~b) The amount which may be obligated ~~during-any-twelve-(12) month-period-beginning-on-July-1-and-ending-on-the--next--June--30 does~~ at any time may not exceed the amount by which ~~(i)~~ the aggregate of the amounts ~~credited~~ transferred to the account of this state pursuant to section 903 of the ~~Federal--S~~social ~~S~~security ~~A~~act (42 U.S.C. 1103), ~~as-amended,-during-the-same-twelve-(12) month-period-and-the-thirty-four-(34)-preceding-twelve-(12)--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-thirty-five-(35)-twelve-(12) month-periods~~ by this state and charged against the amounts transferred to the account of this state. For the purposes of this subsection, ~~amounts-used-during-any-twelve-(12)-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-(12)-month period-may-be-charged-against-any-amount-credited--during--such--a twelve--(12)-month-period-earlier-than-the-thirty-fourth-preceding such-period~~ amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into.

(c) Reed act moneys requisitioned for the payment of benefits shall be deposited in the benefit account established in this section. Reed act moneys requisitioned for the payment of administrative expenses pursuant to a specific appropriation shall be deposited in the employment security administration fund, section 72-1347, Idaho Code, except that moneys appropriated for the purchase of lands and buildings shall be deposited in the state employment security administrative and reimbursement fund in accordance with section 72-1348, Idaho Code. Money so deposited shall, until expended, remain part of the employment security fund and, if not expended, shall be promptly returned to this state's

account in the unemployment trust fund.

SECTION 57. That Section 72-1346A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1346A. ADVANCES UNDER TITLE XII OF THE SOCIAL SECURITY ACT TO EMPLOYMENT SECURITY FUND -- FEDERAL ADVANCE INTEREST REPAYMENT FUND. (~~a~~1) In the event the director determines that it is necessary to obtain ~~an advance or~~ advances from the federal unemployment account in the unemployment trust fund pursuant to title XII of the ~~S~~social ~~S~~security ~~A~~act (42 U.S.C. 1321), ~~as amended,~~ and that a request for such ~~an~~ advances is authorized under section 1201 of the ~~S~~social ~~S~~security ~~A~~act, ~~as amended,~~ or under any other act of congress extending such authority, the director shall request the governor to make application to the secretary of labor of the United States for such ~~an~~ advances.

(~~b~~2) ~~When so requested by the director, t~~The governor is ~~hereby~~ authorized to make application to the secretary of labor of the United States to obtain ~~an advance or~~ advances pursuant to title XII of the ~~S~~social ~~S~~security ~~A~~act~~, as amended~~ (42 U.S.C. 1321 et seq.). Funds so advanced shall be for the payment of unemployment insurance benefits.

(~~c~~3) Any amount transferred to the employment security fund by the secretary of the treasury of the United States ~~under the terms of any agreement entered into~~ in accordance with ~~the authority extended in~~ this section shall be repaid from the employment security fund ~~and~~ as provided in section 1202 of the ~~S~~social ~~S~~security ~~A~~act~~, as amended~~ (42 U.S.C. 1322).

(~~d~~4) There is ~~hereby~~ established in the state treasury ~~a special fund to be known as~~ the "Federal Advance Interest Repayment Fund." This fund shall consist of all moneys collected pursuant to subsection (~~e~~5) of this section and interest earned upon any moneys in the fund. All moneys in the fund are ~~hereby~~ perpetually appropriated ~~and made available~~ to the director for the payment of interest on any advance made to this state pursuant to title XII of the ~~S~~social ~~S~~security ~~A~~act, ~~as amended,~~ except that if, at the end of any calendar year, all advances and interest have been repaid, any remaining balance in the fund shall be transferred to the employment security fund. Interest charges due and payable pursuant to section 1202 of the ~~S~~social ~~S~~security ~~A~~act, ~~as amended,~~ shall be paid by the director from the federal advance interest repayment fund. Such expenditures 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 moneys in the fund shall be mingled and undivided.~~

(~~e~~5) A federal advance interest repayment tax shall be levied in accordance with the following provisions when required under paragraph (~~2~~b) of this subsection:

(~~1~~a) On the first day of the third month of a calendar quarter, the director shall:

(~~A~~i) Estimate the interest payable on federal advances obtained under subsections (~~a~~1) and (~~b~~2) of this section;

(~~B~~ii) Estimate the amount of federal advance interest repayment tax receipts expected to be collected during the quarter

for any preceding calendar quarter in which such tax was assessed;

(~~C~~iii) Add the amount in the federal advance interest repayment fund on the last day of the immediately preceding calendar quarter to the estimate in paragraph (~~D~~ii) of this subsection; and

(~~D~~iv) Subtract the sum obtained in paragraph (~~C~~iii) from the estimate in paragraph (~~A~~i) of this subsection.

(~~2~~b) If the remainder obtained under paragraph (~~D~~iv) of subsection (~~e~~5)(~~1~~a) of this section is more than zero, each covered employer subject to this section shall be assessed a federal advance interest repayment tax. Such tax shall be a percentage of the contributions payable under sections 72-1349 and 72-1350, Idaho Code, for the calendar quarter, but in no case shall be less than one dollar ($1.00). The percentage shall be determined by dividing the remainder in paragraph (~~D~~iv) of subsection (~~e~~5)(~~1~~a) of this section by the estimated amount of contributions due and payable on wages paid during the quarter. The percentage shall be rounded up to the next one-tenth of a percent (0.1%).

(~~3~~c) The tax assessed shall be collected and paid in accordance with such rules ~~and regulations~~ as the director may prescribe. All such taxes collected shall be deposited in the federal advance interest repayment fund~~, notwithstanding other provisions of this act to the contrary~~. Any such tax imposed in a calendar quarter shall be paid on or before the last day of the second month following the close of such calendar quarter. An extension of time for payment may be granted for good cause in accordance with section 72-1349(~~d~~4), Idaho Code.

(~~4~~d) If any covered employer fails to pay such tax on or before the date on which they are due, ~~and payable,~~ such tax shall bear penalty at a rate of five dollars ($5.00) for each month or fraction thereof until paid; provided, that in no case shall the penalty exceed the actual amount of the tax due and payable. The date of payment shall be deemed the date of actual receipt by the director, or if mailed, the date of mailing. Penalties collected pursuant to this subsection shall be paid into the federal advance interest payment fund. Furthermore, if any employer becomes delinquent in making payment of the tax as required by this subsection, such employer shall be subject to the collection provisions in sections 72-1355 and 72-1360, Idaho Code.

(~~5~~e) A covered employer may make application to the director for a refund or credit of any amount erroneously paid as tax under this subsection.~~, s~~Such applications and the director's determinations regarding ~~such applications to~~ them shall be made in accordance with the provisions of section 72-1357, Idaho Code.

(~~6~~f) This section does not apply to covered employers eligible and electing the cost reimbursement payment method under sections 72-1349A, ~~72-1349B and 72-1349C,~~ Idaho Code.

SECTION 58. That Section 72-1347, Idaho Code, be, and the same is hereby amended to read as follows:

72-1347. EMPLOYMENT SECURITY ADMINISTRATION FUND. (~~a~~1) There is

~~hereby~~ established in the state treasury ~~a-special-fund-to-be-known-as~~ the "Employment Security Administration Fund." All moneys ~~which--shall~~ be deposited ~~or-paid-into~~ in said fund are ~~hereby~~ perpetually appropriated ~~and-made-available~~ to the director. Expenditures ~~of--such moneys~~ from the fund shall be ~~only~~ in accordance with ~~the-provisions of~~ this ~~act~~ chapter on the approval of the director ~~or-his-duly-authorized-agent-for-such-purpose,~~ and shall not require approval by the ~~state~~ board of examiners, and shall not lapse at any time or be transferred to any other fund, except that the director may establish ~~from such-fund~~ a revolving fund for the purpose of paying current cash items in connection with ~~administration~~ administrative expenses. All moneys in this fund which are received from the federal government ~~or any--agency--thereof~~ shall be expended solely for the purposes and in the amounts found necessary by the secretary, United States department of labor, for the proper and efficient administration of this ~~act~~ chapter. The fund shall consist of all moneys appropriated by this state to this fund, all moneys received from the United States ~~of America,-or-any-agency-thereof,-including-the-secretary,-United-States department--of--labor,-and~~ for this fund, all moneys received from any other source for such purpose, and ~~shall--also--include~~ any moneys received from ~~any--agency-of~~ the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the ~~employment--security administration~~ fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies. ~~which--may--no longer--be--necessary--for-the-proper-administration-of-this-act.~~ Such moneys shall be secured by the depository in which they are held ~~to the--same--extent--and--in--the-same-manner~~ as required by the general depository law of the state, chapter 1, title 57, Idaho Code, and collateral pledged shall be maintained in a separate custody account. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the ~~employment-security administration-fund-provided-for-under-this-act.-All-sums-recovered-on any-surety-bond-for-losses-sustained-by-the-employment-security-administration-fund-shall-be-deposited-in-said~~ fund.

(~~b~~2) Reimbursement of ~~F~~fund. If any moneys received ~~after--June 30,-1941,~~ from the ~~secretary,~~ United States department of labor, under ~~T~~title III of the ~~S~~social ~~S~~security ~~A~~act, ~~or-any-unencumbered-balances in-the-employment-security-administration-fund-as-of-that-date,-or-any moneys--granted--after--that--date~~ are found by the ~~secretary,~~ United States department of labor, ~~because-of-any-action-or--contingency,~~ to have been lost or ~~been~~ expended for purposes other than, or in amounts in excess of, those found necessary by the ~~secretary,~~ United States department of labor, for the proper administration of this ~~act,-it--is the--policy--of-this-state-that~~ chapter, such moneys shall be replaced by moneys in the state employment security administrative and reimbursement fund as provided in section 72-1348, Idaho Code, but if the moneys therein are insufficient, ~~then~~ the balance ~~required~~ shall be replaced ~~from--moneys--appropriated-for-such-purpose-from-the-general funds-of-this-state.-Upon-receipt-of-such-a-finding-by-the--secretary, United--States--department--of-labor,-and-where-there-are-insufficient~~

~~moneys-in-the-state-employment-security-administrative-and--reimbursement-fund-to-make-such-replacement;-the-director-shall-promptly-report the-balance-required-for-such-replacement-to-the-governor-and-the-governor--shall--at-the-earliest-opportunity;-submit-to-the-legislature-a request-for-the-appropriation-of-such-balance.-This--subsection--shall not--be-construed-to-relieve-this-state-of-its-obligation-with-respect to-funds-received-prior-to-July-1,-1941,-pursuant-to-the-provisions-of Title-III-of-the-Social-Security-Act~~ by moneys in the department of labor special administration fund, section 72-1347A(3), Idaho Code.

SECTION 59. That Section 72-1347A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1347A. EMPLOYMENT SECURITY RESERVE FUND -- SPECIAL ADMINISTRATION FUND. (~~a~~1) There is ~~hereby~~ established in the state treasury a special trust fund, separate and apart from all other public ~~moneys-or~~ funds of this state, to be known as the employment security reserve fund, hereinafter "reserve fund." Except as provided herein, all proceeds from the reserve tax defined in subsection (~~b~~2) of this section shall be paid into the reserve fund. ~~and-shall-be--mingled--and--undivided.~~ The moneys in the reserve fund may be used by the director for loans to the employment security fund, section 72-1346, Idaho Code, as security for loans from the federal unemployment insurance trust fund, and for the repayment of any interest bearing advances, including interest, made under title XII of the social security act, 42 USC 1321 through 1324, and shall be ~~continuously~~ available to the director for expenditure in accordance with the provisions of this section. The state treasurer shall be the ~~ex-officio-treasurer-and~~ custodian of the reserve fund and shall invest said moneys in accordance with ~~existing~~ law. ~~and-rules-promulgated-pursuant-thereto.~~ The state treasurer shall disburse the moneys from the reserve fund in accordance with the directions of the director.

(~~b~~2) ~~Effective--January--1,-1991,-a~~ A reserve tax ~~shall-be-and~~ is ~~hereby~~ imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code. The reserve tax shall be due and payable at the same time and in the same manner as contributions. ~~For--calendar--year-1991-and-each-year-thereafter-i~~If the reserve fund is less than one percent (1%) of state taxable wages in the penultimate year as of ~~December-31~~ September 30 of the preceding calendar year, the reserve tax rate for all eligible, standard-rated and deficit employers shall be equal to the taxable wage rate then in effect less the assigned contribution rate and training tax rate. The ~~terms-and-conditions-of-the~~ provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the reserve tax, ~~imposed-by-this-subsection,~~ including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section and the collection of the reserve tax, ~~created-in-this-subsection,~~ the director is granted all rights, authority, and prerogatives granted the director under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions and reserve taxes shall first be applied to pay any penalty and interest imposed

pursuant to the provisions of this chapter and shall then be applied pro rata to pay delinquent contributions to the employment security fund, section 72-1346, Idaho Code, and delinquent reserve taxes to the reserve fund pursuant to this section. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Reserve taxes paid pursuant to this subsection may not be deducted in whole or in part by any employer from the wages of individuals in its employ. All reserve taxes collected pursuant to this subsection shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the reserve fund established in subsection (~~a~~l) of this section. ~~Except-as--to--reserve taxes--unpaid--on--the--date--on--which--they-are-due-and-payable,-n~~No reserve ~~taxes~~ tax shall be ~~collected-or-paid--into--the--reserve--fund during-a~~ imposed for any calendar year if, as of ~~December-31~~ September 30 of the preceding calendar year, the balance of the reserve fund equals or exceeds one percent (1%) of the state taxable wages for the penultimate calendar year, or exceeds forty-nine percent (49%) of the actual balance of the employment security fund, section 72-1346, Idaho Code.

(~~c~~3) The interest earned from investment of the reserve fund ~~moneys~~ shall be deposited in a fund ~~hereby~~ established in the state treasurer's office, to be known as the department of ~~employment~~ labor special administration fund, hereinafter "special administration fund." The moneys in the special administration fund shall be held separate and apart from all other public ~~moneys-or~~ funds of this state. ~~and-shall-be-mingled-and-undivided.~~ The state treasurer shall be the ~~ex-officio-treasurer-and~~ custodian of this fund and may invest said moneys in accordance with ~~existing~~ law. ~~and--rules--promulgated pursuant--thereto.~~ Any interest earned on said moneys shall be deposited in the special administration fund. In the absence of a specific appropriation, the moneys in the special administration fund are ~~hereby~~ perpetually appropriated to the director and may be expended with the approval of the advisory council appointed pursuant to section 72-1336, Idaho Code, for costs related to employment service programs and unemployment insurance programs administered under ~~the employment--security-law~~ this chapter. The director shall report annually to the joint finance-appropriations committee and the advisory council the expenditures and disbursements made from the fund during the preceding fiscal year, and the expenditures and disbursements and~~/~~or commitments made during the current fiscal year to date.

(~~d~~4) ~~Administrative--costs--for-the-collection-of-the-reserve-tax defined-in-subsection-(b)-of-this-section,-and-any-penalties-or-interest-thereon,-shall-be-paid-from-federal-administrative-grants-received under-title-III-of-the-social-security-act,-as-amended,-to-the--extent permitted--by-federal-law,-and-then-from-the-state-employment-security administrative-and-reimbursement-fund,-section--72-1348,--Idaho--Code, until-such-time-as-the-special-administration-fund-established-in-subsection--(c)--of--this--section,--has--sufficient-moneys-to-cover-such administrative-costs-but-in-any-event,-no-later--than--July--1,--1992.~~

~~After--July-1,-1992,-such-a~~Administrative costs related to the reserve fund and the special administration fund shall be paid from federal administrative grants received under title III of the social security act, ~~as-amended,~~ to the extent permitted by federal law, and then from the special administration fund.

SECTION 60. That Section 72-1347B, Idaho Code, be, and the same is hereby amended to read as follows:

72-1347B. WORKFORCE DEVELOPMENT TRAINING FUND. (~~a~~1) There is ~~hereby~~ established in the state treasury a special trust fund, separate and apart from all other public ~~moneys-or~~ funds of this state, to be known as the workforce development training fund, hereinafter "training fund." Except as provided herein, all proceeds from the training tax defined in subsection (~~d~~4) of this section shall be paid into the training fund. ~~and-shall-be-mingled-and-undivided.~~ The state treasurer shall be the custodian of the training fund and shall invest said moneys in accordance with law. Any interest earned on the moneys in the training fund shall be deposited in the training fund. Moneys in the training fund shall be disbursed in accordance with the directions of the director.

(~~b~~2) All moneys in the training fund are ~~hereby~~ perpetually appropriated ~~and--made--available~~ to the director for expenditure in accordance with the provisions of this section. The purpose of the training fund ~~established--by--this--section~~ is to provide or expand training and retraining opportunities in an expeditious manner that would not otherwise exist for Idaho's workforce. The training fund is intended to supplement, but not to supplant or compete with, money available through existing training programs. The moneys in the training fund shall be used for the following purposes:

(~~1~~a) To provide training for skills necessary for specific economic opportunities and industrial expansion initiatives;

(~~2~~b) To provide training to upgrade the skills of currently employed workers at risk of being permanently laid off;

(~~3~~c) For refunds of training taxes erroneously collected and deposited in the workforce training fund;

(~~4~~d) For all administrative expenses incurred by the department associated with the collection of the training tax and any other administrative expenses associated with the training fund.

(~~c~~3) Expenditures from the training fund for purposes authorized in paragraphs (~~1~~a) and (~~2~~b) of subsection (~~b~~2) of this section shall be approved by the director ~~of-the-department-of--employment~~ and the director of the department of commerce based on procedures, criteria and performance measures established by ~~a~~ the council appointed ~~by-the governor,-or-an-existing-council-designated-by-the-governor,-hereinafter-"council."~~ pursuant to section 72-1336, Idaho Code. The activities funded by the training fund will be coordinated with similar activities funded by the state division of vocational education. Expenditures from the training fund for purposes authorized in paragraphs (~~3~~c) and (~~4~~d) of subsection (~~b~~2) of this section shall be approved by the director. The director shall pay all approved expenditures as long as the training fund has a positive balance. The council shall report annually to the governor and the joint finance-appropriations commit-

tee the commitments and expenditures made from the training fund in the preceding fiscal year and the results of the activities funded by the training fund.

(d4) ~~Effective-January-1,-1996,-and-each-calendar--year--thereafter,--a~~ A training tax is hereby imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code, with the exception of deficit employers who have been assigned a taxable wage rate from rate class six pursuant to section 72-1350, Idaho Code. The training tax rate shall be equal to three percent (3%) of the taxable wage rate then in effect for each eligible, standard-rated and deficit employer. The training tax shall be due and payable at the same time and in the same manner as contributions. This subsection is repealed effective January 1, 2002, unless, prior to that date, the Idaho legislature approves the continuation of this subsection by repeal of this sunset clause.

(e5) The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the training tax, ~~imposed-by-subsection-(d)-of--this--section,~~ including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section, the director is granted all rights, authority, and prerogatives granted ~~the-director~~ under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions, reserve taxes and the training tax shall first be applied to pay any penalty and interest imposed pursuant to the provisions of this chapter and shall then be applied pro rata to pay delinquent contributions to the employment security fund, section 72-1346, Idaho Code, delinquent reserve taxes to the reserve fund, section 72-1347A, Idaho Code, and delinquent training taxes to the training fund. ~~established--in-this-section.~~ Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Training taxes paid pursuant to this section shall not be credited to the employer's experience rating account and may not be deducted ~~in-whole-or-in-part~~ by any employer from the wages of individuals in its employ. All training taxes shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the training fund established in subsection (a1) of this section.

(f6) Administrative ~~expenditures-for-the-collection-of-the-training-tax-defined-in-subsection-(d)-of-this-section-and-the--maintenance of--the-training-fund,-and-any-penalties-or-interest-thereon,-shall-be paid-from-the-state-employment-security-administrative-and--reimbursement--fund,-section-72-1348,-Idaho-Code,-until-such-time-as-the-training-fund-established-in-subsection-(a)-of-this-section-has--sufficient moneys-to-cover-such-administrative-costs.-At-that-time,-such-administrative~~ costs related to the training fund shall be paid from the training fund in accordance with subsection (e3) of this section. ~~and all-moneys-previously-paid-from-the-employment-security-administrative and--reimbursement-fund,-section-72-1348,-Idaho-Code,-for-the-adminis-~~

~~tration-of-the-training-fund-shall-be-reimbursed.~~

SECTION 61. That Section 72-1348, Idaho Code, be, and the same is hereby amended to read as follows:

72-1348. STATE EMPLOYMENT SECURITY ADMINISTRATIVE AND REIMBURSEMENT FUND. (~~a~~1) There ~~shall be,~~ and is hereby created in the state treasury ~~a special fund to be known as~~ the "State Employment Security Administrative and Reimbursement Fund." Notwithstanding the provisions of sections 72-1346 and 72-1347, Idaho Code, the fund shall consist of:

(~~1~~a) ~~a~~All penalties, and all interest on judgments or accounts secured by liens, collected pursuant to the provisions of sections 72-1347A, 72-1347B and 72-1354 ~~to~~ through 72-1364, ~~inclusive~~ Idaho Code, but only after such interest and penalties have been deposited in the clearing account and are thereafter transferred to this fund ~~at such times and~~ in such amounts as, in the discretion of the director, will leave a sufficient balance of interest and penalties in the clearing account to ~~take care of interest~~ pay refunds~~;~~; and

(~~2~~b) ~~all~~ Reed act moneys ~~requisitioned for the administration of this act pursuant to a specific appropriation by the legislature of this state of moneys which have heretofore or may hereinafter accrue to the account of this state in the unemployment trust fund in the treasury of the United States by virtue of section 903 of the Federal Social Security Act, as amended~~ appropriated for the purchase of land and buildings pursuant to section 72-1346(4), Idaho Code.

~~(3) The director through the treasurer of the state of Idaho may requisition the moneys mentioned under (2) above, and upon receipt they shall be deposited in this fund. Until they are expended, such moneys shall remain a part of the employment security fund. The director shall maintain a separate record of the deposit, obligations, expenditure, and return of such funds. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified in section 72-1346(e)(1), it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.~~

~~(b) All moneys in said fund shall be and are hereby perpetually appropriated and made available to the director in the manner and for the purposes hereinafter set forth. Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for (or corresponding reduction in) Federal funds granted under Title III of the Federal Social Security Act, as amended, which would in the absence of said moneys be available to finance expenditures for the administration of the Employment Security Law, nor shall such moneys, while a part of this fund, be in anywise subject to control by the United States Government or any agency or official thereof. The other provisions of this subsection to the contrary notwithstanding, it is provided that any moneys referred to in subsection (a)(2) of this section shall be subject to such control and regula-

~~tions-and-may-be-used-only-in-the-manner-provided-in-this-section--and in--section--72-1346--of--this--act--and-in-section-903-of-the-Federal Social-Security-Act,-as-amended.-But-nothing--in--this--section--shall prevent--any--moneys--referred-to-in-subsection-(a)(1)-of-this-section from-being-used-as-a-revolving-fund-to-cover--expenditures--(necessary and--proper--under--the--law)--for--which-federal-funds-have-been-duly requested-but-not-yet-received,-subject-to-the-charging-of-such-expenditures-against-such-funds-when-received.-The-moneys-in-this-fund--may be--used--by-the-director-only-for-the-payment-of-costs-of-administration-which-have-not-been-provided-by-or-are-found--not--to--have--been properly--and--validly--chargeable--against--federal--grants-(or-other funds)-received-for-or-in-the-employment-security-administration-fund, and-the-payment-of-refunds-of-penalties-pursuant-to-section-72-1357-if such-penalties-were-paid-into-this-fund-and-payments-specified-in-subsection-(c)-of-this-section.-No-expenditure-of-this-fund-shall-be-made except-on-written-authorization-by-the-director--and--state--board--of examiners.~~

~~(c)--The--moneys--in--this-fund-shall-be-continuously-available-to the-director-for-expenditure-in-accordance-with-the-provisions-of-this section.-The-moneys-referred-to-in-subsection-(a)(1)-of--this--section shall--be--available--to--the--director-for-reimbursement-which-may-be required-pursuant-to-section-72-1347(b),-and--such--moneys--shall--not lapse-at-any-time-and-may-be-transferred-to-another-fund-only-when-the balance--exceeds--the--amount--deemed--by-the-director-as-a-reasonable reserve-against-future-needs;-then-such-excess-shall-be-transferred-to the-employment-security-fund-established-by-section-72-1346.~~

(d2) ~~The-employment-security-agency-may~~ Moneys referred to in subsection (1)(a) of this section are perpetually appropriated to the director and may be used upon written authorization of the board of examiners for any lawful purpose, including, but not limited to:

(a) As a revolving fund to cover expenditures for which federal funds have been duly requested but not yet received, subject to reimbursement upon receipt of the federal funds;

(b) For the payment of costs of administration including costs not validly chargeable against federal grants;

(c) For the payment of refunds of penalties pursuant to section 72-1357, Idaho Code; and

(d) For the purchase of land and buildings for the purpose of providing office space for the department.

(3) Moneys referred to in subsection (1)(b) of this section may be used by the department to acquire for and in the name of the state by term purchase agreement ~~such~~ lands and buildings for ~~the-purpose-of providing~~ office space for the ~~employment-security--agency~~ department at such places as the ~~agency~~ director finds necessary. ~~and-suitable.~~

~~(1)~~ An agreement made for the purchase of the premises pursuant to this subsection shall be subject to the approval of the attorney general as to form and ~~as-to~~ title. ~~thereto-and-shall-not-subject--the--state-to-liability-for-payment-of-the-purchase-price-or any-part-or-portion-thereof-except-from-moneys--allocated--to--the state-by-the-United-States-department-of-labor-for-the-administration-of-this-act.~~

~~(2)--All--moneys--received-from-the-United-States-for-the-payments authorized-by-this-subsection-for-lands--and--buildings--shall--be~~

~~deposited-in-the-employment-security-administrative-and-reimbursement--fund--in-the-state-treasury-and-may-be-utilized-for-the-purposes-herein-set-out-upon-appropriation-by-the-state--legislature; provided,--that--all--such--moneys-received-from-the-United-States with-respect-to-expenditures--made--from--money--credited--to--the account--of--this-state-in-the-unemployment-trust-fund-pursuant-to section-903-of-the-Federal-Social-Security-Act,-as-amended,--shall be--deposited--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.~~

~~(3)--If--the-p~~Premises are purchased pursuant to this section~~,-the employment-security-agency-or-such-other-department-of-state--performing--its--functions,~~ shall be ~~housed--therein~~ used for the department, or if it is desirable to move the ~~employment--security agency~~ department, ~~other-substantially~~ similar space will be furnished by the state to the ~~agency~~ department without further payment therefor by the United States.

SECTION 62. That Section 72-1349, Idaho Code, be, and the same is hereby amended to read as follows:

72-1349. PAYMENT OF CONTRIBUTIONS. (~~a~~1) Contributions shall be paid on taxable wages for each calendar year equal to the amount ~~as~~ determined in accordance with section 72-1350(~~a~~1), Idaho Code. Contributions on wages paid to an individual under another state unemployment insurance law, or paid by an employer's predecessor during the calendar year, shall be counted in complying with this provision.

(~~b~~2) 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. All moneys required to be paid by a covered employer pursuant to this chapter shall immediately, upon becoming due and payable, become or be deemed money belonging to the state, and every covered employer shall hold or be deemed to hold said money separately, aside, or in trust from any other funds, moneys or accounts, for the state of Idaho for payment in the manner and at the times provided by law.

(~~c~~3) 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.

(~~d~~4) 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.

(~~e~~5) Whenever it appears to be essential to the proper administration of this ~~act~~ chapter 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;~~

(~~f~~6) In accordance with ~~regulations as~~ rules 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~~;~~ or public work, ~~or quasi public work;~~ the contract price of which exceeds the sum of ~~two hundred dollars~~ one thousand dollars ($~~2~~1,000) may be required before commencing such work, to ~~executate~~ execute a surety bond in an amount sufficient to cover contributions when due. ~~In case~~ If the director, who shall approves said bond, ~~shall~~ determines that said bond has become insufficient, ~~or inadequate;~~ he may require that a new bond be provided in ~~such~~ the amount ~~as~~ he ~~may~~ directs. 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~~ chapter.

(~~g~~7) In the payment of any contributions a fractional part of a ~~cent~~ dollar shall be disregarded unless it amounts to ~~one-half~~ fifty cents (~~1/2~~50¢) or more, in which case it shall be increased to one ~~cent~~ dollar (~~1¢~~$1.00).

SECTION 63. That Section 72-1349A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1349A. FINANCING OF BENEFIT PAYMENTS BY NONPROFIT ORGANIZATIONS AND GOVERNMENTAL ENTITIES. (~~a~~1) Benefits paid to employees of governmental entities and nonprofit organizations shall be financed in accordance with the provisions of this section. ~~For the purpose of this section, 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~~ such organizations or entities may elect, with the approval of the director, to act as a group in fulfilling the requirements of this ~~section or of this act~~ chapter.

(~~1~~2) Liability for contributions and election of reimbursements. ~~Any~~ A nonprofit organization or governmental entity shall pay contributions under the provisions of section 72-1349, Idaho Code, unless it elects, in accordance with this ~~paragraph~~ section to pay to the director ~~for the unemployment fund~~ an amount equal to the full amount of regular benefits paid and ~~one-half (1/2)~~ the amount ~~of~~ paid for extended benefits ~~paid~~ for which the department is not reimbursed by the federal government, for any reason including, but not limited to, payments made as a result of a determination or payments erroneously ~~or incorrectly~~ paid or paid as a result of a determination of eligibility which is subsequently reversed; if said payment or any portion thereof was made as a result of wages earned in the employ of such ~~nonprofit~~ organization~~;~~ or entity. ~~Any~~ sums recovered by the department from a ~~benefit~~ claimant as a result of said payments shall be credited to the account of the nonprofit organization or governmental

entity which reimbursed the fund for the payment of said benefits. Where such benefits are paid utilizing wages paid by two (2) or more employers, the portion of benefits to be repaid by ~~a nonprofit~~ the organization or entity shall be ~~their~~ its 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 or entity and the total wages utilized in paying such benefits.

(~~A~~3) Any nonprofit organization or governmental entity 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,~~ not later than thirty (30) days prior to the beginning of any taxable year or within thirty (30) days after the date of the final determination that such organization or entity is subject to this chapter. Ssuch election shall be effective for not less than ~~twelve-(12)-months~~ two (2) full taxable years after the election is made, and will continue to be in effect until terminated. The ~~nonprofit~~ organization or entity 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, in his discretion, terminate ~~the~~ an election as provided in this ~~paragraph. The--director--may--for-good-cause~~ section or 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 and governmental entity of any determination ~~which~~ he ~~may~~ makes 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~~4) Reimbursement payments. Payments in lieu of contributions shall be made in accordance with the provisions of this ~~paragraph~~ subsection, including either ~~subparagraph-(A)~~ paragraph (a) or ~~subparagraph-(B)~~ paragraph (b).

(~~A~~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 entity (or group of ~~nonprofit~~ organizations or entities) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits ~~and-one-half-(1/2)-the-amount-of--extended--bene-~~

~~fits--paid--for--any-reason-as-herein-provided-in-paragraph-(a)(1) above-during-such-quarter-or--other--prescribed--period--which--is~~ paid, and the amount paid for extended benefits for which the department is not reimbursed by the federal government, if paid as a result of wages earned in the employ of such organization or entity.

~~2.-Bond-on-surety-requirements.--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~~b) Payment in advance. Nonprofit organizations or governmental entities 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 or governmental entity shall pay one percent (1%) of its total quarterly payroll unless the director determines that a lesser percentage will cover the cost of payment of benefits to the employees of said employer. For purposes of this section, the total quarterly payroll for school districts shall be computed based upon only those school districts which have elected cost reimbursement status. Such payments shall become due and payable within thirty (30) days following the quarter ending.

At the end of such taxable year, the director shall compute the benefit costs attributable to ~~such-nonprofit-organization,~~ the employer as provided in subsection ~~(A)--1--above~~ (2) of this section. The director will then debit the employer's account with these costs. When payments exceed benefit costs, the employer will be credited on subsequent benefit costs with the overpayment~~,-or given-a-refund-upon-request~~. When payments are not sufficient to pay ~~such~~ benefit costs, the employer will be billed the additional amount necessary to pay such costs.

(5) Bond requirements. 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.

(~~6~~6) ~~1.~~ Failure to pay timely. If any nonprofit organization or governmental entity 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~~ employer'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 or governmental entity becoming delinquent in making payments in lieu of contributions ~~as required in (A) 1 and (B) of this subsection~~ shall be subject to the same penalty provisions ~~provided in section 72-1354, Idaho Code, the collection provisions of sections 72-1355 and 72-1360, Idaho Code, and the jeopardy assessment provision of section 72-1359, Idaho Code~~ as any other covered employer as provided in this chapter.

(~~B~~7) Appeals procedure. ~~The n~~Nonprofit organizations and governmental entities making payments in lieu of contributions may appeal ~~the director's~~ a determination ~~of benefit costs and payment credits~~ made pursuant to this section as provided in section 72-1368~~1~~, Idaho Code.

(~~b~~8) In the payment of any payments in lieu of contributions a fractional part of a ~~cent~~ dollar shall be disregarded unless it amounts to ~~one-half~~ fifty cents (~~1/2~~50¢) or more, in which case it shall be increased to one ~~cent~~ dollar (~~1¢~~$1.00).

SECTION 64. That Sections 72-1349B and 72-1349C, Idaho Code, be, and the same are hereby repealed.

SECTION 65. That Section 72-1349D, Idaho Code, be, and the same is hereby amended to read as follows:

72-1349~~D~~B. FINANCING OF BENEFITS PAYMENTS BY PROFESSIONAL EMPLOYERS AND THEIR CLIENTS. (1) Nonprofit organizations and governmental entities excepted. Financing of benefits for workers assigned by a professional employer to a nonprofit organization~~, as defined in section 72-1349A(a), Idaho Code,~~ or a governmental entity shall be paid ~~by the nonprofit organization,~~ as provided in section 72-1349A, Idaho Code. ~~Financing of benefits for workers assigned by a professional employer to a governmental entity shall be paid by the governmental~~

~~entity,-as-provided-in-section-72-1349B,-Idaho-Code.~~ Financing of benefits for workers assigned by a professional employer to any entity other than a nonprofit organization or governmental entity shall be made in accordance with the provisions of this section.

(2) Liability for contributions. Unless a professional employer meets the minimum requirements of this ~~act~~ chapter, its client shall remain liable as a covered employer for any ~~contributions--owing--on wages~~ payments due under the provisions of this ~~act~~ chapter. During the term of a professional employer arrangement, a professional employer is liable~~,--in--accordance--with-the-provisions-of-sections 72-1349,-72-1354-and-72-1360,-Idaho-Code,~~ for the payment of ~~contributions,-penalties,-and-interest-on~~ all moneys due pursuant to this chapter as a result of wages paid to employees assigned to a client company, except compensation paid to sole proprietors or partners in the client company.

(3) Joint and several liability. A client is jointly and severally liable for any unpaid ~~contributions,--interest--and--penalties~~ moneys due under the provisions of this ~~act~~ chapter from the professional employer for wages paid to workers assigned to the client.

(4) Reporting requirements. The professional employer shall report and ~~pay~~ make all ~~contributions~~ payments under its state employer account number. The professional employer shall keep separate records and submit separate quarterly wage reports for each of its clients. The professional employer shall pay contributions for its clients collectively using the professional employer's contribution rate unless it elects to pay the contribution for certain clients individually in which instance the contribution shall be paid using the individual client's contribution rate.

(5) Interested party. As between a professional employer and its client, the professional employer company shall be deemed to be the interested party for purposes of section 72-1323, Idaho Code, and all proceedings to determine rights to benefits under the provisions of this ~~act~~ chapter.

(6) Temporary workers. The provisions of this section do not apply to an entity that provides temporary workers on a temporary help basis, provided that the entity is liable as the employer for all payments due under the provisions of this chapter as a result of ~~contributions-on~~ wages paid to those temporary workers.

(7) Rebuttable presumption. When a professional employer assigns workers to only one (1) client and its affiliates, there is a rebuttable presumption that the client entered into a professional employer arrangement to avoid calculation of the proper ~~contribution~~ taxable wage rate. ~~for-payment-of-unemployment-insurance-contributions.~~ If the professional employer fails to rebut this presumption, the director, pursuant to section 72-1353, Idaho Code, shall issue an administrative determination of coverage holding the client to be the covered employer for purposes of this ~~act~~ chapter.

(8) A client ceasing to pay wages. Whenever a client ceases to pay wages, such client shall be subject to termination of its employer account and experience rating records in the same manner as any other employer, in accordance with the provisions of sections 72-1351 and 72-1352, Idaho Code. If a client which has ceased to pay wages subsequently becomes subject to this ~~act~~ chapter because it resumes paying

wages, it will be assigned the appropriate experience rate in accordance with the provisions of section 72-1351, Idaho Code.

(9) Succession of experience factors. Whenever a professional employer arrangement is entered, the separate account and experience factors of payroll and reserve shall be transferred to the professional employer for the purpose of determining the professional employer's contribution rate to be paid on behalf of the client. Upon the expiration or termination of the professional employer arrangement, so much of the professional employer's separate account and experience factors of payroll and reserve as is attributable to the client shall be transferred to the terminating client for the purpose of determining the client's subsequent rate of contribution. In the event the professional employer elects to pay the client's contribution separately as provided in subsection (4) of this section, then the client's experience factors of payroll and reserve shall remain with the client employer for the duration of the professional employer arrangement.

SECTION 66. That Section 72-1350, Idaho Code, be, and the same is hereby amended to read as follows:

72-1350. TAXABLE WAGE BASE AND TAXABLE WAGE RATES. (~~a~~1) All remuneration for personal services as defined in section 72-1328, Idaho Code, equal to the average annual wage in covered employment for the penultimate calendar year, rounded to the nearest multiple of ~~six~~ one hundred dollars ($~~6~~100), or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher, shall be the taxable wage base for purposes of this ~~act.-Provided-however,-and-notwithstanding-any-other-provision-of-the-employment-security-law-to-the contrary,--for--calendar--year--1997--the--taxable--wage-base-shall-be twenty-one-thousand-dollars-($21,000),-which-was-the-taxable-wage-base in-effect-for-calendar-year-1995~~ chapter.

(~~b~~2) All covered employers, except those eligible and electing the cost reimbursement payment method, shall be assigned taxable wage rates annually by the director in accordance with the following~~,--provided--however,-and-notwithstanding-any-other-provision-of-the-employment-security-law-to-the-contrary,-for-calendar-year-1997-the--taxable wage--rates-for-all-covered-experience-rated-employers-shall-be-determined-in-accordance-with-schedule-I,-which-was-the-schedule-in--effect for-calendar-year-1995~~.

(~~c~~3) A desired employment security fund size shall be determined for each calendar year by calculating from the penultimate year, the ten (10) year average of annual benefits paid to wages covered, multiplied by one and one-half (1.5). The resulting ratio, when applied to the covered wages of the penultimate year, represents the desired fund size. This calculation is hereafter referred to as the average cost multiple (ACM).

(~~d~~4) ~~Beginning--in-calendar-year-1989-and-effective-each-calendar year-thereafter,-t~~The ACM ~~becomes~~ shall be the ratio at the top of taxable wage rate schedule V as provided in subsection (~~g~~7) of this section, and all other ratios for schedules I through IX are adjusted up or down from schedule V in equal increments of .005.

(~~e~~5) The taxable wage rate schedule for each calendar year shall

be determined by comparing the ratio of the actual balance of the employment security fund, section 72-1346, Idaho Code, and the reserve fund, section 72-1347A, Idaho Code, on September 30, to the wages covered in the penultimate year against the taxable wage schedule ratios as provided in subsection (~~d~~4) of this section.

(~~f~~6) The ratios computed for each taxable wage rate schedule as provided in subsection (~~d~~4) of this section shall be placed with their appropriate schedule at the top of the columns as provided in subsection (~~g~~7) of this section, and shall represent the minimum fund level required for the specific schedule to be in effect.

(g7) Schedules of Taxable Wage Rates

Rate Class	More Than (% of Total Taxable Payroll)	Equal to or Less Than (% of Total Taxable Payroll)	SCHED. I	SCHED. II	SCHED. III	SCHED. IV	SCHED. V	SCHED. VI	SCHED. VII	SCHED. VIII	SCHED. IX
Cumulative Taxable Payroll Limits			+.020	+.015	+.010	+.005	ACM	-.005	-.010	-.015	
			Taxable Wage Rates for Eligible Employers								
1	--	~~10~~	0.1%	~~0.5%~~	~~0.9%~~	~~1.3%~~	~~1.5%~~	~~1.7%~~	~~2.1%~~	~~2.5%~~	~~2.9%~~
		12		0.2%	0.4%	0.8%	1.2%	1.6%	2.0%	2.2%	2.4%
2	~~10~~	~~22~~	~~0.4~~	~~0.8~~	~~1.2~~	~~1.6~~	~~1.8~~	~~2.0~~	~~2.4~~	~~2.8~~	~~3.2~~
	12	24	0.2	0.4	0.6	1.0	1.4	1.8	2.2	2.4	2.6
3	~~22~~	~~37~~	~~0.7~~	~~1.1~~	~~1.5~~	~~1.9~~	~~2.1~~	~~2.3~~	~~2.7~~	~~3.1~~	~~3.5~~
	24	36	0.4	0.6	0.8	1.2	1.6	2.0	2.4	2.6	2.8
4	~~37~~	~~52~~	~~1.0~~	~~1.4~~	~~1.8~~	~~2.2~~	~~2.4~~	~~2.6~~	~~3.0~~	~~3.4~~	~~3.8~~
	36	48	0.6	0.8	1.0	1.4	1.8	2.2	2.6	2.8	3.0
5	~~52~~	~~67~~	~~1.3~~	~~1.7~~	~~2.1~~	~~2.5~~	~~2.7~~	~~2.9~~	~~3.3~~	~~3.7~~	~~4.1~~
	48	60	0.8	1.0	1.2	1.6	2.0	2.4	2.8	3.0	3.2
6	~~67~~	~~82~~	~~1.6~~	~~2.0~~	~~2.4~~	~~2.8~~	~~3.0~~	~~3.2~~	~~3.6~~	~~4.0~~	~~4.4~~
	60	72	1.0	1.2	1.4	1.8	2.2	2.6	3.0	3.2	3.4
7	~~82~~	--	~~1.9~~	~~2.3~~	~~2.7~~	~~3.1~~	~~3.3~~	~~3.5~~	~~3.9~~	~~4.3~~	~~4.7~~
	72		1.2	1.4	1.6	2.0	2.4	2.8	3.2	3.4	3.6
Taxable Wage Rates for Standard-Rated Employers:			~~2.1%~~	~~2.5%~~	~~2.9%~~	~~3.3%~~	~~3.5%~~	~~3.7%~~	~~4.1%~~	~~4.5%~~	~~4.9%~~
			1.3%	1.5%	1.7%	2.1%	2.5%	2.9%	3.3%	3.5%	3.7%

Rate Class	Cumulative Taxable Payroll Limits: More Than (% of Total Taxable Payroll)	Cumulative Taxable Payroll Limits: Equal to or Less Than (% of Total Taxable Payroll)	Taxable Wage Rates for Deficit Employers								
1	–	~~20~~	2.4	~~2.8~~	~~3.2~~	~~3.6~~	~~3.8~~	4.0	4.4	~~4.8~~	~~5.2~~
		30		2.6	2.8	3.2	3.6			4.6	4.8
2	~~20~~	~~40~~	2.8	~~3.2~~	~~3.6~~	~~4.0~~	~~4.2~~	4.4	4.8	~~5.2~~	~~5.6~~
	30	50		3.0	3.2	3.6	4.0			5.0	5.2
3	~~40~~	~~60~~	3.2	~~3.6~~	~~4.0~~	~~4.4~~	~~4.6~~	4.8	5.2	~~5.6~~	~~6.0~~
	50	65		3.4	3.6	4.0	4.4			~~5.4~~	~~5.6~~
4	~~60~~	80	3.6	~~4.0~~	~~4.4~~	~~4.8~~	~~5.0~~	5.2	5.6	~~6.0~~	~~6.4~~
	65			3.8	4.0	4.4	4.8			5.8	6.0
5	80	~~99~~	4.0	~~4.4~~	~~4.8~~	~~5.2~~	~~5.4~~	5.6	6.0	~~6.4~~	~~6.8~~
		95		4.2	4.4	4.8	5.2			6.2	6.4
6	~~99~~	--	5.4	5.4	5.4	5.4	~~5.4~~	~~5.6~~	~~6.0~~	~~6.4~~	6.8
	95						5.6	6.0	6.4	6.6	

(~~h~~8) Each employer will be assigned a taxable wage rate from the effective taxable wage rate schedule for eligible, standard-rated and deficit employers, based upon the employer's experience as determined under the provisions of sections 72-1319, 72-1319A, 72-1319B and 72-1351, Idaho Code.

(~~1~~a) Deficit employers who have been assigned a taxable wage rate from rate class six will be assigned contribution rates equal to their taxable wage rate.

(~~2~~b) All other eligible, standard-rated and deficit employers will be assigned contribution rates equal to ninety-seven percent (97%) of their taxable wage rate. Provided however, that for each calendar year a reserve tax is imposed pursuant to section 72-1347A, Idaho Code, the contribution rates for employers assigned contribution rates pursuant to this paragraph shall be eighty percent (80%) of their taxable wage rate.

(~~i~~9) Each employer shall be notified of his taxable wage rate as determined for any calendar year pursuant to this section and section 72-1351, Idaho Code. 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. The employer shall be promptly notified of the redetermination, which shall become final unless an appeal is filed within fourteen (14) days after delivery or mailing of notice to his last known address. Proceedings on the appeal shall be in accordance with the provisions of section 72-1361, Idaho Code.

SECTION 67. That Section 72-1351, Idaho Code, be, and the same is hereby amended to read as follows:

72-1351. EXPERIENCE RATING. (~~a~~1) Subject to the other provisions of this ~~act~~ chapter, each eligible and deficit employer's (except cost reimbursement employers) taxable wage rate shall be determined in the manner set forth below for each calendar year:

(~~1~~a) (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 taxable 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 (1) 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 ~~occuring 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 taxable wage 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~~ this chapter for the purpose of computing any future "experience factor."

(~~2~~b) 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~~i) the amount of his taxable payroll for the fiscal year ending on the computation date, and (~~b~~ii) a 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~~c) The cumulative taxable payroll amounts listed on the schedules provided for in paragraph (~~2~~b) of this subsection shall be segregated into groups whose limits shall be those set out in the table of schedules of taxable wage rates, section 72-1350(7), Idaho Code~~, subsection (g)~~. Each of such groups shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules shall be assigned ~~that~~ the taxable wage rate opposite his rate class for the tax schedule in effect for the taxable year.

(~~4~~d) (i) If the grouping of rate classes requires the inclusion of exactly one-half (1/2) of an employer's taxable payroll, ~~such~~ the 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 (1/2) of an employer's

taxable payroll, ~~such~~ the 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 taxable wage rate specified for such class, notwithstanding the provisions of paragraph (~~3~~c) of this subsection.

(~~5~~e) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, ~~such~~ the employer shall be placed in that position on the schedules which he would have occupied had his taxable 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.

(b2) 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~~ chapter. Benefits paid prior to June 30 shall, as of June 30 of each year preceding the calendar year for which a covered employer's taxable wage 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 no charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(~~1~~a) 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~~b) If paid in accordance with the provisions of section 72-1368(~~j~~10), Idaho Code, and ~~such-determination-of~~ the decision to pay benefits is subsequently reversed; or

(~~3~~c) 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~~d) If paid in accordance with the extended benefit program triggered by either national or state indicators~~.~~;

(~~5~~e) If paid to a worker who continues to perform services for such covered employer without a reduction in his customary work schedule, and who is eligible to receive benefits due to layoff or a reduction in earnings from another employer.

(c3) A covered employer whose experience rating account is chargeable, as prescribed by this section, is an interested party as defined in section 72-1323, Idaho Code. 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~~4) (~~1~~a) Whenever any individual or type of organization (whether or not a covered employer within the meaning of section 72-1315, Idaho Code) 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 taxable payroll experience of the predecessor shall, upon the joint application of the predecessor and the successor within the ninety (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 taxable wage rate 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~~ chapter; provided, however, that such ninety (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~~b) Whenever any individual or type of organization, whether or not a covered employer within the meaning of section 72-1315, Idaho Code, 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 taxable 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 ninety (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 taxable wage rate 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~~ chapter; provided, however, that such ninety (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~~c) (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 taxable wage rate, 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 (1) 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.

SECTION 68. 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~~1) Except as otherwise provided in subsection (~~c~~3) 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~~2) The coverage of any covered employer may be terminated if~~--~~:

(~~1~~a) 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 one thousand five hundred dollars ($1,500) or more within the ensuing two (2) calendar quarters~~,~~; or

(~~2~~b) 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 one thousand five hundred dollars ($1,500) 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, Idaho Code, within the ensuing calendar year.

(~~3~~c) Notwithstanding the provisions in subsections (b2)(~~1~~a) or (b2)(~~2~~b), 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.

(c3) Any employer for whom services ~~that~~ are performed in this state which do not constitute covered employment, ~~are performed,~~ may file with the director a written ~~election~~ request 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-(2) 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 for not less than two (2) calendar years. Such services shall cease to be covered employment as of January 1st of any calendar year subsequent to such two (2) 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.

(d4) Benefits payable to the employees thus covered will be payable ~~under~~ on the same basis~~,-the-same-benefit-formula~~ and ~~eligibility~~ conditions ~~as-prevail-for~~ that apply to all other covered employees.

SECTION 69. That Section 72-1353, Idaho Code, be, and the same is hereby amended to read as follows:

72-1353. ADMINISTRATIVE DETERMINATIONS OF COVERAGE. (1) The director may, upon his own motion or upon application of any employer, make findings of fact and on the basis thereof~~,-a--determination--with respect--to~~ determine whether such employer is a covered employer and whether services performed for or in connection with the business of such employer constitutes covered employment. ~~A~~ The determination shall become final unless, within fourteen (14) days after notice, an appeal is filed with the ~~employment-security-agency~~ department setting forth the grounds for such appeal. ~~For-purposes-of-this-section,-a~~ A notice shall be deemed served if delivered to the person being served or if mailed to his last known address; service by mail shall be deemed complete on the date of mailing. Proceedings on appeal shall be had in accordance with the provisions of section 72-1361, Idaho Code.

(2) In making any determination with respect to whether the services performed by a worker are performed in covered employment, the director may, on the basis of the available evidence, determine that other workers performing similar services for the employer are similarly situated with respect to the coverage of said services under the provision of this chapter, and that such services constitute covered employment.

(3) In any proceeding to determine whether an employer is a covered employer or whether services are performed in covered employment, it shall be the burden of the employer to prove that the employer is

not a covered employer, that services were not performed in covered employment, or that workers are not similarly situated with respect to the coverage of their services.

SECTION 70. That Section 72-1354, Idaho Code, be, and the same is hereby amended to read as follows:

72-1354. PENALTY ON UNPAID ~~CONTRIBUTIONS----EFFECT-OF-FAILURE--TO PAY-CONTRIBUTIONS~~ AMOUNTS. If ~~contributions~~ any amounts due under this chapter are not paid by any covered employer on or before the date on which they are due~~, and-payable,~~ such ~~contributions~~ amounts shall bear penalty at the rate of two ~~per--cent~~ percent (2%) or ten dollars ($10.00), whichever is the larger, for each month or fraction thereof until paid; provided, that in no case shall the penalty exceed the actual amounts ~~of-contributions~~ due~~, and-payable.~~ The date of payment ~~of-contributions~~ shall be deemed the date of actual receipt by the director, or if mailed, the date of mailing. Penalties collected pursuant to this section shall be paid into the state employment security administrative and reimbursement fund as established by section 72-1348, Idaho Code. At the discretion of the director~~, or-his--authorized-representative,~~ the department may compromise the amount of penalty collected pursuant to this section if the employer shows he had good cause for failing to timely pay contributions.

~~Furthermore,-if-any-employer-shall-be--in--default--under--section 72-1349,--Idaho--Code,--for--a--period--of-thirty-(30)-days,-he-may-be enjoined,-by-the-district-court-of-any-county-in-which--such--employer carries--on--any-part-of-his-trade-or-occupation,-from-carrying-on-his business-while-such-default-continues.-All-proceedings-in--the--courts are-to-be-brought-by-the-director-in-the-name-of-the-state-of-Idaho.~~

SECTION 71. That Section 72-1355, Idaho Code, be, and the same is hereby amended to read as follows:

72-1355. COLLECTION BY SUIT. (a1) ~~If-any-covered-employer-becomes delinquent--in--any-payment-of-contributions-or-penalties-thereon,-the amount-due-may,-in-addition-to-or-alternatively-to-any-other-method-of collection-prescribed-in-this-act,-be-collected-by-civil--action--commenced--by--the--director--in--the-name-of-the-state,-and-the-employer adjudged-in-default-shall-pay-the-cost-of--such--action.--In--bringing such-actions-for-the-collection-of-unpaid-contributions-and-penalties, the--director--shall--have-all-the-rights-and-remedies-provided-by-the laws-of-this-state-for-collection-of-a--debt--arising--upon--contract.~~ Civil actions in the district court may be brought to collect any amount due under the employment security law of this state or any other state or the federal government in the same manner provided by law for collection of debt. Any person found liable for any amount due under this chapter shall pay the costs of such action.

~~(b)--Civil-actions-brought-under-this-section-to-collect-contributions-or-penalties-thereon-from-a-delinquent-covered-employer-shall-be heard-by-any-court-of-this-state-of-competent-jurisdiction-at-the-earliest-possible-date-and-in-the-courts-of-original--jurisdiction--shall be--entitled--to--preference--upon-the-calendar-of-such-court-over-all other-civil-actions,-and-in-the-Supreme-Court--shall--be--entitled--to~~

~~preference upon its calendar over all other civil actions except those involving workmen's compensation and appeals from the commission in other cases involving this act.~~

~~(c) The courts of this state shall in like manner entertain actions to collect contributions or penalties thereon for which liability has accrued under the Unemployment Compensation or Unemployment Insurance Law of any other state or of the federal government. No suit, including an~~ proceeding or action ~~for a declaratory judgment,~~ shall be maintained and no writ or process shall be issued by any court ~~of this state~~ which has the purpose or effect of ~~restraining,~~ delaying~~, or forestalling~~ the collection of any ~~contributions~~ amounts due under this ~~act~~ chapter or substituting any collection procedure for those prescribed in this ~~act~~ chapter.

~~(d) All the costs necessarily incurred by the director in bringing any such action shall be paid out of the employment security administration fund.~~

(2) Any person who fails to comply with section 72-1349 or 72-1349A, Idaho Code, for a period of thirty (30) days or more may be enjoined by the district court of any county in which such person does business from carrying on his business while such delinquency continues.

(3) All proceedings in the courts are to be brought by the director in the name of the state of Idaho.

SECTION 72. That Section 72-1355A, Idaho Code, be, and the same is hereby amended to read as follows:

72-1355A. CONTRACTORS' AND PRINCIPALS' LIABILITY FOR CONTRIBUTIONS. No covered employer which contracts with any contractor or subcontractor who is a covered employer under the provisions of this ~~act~~ chapter shall make final payment to such contractor or subcontractor for any indebtedness due, until after the contractor or subcontractor has paid or has furnished a good and sufficient bond acceptable to the director for payment of contributions due, or to become due, in respect to personal services which have been performed by individuals for such contractor or subcontractor. Failure to comply with the provisions of this section shall render said covered employer directly liable for such contributions; and the director shall have all of the remedies of collection against said covered employer under the provisions of this ~~act~~ chapter as though the services in question were performed directly for said covered employer.

SECTION 73. That Section 72-1356, Idaho Code, be, and the same is hereby amended to read as follows:

72-1356. PRIORITIES. Where the assets of an employer subject to the provisions of this ~~act~~ chapter are distributed by an order of court under ~~the~~ Idaho law, including any receivership, assignment for the benefit of creditors, adjudication of insolvency, composition, administration of estates of decedents, or similar proceeding, ~~contributions and penalties~~ amounts then or thereafter due under this chapter must be paid in full prior to all other unsecured claims except taxes, claims arising under the ~~Workmen's~~ worker's ~~C~~compensation ~~A~~act,

and claims for wages of not more than two hundred fifty dollars ($250) to each claimant earned within four (4) months of the commencement of proceedings. In the case of such an employer's adjudication of bankruptcy, judicially confirmed extension proposal or composition under the ~~B~~bankruptcy ~~Act--of-1898-as-amended,-contributions-and-penalties~~ law, amounts then or thereafter due under this chapter are entitled to such priority as is now or may hereafter be granted ~~to-be-due-a--state~~ under ~~section--64(b)-of-the-Federal-Bankruptcy-Law-as-amended.-(Title~~ 11 U.S.C.~~,-104~~507.~~)~~

SECTION 74. That Section 72-1357, Idaho Code, be, and the same is hereby amended to read as follows:

72-1357. ADJUSTMENTS AND REFUNDS. (~~a~~1) If any person shall make application for a refund or credit of any amounts paid ~~as-contributions-or-payments-in-lieu-of-contributions-or-penalties~~ under this ~~act~~ chapter, the director shall, upon determining that such amounts or any portion thereof was erroneously collected, either allow credit therefor, without interest, in connection with subsequent ~~contribution~~ payments, or shall refund from the ~~appropriate~~ fund in which the erroneous payment was deposited, without interest, the amount erroneously paid.

(~~b~~2) No refund or credit shall be allowed ~~with-respect-to-a-payment-as-contributions-or--penalties~~ unless an application therefor ~~shall--be~~ is made on or before whichever of the following dates ~~shall~~ be is later:

(~~1~~a) One (1) year from the date on which such payment was made; or

(~~2~~b) Three (3) years from the last day of the calendar quarter with respect to which such payment was made. For a like cause and within the same period a refund may be so made, or credit allowed, on the initiative of the director. Nothing in this ~~act,-or-any part-thereof,~~ chapter shall be construed to authorize any refund or credit of moneys due and payable under the law and regulations in effect at the time such moneys were paid.

(~~c~~3) In the event that any application for refund or credit is rejected in whole or in part, a written notice of rejection shall be forwarded to the applicant. Within fourteen (14) days after the mailing of such notice to the applicant's last known address, or in the absence of such mailing, within fourteen (14) days after delivery thereof, the applicant may appeal to the director for a hearing with regard to the rejection, setting forth the grounds for such appeal. Proceedings on the appeal shall be ~~had~~ in accordance with the provisions of section 72-1361, Idaho Code.

SECTION 75. That Section 72-1358, Idaho Code, be, and the same is hereby amended to read as follows:

72-1358. DETERMINATION OF AMOUNTS DUE UPON FAILURE TO REPORT. If any covered employer fails to file a report when due under this ~~act~~ chapter, or if such report when filed is incorrect or insufficient, the director ~~or--his--authorized-representative~~ may, on the basis of available information, determine the amount of wages paid ~~for~~ in cov-

ered employment during the ~~period or~~ periods with respect to which the reports were or should have been made and the amount ~~of contributions~~ due under this chapter from ~~such~~ the employer. ~~on the basis of such information as he may be able to obtain, the amount of such contributions to be computed according to the rates prescribed in this act and subject to penalties as provided by section 72-1354 of this act.~~ The director shall ~~then~~ give written notice of ~~such~~ the determination to ~~such~~ the employer. ~~Such~~ The determination shall ~~be deemed correct~~ become final unless ~~such~~ the employer, ~~shall,~~ within fourteen (14) days after the mailing of ~~such~~ the notice to the employer's last known address, or, in the absence of such mailing, within fourteen (14) days after delivery thereof, files an appeal with the ~~employment security agency~~ department. Proceedings on ~~such~~ the appeal shall be ~~had~~ in accordance with the provisions of section 72-1361, Idaho Code.

SECTION 76. That Section 72-1359, Idaho Code, be, and the same is hereby amended to read as follows:

72-1359. JEOPARDY ASSESSMENTS. If the director determines that the collection of any ~~contribution, payment in lieu of contribution, or penalty~~ amounts due from any covered employer under the provisions of this ~~act~~ chapter will be jeopardized by delay, he may, whether or not the time prescribed by this ~~act~~ chapter or any ~~regulations~~ rules issued pursuant thereto for making reports and ~~paying such contributions or~~ payments ~~in lieu of contributions~~ has expired, determine, ~~upon~~ on the ~~best~~ basis of available information, ~~obtainable~~ the ~~amount of~~ wages paid by such employer for covered employment and ~~in accordance with the taxable wage rates or provisions for payments in lieu of contributions prescribed in this act, compute and~~ declare the amount ~~of contributions or payments in lieu of contributions~~ due ~~and~~ thereon immediately payable, and shall give written notice of such declaration to such employer. Within fourteen (14) days after the mailing of such declaration to the last known address of such employer or in the absence of such mailing, within fourteen (14) days after delivery thereof, the employer may appeal to the ~~employment security agency~~ department setting forth grounds for such appeal. In such cases, ~~however,~~ the right of appeal shall be conditioned upon the payment of ~~contributions or payments in lieu of contributions and penalties~~ the amount declared to be due or upon giving ~~any~~ appropriate security to the director for the payment thereof. Proceedings on such appeals shall be ~~had~~ in accordance with the provisions of section 72-1361, Idaho Code.

SECTION 77. That Section 72-1360, Idaho Code, as amended by Section 6, Chapter 205, Laws of 1997, be, and the same is hereby amended to read as follows:

72-1360. LIENS. (1) Upon the failure of any person to pay ~~contributions or penalties~~ any amount when due under this chapter, ~~or~~ including the failure to repay overpayments as that term is defined in section 72-1369, Idaho Code, the director ~~or his authorized representative~~ may file with the office of the secretary of state, as provided in chapter 19, title 45, Idaho Code, a notice of lien.

(2) Upon delivery to the secretary of state, the notice of lien shall be filed and maintained in accordance with chapter 19, title 45, Idaho Code. When such notice is duly filed, ~~the~~ all amounts ~~of the overpayments, or contributions or penalties in default, together with any interest~~ due ~~thereof,~~ shall ~~be~~ constitute a lien upon the entire interest, legal or equitable, in any property of such person, ~~liable for overpayments, or contributions or penalties, in any property,~~ real or personal, tangible or intangible, not exempt from execution, situated in the state. Such lien may be enforced ~~against any real or personal property of the person liable for overpayments or contributions or penalties~~ by the director~~, his authorized representative,~~ or by any sheriff of the various counties in the same manner as a judgment of the district court duly docketed and the amount~~,~~ secured by the lien ~~thus established,~~ shall bear interest at the rate of the state statutory legal limit on judgments. The foregoing remedy shall be in addition to all other remedies ~~against the person liable for overpayment of contributions or penalties~~ provided by law. The amount of interest collected pursuant to this section may be compromised at the discretion of the director when such compromise is in the best interest of the department.

(3) In any suit or action involving the title to real or personal property against which the state has a perfected lien, the state shall be made a party to such suit or action.

SECTION 78. That Section 72-1360A, Idaho Code, as added by Section 7, Chapter 205, Laws of 1997, be, and the same is hereby amended to read as follows:

72-1360A. COLLECTION OF LIEN AMOUNTS. (1) In addition to all other remedies or actions provided by this ~~act~~ chapter, it shall be lawful for the director or ~~any of~~ his ~~authorized representatives,~~ agents ~~or deputies,~~ to collect any amounts secured by liens ~~for overpayments of benefits or contributions, together with such interest, penalties, and other additional amounts as are permitted by law,~~ created pursuant to this chapter by ~~distraint~~ seizure and sale~~, in the manner provided herein,~~ of the property of any person liable for such ~~overpayments of benefits or contributions, interest, penalties, or other additional~~ amounts~~,~~ who ~~neglects or refuses~~ fails to pay the same within thirty (30) days from the mailing of notice and demand for payment thereof~~, and who has not appealed from the assessment or determination of such contributions or overpayments, interest, penalties and other additional amounts pursuant to the provisions of this act or who has not satisfied or discharged any lien authorized and created under this act.~~

(2) Property exempt from ~~distraint~~ seizure shall be the same property as is exempt from execution under the provisions of chapter 6, title 11, Idaho Code.

(3) In ~~case of neglect or refusal to repay benefit overpayments or to pay contributions, or any other amounts due as hereinabove provided~~ exercising his authority under subsection (1) of this section, the director ~~or his authorized representative~~ may levy, or~~,~~ by his warrant~~, issued under his own hand,~~ authorize any of his ~~agents,~~ representatives, ~~or~~ a sheriff~~, constable,~~ or deputy~~,~~ to levy upon, seize

and sell ~~all~~ any nonexempt property~~,-except-such-as-is-exempt--by--the preceding-section,~~ belonging to any person~~,-for-the-enforcement-of-any lien-authorized-pursuant-to-this-act~~ liable for the amounts secured by the lien.

(4) When a warrant is issued by the department ~~of-labor~~ for the collection of any amount due pursuant to a lien ~~for--benefit--overpayments--or-contributions,-together-with-any-interest,-penalty,-or-additional-amount-due-thereon,-for-the-enforcement-of-any-lien~~ authorized by this ~~act~~ chapter, it shall be directed to any authorized ~~agent-or~~ representative of the department, or to any sheriff~~,--constable,~~ or deputy, and any such warrant shall have the same force and effect as a writ of execution. It may ~~and-shall~~ be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy and sale pursuant to a writ of execution. ~~The-sheriff,-constable,-or deputy-shall-receive-u~~Upon the completion of his services pursuant to said warrant, ~~and~~ the ~~director-is-authorized-to-pay-to-said~~ sheriff~~,~~ ~~constable,~~ or deputy~~,~~ shall receive the same fees~~,--commissions~~ and expenses ~~pursuant--to-said-warrant~~ as are provided by law for ~~similar~~ services ~~pursuant~~ related to a writ of execution~~,--provided--however, that-said.~~ All such fees~~,-commissions~~ and expenses shall be an obligation of the person liable for ~~contributions-or-penalties-or-overpayments~~ the amounts due and ~~may~~ shall be collected from such person by virtue of the warrant. Any ~~such~~ warrant issued by the director shall contain, at a minimum, the name and address of the liable person; ~~his address;~~ the nature of the underlying liability; the date the liability was incurred; the amount of the liability secured by the lien; the amount of any penalty, interest or other amount due under the lien; and the interest rate on the lien.

(5) Whenever any property that is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the state for which ~~distraint-or~~ seizure is made, ~~the-authorized-agent--or representative-of-the-department,-or-the-sheriff,-constable,-or-deputy may--thereafter,-and-as-often-as-the-same-may-be-necessary,-proceed-to seize-and-sell-in-like-manner~~ any other property ~~liable~~ subject to seizure ~~of--the--person--liable--for-the-contributions,-penalties,-or overpayments,~~ shall be seized and sold until the amount due from such person, together with all expenses, is fully paid.

(6) All persons~~,~~ are required, on demand of ~~an-authorized-agent or~~ a representative of the department, ~~or~~ a sheriff~~,--constable,~~ or deputy ~~about--to--distrain,--or--having-distrained-on-any-property-or rights-of-property,~~ acting pursuant to this chapter, to ~~exhibit~~ produce all ~~books--containing~~ documentary evidence ~~or~~ and statements relating to the ~~subject-of-distraint-or-the~~ property or rights ~~of~~ in the property ~~liable--to--distraint--for--the--amount--due~~ subject to seizure.

~~(7)--The-distraint-provisions-of-this--act--shall--not--be--deemed exclusive-but-shall-be-in-addition-to-any-and-all-other-existing-remedies-provided-by-law-for-the-enforcement-of-this-act.~~

SECTION 79. That Section 72-1361, Idaho Code, be, and the same is hereby amended to read as follows:

72-1361. APPEALS TO THE ~~EMPLOYMENT-SECURITY-AGENCY~~ DEPARTMENT AND

TO THE COMMISSION. Upon appeal from a denial of a claim for refund or credit, determination of amounts due upon failure to report, determination of rate of contribution, determination of coverage, determination of chargeability, or jeopardy determination, ~~as provided by this act, the interested employer shall have opportunity for a fair hearing. The conduct of such hearings and~~ the director may transfer the appeal directly to an appeals examiner pursuant to section 72-1368(6), Idaho Code, or he may issue a redetermination affirming, reversing or modifying the initial determination. A redetermination shall become final unless, within fourteen (14) days after notice as provided in section 72-1368(5), Idaho Code, an appeal is filed by an interested party with the department in accordance with the department's rules. A~~a~~ppeal procedures shall be governed ~~exclusively~~ by the provisions of section 72-1368(~~f~~6), (~~g~~7), (~~h~~8), (~~i~~9) and (~~k~~11), Idaho Code. ~~The director may make special redeterminations as provided in subsection 72-1368(d), Idaho Code.~~ The party appealing shall have the burden of proving each issue appealed by clear and convincing evidence. The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, regarding contested cases and judicial review of contested cases are inapplicable to proceedings involving interested employers under this ~~act~~ chapter.

SECTION 80. That Section 72-1362, Idaho Code, be, and the same is hereby amended to read as follows:

72-1362. LIABILITY OF SUCCESSOR. Any person, whether or not a covered employer, who acquires the organization, trade, or business or a substantial part of the assets thereof, from a covered employer, shall be liable, in an amount not to exceed the reasonable value of the organization, trade, business, or assets acquired, for any contributions or penalties due or accrued and unpaid by such covered employer, and the amount of such liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other liens; ~~P~~provided, ~~T~~that the ~~said~~ lien shall not be valid ~~as~~ against one who acquires from the said predecessor any interest in the said property or assets in good faith, for value and without notice of the lien. The director shall, upon written request therefor, and with permission of the owner, furnish such prospective purchaser with a written statement of the amount of contributions and penalties due or accrued and unpaid by the said covered employer as of the date of such acquisition, and the amount of the liability of the successor or the amount of the said lien shall in no event exceed the liability disclosed by such statement. The foregoing remedies shall be in addition to all other existing remedies against the covered employer or his successor.

SECTION 81. That Section 72-1363, Idaho Code, be, and the same is hereby repealed.

SECTION 82. That Section 72-1364, Idaho Code, be, and the same is hereby amended to read as follows:

72-1364. UNCOLLECTIBLE ACCOUNTS. (~~a~~1) The director may enter

into agreements of compromise with ~~an~~ employers with respect to ~~any contributions,--penalties--and--interest~~ amounts due ~~where~~ under this chapter when it is determined by the director that ~~there--exists--an inability--on-the-part-of~~ the employer is unable to make full payment~~, and-the-employer-is-no-longer-operating-any-business.~~

(~~b~~2) ~~Contribution-payments-or-penalties~~ Amounts due~~,-pursuant--to the--provisions-of-this-act,~~ under this chapter, which are uncollected three (3) years after they become due, may be ~~charged-as~~ deemed uncollectible by the director if ~~no-assets-belonging-to-the--liable--person and--subject--to--attachment--can--be--found-and-in-the-opinion-of-the director~~ there is no likelihood of collection at a future date.

SECTION 83. That Section 72-1365, Idaho Code, be, and the same is hereby amended to read as follows:

72-1365. PAYMENT OF BENEFITS. (~~a~~1) ~~With-respect--to--unemployment occurring-after-July-1,-1947,-b~~Benefits shall be paid from the employment security fund to any unemployed individual who is eligible for benefits as provided by section 72-1366, Idaho Code.

(~~b~~2) Periodically, the department of health and welfare, bureau of child support enforcement, shall forward to the director a list containing the full name and social security number of persons from whom it is seeking child support. The director shall match the names and social security numbers on the list with its records of individuals eligible for ~~unemployment-compensation~~ benefits, and shall notify the department of health and welfare, bureau of child support enforcement, of the address and amount of ~~compensation~~ benefits due each individual.

(~~1~~a) Voluntary withholding. The director shall deduct and withhold from any ~~unemployment-compensation~~ benefits payable to an individual that owes child support obligations as defined under ~~subsection~~ paragraph (~~7~~g) of this subsection, the amount specified by the individual to the director to be deducted and withheld under this subsection, if ~~subsection~~ paragraph (~~2~~b) of this subsection below is not applicable.

(~~2~~b) Involuntary withholding. The director shall withhold any ~~unemployment-compensation~~ benefits of any person within the limits established by section 11-207, Idaho Code, upon notification and order by the department of health and welfare, bureau of child support enforcement, to collect any delinquent child support obligation which has been assigned on behalf of any individual to the department of health and welfare under sections 56-203A and 56-203B, Idaho Code, or a child support obligation which the department seeks to collect pursuant to chapter 12, title 7, Idaho Code. The set-off or withholding of any ~~unemployment--compensation~~ benefits of a claimant shall become final after the following conditions have been met:

(~~A~~i) The child support payment to be set-off or withheld is a child support obligation established by order as defined in section 7-1202, Idaho Code.

(~~B~~ii) All liabilities owed by reason of the provisions of section 72-1369, Idaho Code, have been collected by the director.

(~~C~~iii) Notice of the set-off or withholding has been mailed by registered or certified mail from the department of health and welfare, bureau of child support enforcement, to the claimant-obligor at the address listed on the claim.

Within fourteen (14) days after such notice has been mailed (not counting Saturday, Sunday, or state holidays as the 14th day), the claimant-obligor may file a protest in writing, requesting a hearing before the department of health and welfare to determine his liability to the obligee. The hearing, if requested, shall be held within thirty-five (35) days from the date of the initial notice to the claimant-obligor of the proposed set-off. No issues at that hearing may be considered which have been litigated previously. The department of health and welfare shall issue its findings and decision either at the hearing or within ten (10) days of the hearing by mail to the claimant-obligor.

(~~D~~iv) In its decision, the department of health and welfare may order the withholding and set-off of any subsequent ~~unemployment compensation payments~~ benefits which may be due the claimant-obligor until the debt for which set-off is sought and any additional debts which are incurred by the claimant's failure to make additional periodic payments based upon the same court order are satisfied.

(~~3~~c) Any amount deducted and withheld under ~~subsections~~ paragraph (~~1~~a) or (~~2~~b) of this subsection shall be paid by the director to the appropriate state or local child support enforcement agency.

(~~4~~d) Any amount deducted and withheld under ~~subsections~~ paragraph (~~1~~a) or (~~2~~b) of this subsection shall for all purposes be treated as if it were paid to the individual as ~~unemployment compensation~~ benefits and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(~~5~~e) For purposes of ~~subsections~~ paragraphs (~~1~~a) through (~~4~~d) of this subsection, the term ~~"unemployment compensation~~ "benefits" means any compensation payable under this ~~act~~ chapter, including amounts payable by the director pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(~~6~~f) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the director under the provisions of this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(~~7~~g) The term "child support obligation" is defined for the purposes of these provisions as including only an obligation which is being enforced pursuant to a plan described in section 454 of the social security act which has been approved by the secretary of health and human services under part D of title IV of the social security act.

(~~8~~h) The term "state or local child support enforcement agency" as used in these provisions means any agency of this state or a political subdivision thereof operating pursuant to a plan

described in ~~subsection~~ paragraph (~~7~~g) of this subsection.

(~~c~~3) Benefits shall be paid only to the extent that moneys are available for such payments in the employment security fund.

(~~d~~4) ~~All--b~~Benefits shall be paid ~~at such times~~ not less frequently than biweekly~~,--and in such manner as--the--director--shall--by rules prescribe~~.

(~~e~~5) Upon request, the department of health and welfare, bureau of child support enforcement, shall make the procedures established in this section for collecting child support available to county prosecuting attorneys. The provisions of this subsection apply only if appropriate arrangements have been made for reimbursement by the requesting prosecuting attorney for the administrative costs incurred by the bureau, which are attributable to the request.

(~~f~~6) (~~1~~a) An individual filing a new claim for ~~unemployment compensation~~ benefits shall, at the time of filing such claim, be advised that:

(~~A~~i) ~~Unemployment--compensation is~~ Benefits are subject to federal and state tax and requirements exist pertaining to estimated tax payments;

(~~B~~ii) The individual may elect to have federal income tax deducted and withheld from the individual's ~~payment of--unemployment compensation~~ benefits at the amount specified in the federal internal revenue code;

(~~C~~iii) The individual shall be permitted to change a previously elected withholding status once during each benefit year.

(~~2~~b) Amounts deducted and withheld from ~~unemployment compensation~~ benefits shall remain in the unemployment fund until transferred to the taxing authority as a payment of income tax.

(~~3~~c) The director shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(~~4~~d) Amounts shall not be deducted and withheld under this subsection until the following deductions are made and withheld in the following order:

(~~A~~i) First, amounts owed for overpayments of ~~unemployment compensation~~ benefits deducted and withheld pursuant to the provisions of section 72-1369, Idaho Code;

(~~B~~ii) Second, amounts owed for child support obligations deducted and withheld pursuant to the provisions of subsection (~~b~~2) of this section.

(~~5~~e) At the director's ~~sole~~ discretion, the director may promulgate rules allowing individuals to elect to have state income tax deducted and withheld from the individual's payment of ~~unemployment compensation~~ benefits.

SECTION 84. 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 consistent therewith, as the director may prescribe--~~

(1) ~~He~~ The claimant shall have made a claim for benefits and provided all necessary information pertinent to eligibility.

(2) ~~He~~ The claimant shall have registered for work and thereafter reported ~~at an employment~~ to a job service office or other agency in a manner prescribed by the director.

(~~b~~3) ~~In some calendar quarter within his base period he~~ The claimant shall have met the minimum wage requirements in his base period as provided in section 72-1367, Idaho Code.

~~(c) Claimant's unemployment is not due to having voluntarily left work to marry, or to perform the customary duties of maintaining a household, or to leave the locale to live with a spouse. The provisions of this subsection shall not apply after a change in conditions whereby claimant has become the main support of self or immediate family.~~

(~~d~~4) During the whole of any week with respect to which he claims benefits or credit to his waiting period~~,~~ ~~he~~ the claimant was able to work, available for suitable work, and seeking work; provided, however, that no claimant shall be considered ineligible ~~in any week of unemployment~~ for failure to comply with the provisions of this subsection if: (i) such failure is due to an illness or disability which occurs after he has filed a claim ~~and registered for work~~ and ~~after the beginning of~~ during such illness or disability, ~~no~~ the claimant does not refuse or miss suitable work ~~has been available for the claimant~~ that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; ~~and, provided further, that no~~ or (ii) the claimant~~,~~ ~~shall be deemed to be unavailable for the whole of the week who,~~ because of compelling personal circumstance, is required to be absent from his normal labor market area, provided that such absence does not exceed a minor portion of the workweek.

(~~e~~5) ~~His~~ The claimant's unemployment is not due to the fact that he left his employment voluntarily without good cause connected with his employment, or that he was discharged for misconduct in connection with his employment.

(~~f~~6) ~~His~~ The claimant's unemployment is not due to his failure without good cause to apply for available suitable work or to accept suitable work when offered to him. The longer a claimant has been unemployed, the more willing he must be to seek other types of work ~~other than in his ordinary trade or occupation~~ and ~~to~~ accept work at a lower rate of pay.

(~~g~~7) 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~~a) If the vacancy of the position offered is due directly to a strike, lockout, or other labor dispute;

(~~2~~b) If the wages, hours, or other conditions of the work offered are ~~substantially less favorable to the individual than~~ below

those prevailing for similar work in the locality of the work offered;

(~~3~~c) 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.

(~~h~~8) No claimant who is otherwise eligible shall be denied benefits for any week due to an inability to comply with the requirements contained in subsections (~~d~~4) and (~~f~~6) of this section, if:

(~~1~~a) The claimant is a participant in a program sponsored by title III of the job training partnership act and attends a job training course under that program; or

(~~2~~b) The claimant attends a job training course authorized pursuant to the provisions of section 236(a)(1) of the trade act of 1974~~;~~ or the North American free trade agreement implementation act.

(~~3~~c) The claimant lacks skills to compete in the labor market and attends a job training course with the approval of the director. The director may approve job training courses that meet the following criteria:

(~~a~~i) The purpose of the job training is to teach the claimant skills that will enhance the claimant's opportunities for employment; and

(~~b~~ii) The job training can be completed within one (1) year, except that this requirement may be waived pursuant to rules ~~and regulations~~ that the director ~~shall~~ may prescribe.

This subsection shall apply only if the claimant submits with each claim report a written certification from the training facility that the claimant is attending and satisfactorily completing the job training course, or demonstrates good cause for failure to attend the job training.

(~~i~~9) No claimant who is otherwise eligible shall be denied benefits under subsection (~~e~~5) of this section for leaving employment to attend job training pursuant to subsection (~~h~~8) of this section, provided that the claimant obtained the employment after enrollment in or during scheduled breaks in the job training course, or that the employment was not suitable. For purposes of this subsection, the term "suitable employment" means work of a substantially equal or higher skill level than the individual's past employment, and wages for such work are not less than eighty percent (80%) of the average weekly wage in the individual's past employment.

(~~j~~10) 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~~a) ~~He~~ The claimant is not participating, financing, aiding, abetting, or directly interested in the labor dispute; and

(~~2~~b) ~~He~~ The claimant does not belong to a grade or class of workers ~~of which, immediately before the commencement of the labor dispute, there were~~ with members employed at the premises at which the labor dispute occurs, ~~any of whom~~ who are participating in or directly interested in the dispute.

(~~k~~11) 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~~ insurance law of the United States.

(~~l~~12) A ~~benefit~~ claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has wilfully made a false statement ~~or representation~~ or wilfully failed to report a material fact in order to obtain ~~said~~ benefits. ~~for a~~ The period of ~~fifty-two (52) weeks from the date of said~~ disqualification shall commence the week the determination is issued. ~~Said~~ The claimant shall also be ~~liable to~~ ineligible for waiting week credit and shall repay ~~to the fund~~ any sums received for a week in which the claimant made a false statement~~, misrepresentation,~~ or failed to report a material fact.

(~~m~~13) A ~~benefit~~ claimant shall not be entitled to benefits if his principal occupation is self-employment.

(~~n~~14) A ~~benefit~~ claimant who has been found ineligible for benefits under the provisions of subsections~~ (c),~~ (e5), (~~f~~6), (g7) or (~~i~~9) of this section ~~may~~ shall reestablish his eligibility by having obtained bona fide work and received wages therefor in an amount of at least twelve (12) times his weekly benefit amount.

(~~o~~15) Benefits based on service in employment defined in sections 72-1349A~~,--72-1349B,~~ and 72-1352(c3), Idaho Code, shall be payable in the same amount, on the same terms and subject to the same conditions as ~~compensation~~ benefits payable on the basis of other service subject to this act.

(~~1~~a) If the services performed during one-half (1/2) or more of any contract period by an individual for an educational institution as defined in section 72-1322B, Idaho Code, are in an instructional, research, or principal administrative capacity, all the services ~~of such individual~~ shall be deemed to be in such capacity.

(~~2~~b) If the services performed during less than one-half (1/2) of any contract period by an individual for ~~such~~ an educational institution are in an instructional, research, or principal administrative capacity, none of the service ~~of such--individual~~ shall be deemed to be in such capacity.

(~~3~~c) 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.

(~~p~~16) No ~~individual~~ claimant is eligible to receive benefits in two (2) successive benefit years unless, ~~subsequent--to~~ after 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 ~~five and one-half~~ six (~~5 1/2~~6) times ~~his~~ the weekly benefit amount established during the first benefit year.

(q17) (1a) ~~With respect to weeks of unemployment beginning after December 31, 1977,~~ b~~B~~enefits based on wages earned for services performed in an instructional, research, or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual ~~if such individual~~ who performs such services in the first ~~of such~~ academic years (or terms) and ~~if there is~~ has a contract ~~or a reasonable assurance that such individual will~~ to perform services in any such capacity for any educational institution in the second ~~of such~~ academic years or terms, or has been given reasonable assurance that such a contract will be offered.

(2b) ~~With respect to weeks of unemployment beginning after December 31, 1977,~~ b~~B~~enefits based on wages earned for services performed in any other capacity for an educational institution shall not be paid to any individual for any week which commences during a period between two (2) successive school years or terms if ~~such~~ the individual performs such services in the first ~~of such~~ school years or terms, and there is a contract or reasonable assurance that ~~such~~ the individual will perform such services in the second ~~of such~~ school years or ~~terms, except that if compensation is~~ term. If benefits are denied to any individual under this subparagraph and ~~such~~ the individual was not offered an opportunity to perform such services for the educational institution for the second ~~of such~~ academic years or terms~~, such~~, the individual shall be entitled to a retroactive payment of ~~compensation~~ benefits for each week for which the individual filed a timely claim for ~~compensation~~ benefits and for which ~~compensation was~~ benefits were denied solely by reason of this clause.

(3c) With respect to any services described in paragraphs (1a) and (2b) of this subsection, benefits shall not be paid nor "waiting week" credit given to an individual for wages earned for services for any week which commences during an established and customary vacation period or holiday recess if ~~such~~ the individual ~~performs such~~ performed the services in the period immediately before ~~such~~ the vacation period or holiday recess, and there is a reasonable assurance ~~that such~~ the individual will perform such services in the period immediately following such vacation period or holiday recess.

(4d) With respect to any services described in paragraphs (1a) and (2b) of this subsection, benefits shall not be payable on the basis of services in any ~~such~~ capacities ~~as~~ specified in paragraphs (1a), (2b) and (3c) of this subsection to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this paragraph the term "educational service agency" means a ~~governmental agency or~~ governmental entity which is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

(r18) Benefits shall not be ~~paid after December 31, 1977, based on~~ payable on the basis of services~~,~~ which substantially ~~all of which~~

consist of participating in sports or athletic events or training or preparing to ~~so~~ participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if ~~such~~ the individual performed ~~such~~ services in the first ~~of--such~~ seasons (or similar periods) and there is a reasonable assurance that ~~such~~ the individual will perform such services in the later of such seasons (or similar periods).

(~~s~~19) (~~1~~a) Benefits shall not be payable on the basis of services performed by an alien unless ~~such~~ the alien ~~is-an--individual--who~~ was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time ~~such~~ the services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of sections 207 and 208 or section 212(d)(5) of the ~~I~~immigration and ~~N~~nationality ~~A~~act).

(~~2~~b) Any data or information required of individuals applying for benefits to determine ~~whether--benefits-are-not-payable-to-them because-of-their-alien-status~~ eligibility under this subsection shall be uniformly required from all applicants for benefits.

(~~3~~c) ~~In--the-case-of-an-individual-whose-application-for-benefits would-otherwise-be-approved,-no--determination--that--benefits--to such--individual-are-not-payable-because-of-his-alien-status-shall be-made-except-upon~~ A decision to deny benefits under this subsection must be based on a preponderance of the evidence.

(~~t~~20) An ~~unemployed-individual-shall-be-eligible-to-receive--benefits--with--respect-to-any-week-only-if-the-individual-participates-in reemployment-services,-such-as-job-search-assistance-services,-if--the~~ individual who has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the director~~,-unless-the-director-determines that~~ must participate in those reemployment services unless:

(~~1~~a) The individual has completed such services; or

(~~2~~b) There is justifiable cause, as determined by the director, for the claimant's failure to participate in such services.

SECTION 85. That Section 72-1367, Idaho Code, be, and the same is hereby amended to read as follows:

72-1367. BENEFIT FORMULA. (~~a~~1) To be eligible an individual shall have ~~at--least--eleven--hundred--forty-four--dollars--and--one--cent ($1,144.01)-in-total~~ the minimum qualifying amount of wages ~~paid--for services--performed--for--covered--employers--in--the-calendar-quarter within-his-base-period-in-which-such-wages-were--highest,~~ in covered employment in at least one (1) calendar quarter of his base period, and shall have total base period wages of at least one and one-quarter (1 1/4) times his high quarter wages. The minimum qualifying amount of wages shall be determined each July 1 and shall equal fifty percent (50%) of the product of the state minimum wage, as defined by section 44-1502, Idaho Code, multiplied by five hundred twenty (520) hours, rounded to the lowest multiple of twenty-six (26).

(~~b~~2) The weekly benefit amount shall be one twenty-sixth (1/26)

of highest quarter wages except that it shall not exceed the applicable maximum weekly benefit amount. The maximum weekly benefit amount shall be established as follows:

(~~1~~a) ~~The director, by regulations as he may prescribe, p~~Prior to June 30 of each year, the director shall compute the average weekly wage paid by covered employers for the preceding calendar year. The maximum weekly benefit amount ~~for benefit years beginning July 1, 1973, and on each July 1 thereafter,~~ shall be sixty per--cent percent (60%) of the state average weekly wage paid by covered employers for the preceding calendar year. ~~Provided,--however, and notwithstanding any provisions to the contrary, the maximum--weekly--benefit amount until June 30, 1984, shall remain the same as the maximum weekly benefit amount which--became--effective on July 1, 1982, and until July 1 of such year when the trust fund has not been borrowing for two (2) preceding quarters.~~

(~~c~~3) Any ~~otherwise~~ eligible individual shall be entitled during any benefit year to a total amount of benefits equal to his weekly benefit amount times the number of full weeks of benefit entitlement appearing in the following table based on ~~the line which includes~~ his ratio of total base period earnings to highest quarter base period earnings.

Ratio of Total Base Period Earnings to Highest Quarter Earnings		Full Weeks of Benefit Entitlement
At Least	Less Than	
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	--	26

(~~d~~4) If ~~in any compensable week~~ the total wages payable to ~~such~~ an individual for less than full-time work performed in ~~such~~ a week claimed exceed one-half (1/2) of his weekly benefit amount, the ~~excess~~ amount of wages that exceed one-half (1/2) of the weekly benefit amount shall be deducted from ~~his weekly benefit amount~~ the benefits payable to the claimant.

(~~e~~5) ~~Any amount of unemployment compensation~~ Benefits payable to any individual ~~for--any week, if not an even dollar amount,~~ shall be rounded to the next lower full dollar amount.

SECTION 86. That Section 72-1367A, Idaho Code, be, and the same is hereby amended 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~~ shall be administered pursuant to the provisions of this section.

(~~a~~1) Definitions. As used in this section, unless the context clearly requires otherwise:

(~~1~~a) "Extended benefit period" means a period which:

(~~A~~i) Begins with the third week after a week for which there is a state "on" indicator; and

(~~B~~ii) Ends with either of the following weeks, whichever occurs later:

1. The third week after the first week for which there is 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.

(~~2~~b) ~~For--weeks--beginning--after-September-26,-1982,-t~~There is a ~~"~~state ~~1~~"on~~1~~" indicator~~"-for-this-state~~ for any 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~~i) Equaled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years and equaled or exceeded five percent (5%); ~~and~~ or

(~~B~~ii) Equaled or exceeded ~~five~~ six percent (5~~6~~%).~~;-and~~

~~(C)--Provided--that--with--respect--to--benefits-for-weeks-of unemployment-beginning-after-September-26,-1982,-the-determination-of-whether-there-has-been-a-state-"on"-or-"off"--indicator--beginning--or-ending-any-extended-benefit-period-shall be-made-under-this-subsection-as-if-it-did-not-contain--paragraph-(A),-and-the-figure-"5"-contained-in-paragraph-(B)-were "6"--except--that,-notwithstanding-any-such-provision-of-this subsection,-any-week-for-which-there--would--otherwise--be--a state--"on"--indicator--shall--continue-to-be-such-a-week-and shall-not-be-determined-to-be-a-week-for--which--there--is--a state-"off"-indicator.~~

(~~3~~c) There is a ~~"~~state ~~1~~"off~~1~~" indicator~~"-for-this-state~~ for any 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~~i) Was less than six percent (6%) and was less than one hundred twenty percent (120%) 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~~ii) Was less than five percent (5%).

(~~4~~d) "Rate of insured unemployment," for purposes of paragraphs (~~2~~b) and (~~3~~c) of this subsection, means the percentage derived by dividing:

(~~A~~i) The average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment ~~with-respect-to~~ for 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~~ii) The average monthly employment covered under this ~~act~~ chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

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

(6f) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen 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.

(~~7~~g) "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.

(~~8~~h) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(~~A~~i) Has received, prior to such week, all of the regular benefits that were available to him under this ~~act~~ chapter or any regular or extended benefits available to him under any other state law (including benefits payable to federal civilian employees and ex-servicemen 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~~ii) 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~~iii) 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~~ insurance 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. ~~Provided, however, that this provision shall not be applicable to individuals seeking benefits under the unemployment compensation laws of the Virgin Islands on the day after the day on which the secretary of labor~~

~~approves an unemployment compensation law submitted to him by the Virgin Islands for approval under the provisions of section 3304(a) of the Internal Revenue Code of 1954.~~

(9i) "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.

(~~10~~j) For purposes of this section only, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the department that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with ~~the~~ applicable state law.

(b2) 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~~ chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c3) 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~~a) ~~He~~ The claimant is an "exhaustee" as defined in subsection (a1)(~~8~~h) of this section;

(~~2~~b) ~~He~~ The claimant has satisfied the requirements of this ~~act~~ chapter 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;

(~~3~~c) ~~He~~ The claimant has had twenty (20) weeks of full-time employment for covered employers during his base period, or earned wages for services performed for covered employers during his base period equal to at least one and one-half (1 1/2) times his high quarter wages, or has earned wages for services performed for covered employers during his base period equal to at least forty (40) times his most recent weekly benefit amount.

(4d)(~~A~~i) Notwithstanding the provisions of this section, payment of extended ~~compensation~~ benefits under this ~~act~~ chapter shall not be made to any individual for any week of unemployment in his eligibility period:

1. During which he fails to accept any offer of suitable work, as defined in subsection (a1)(~~10~~j) of this section, or fails to apply for any suitable work to which he was referred; or

2. During which he fails to actively engage in seeking work.

(~~B~~ii) If any individual is ineligible for extended ~~compensation~~ benefits for any week by reason of a failure described in subsection (c3)(4d)(~~A~~i)1. or (c3)(4d)(~~A~~i)2. of this section, the individual shall be ineligible to receive extended ~~compensation~~ benefits for any week which begins during a

period which:

1. Begins with the week following the week in which such failure occurs; and

2. Does not end until such individual has been employed during at least four (4) weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four (4) multiplied by the individual's average weekly benefit amount.

(~~C~~iii) Extended ~~compensation~~ benefits shall not be denied under subsection (c3)(~~4~~d)(~~A~~i)1. of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work:

1. If the gross average weekly remuneration payable to such individual for the position does not exceed the sum of:

~~a.~~(A) The individual's average weekly benefit amount, as determined for purposes of subsection (b)(1)(C) of section 202 of the federal-state extended unemployment compensation act of 1970, for his benefit year; plus

~~b.~~(B) The amount, if any, of supplemental unemployment compensation benefits, as defined in section 501 (c)(17)(D) of the Internal Revenue Code of 1954, payable to such individual for such week.

2. If the position was not offered to such individual in writing or was not listed with the ~~state employment service~~ department;

3. If such failure would not result in a denial of ~~compensation~~ benefits under the provisions of ~~the applicable state law~~ this chapter to the extent that such provisions are not inconsistent with the provisions of subsections (a1)(~~1~~0j) and (c3)(~~4~~d)(~~D~~iv) of this section; or

4. If the position pays wages less than the higher of:

~~a.~~(A) The minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, without regard to any exemption; or

~~b.~~(B) Any applicable state or local minimum wage.

(~~D~~iv) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if:

1. The individual has engaged in a systematic and sustained effort to obtain work during such week; and

2. The individual provides tangible evidence to the ~~state agency~~ department that he has engaged in such an effort during such week.

(~~E~~v) For purposes of this section only, the department shall refer applicants for extended benefits to any suitable work to which paragraphs 1., 2., 3.~~,~~ and 4. of subsection (c3)(~~4~~d)(~~C~~iii) of this section would not apply.

(d4) (~~1~~a) Except as provided in paragraph (~~2~~b) ~~below~~ of this subsection, payment of extended ~~compensation~~ benefits shall not be made to any individual for any week if:

(~~A~~i) Extended ~~compensation~~ benefits would, but for this subsection have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(~~B~~ii) An extended benefit period is not in effect for such week in such state.

(~~2~~b) Paragraph (~~1~~a) of this subsection shall not apply with respect to the first two (2) weeks for which extended ~~compensation is~~ benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended ~~compensation~~ benefits account established for the benefit year.

(~~3~~c) Section 3304 (a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of ~~compensation~~ benefits required under this subsection.

(~~e~~5) 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.

(~~f~~6) 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~~a) Fifty percent (50%) of the total amount of regular benefits which were payable to him under this ~~act~~ chapter in his applicable benefit year;

(~~2~~b) Thirteen (13) times his weekly benefit amount which was payable to him under this ~~act~~ chapter for a week of total unemployment in the applicable benefit year;

(~~3~~c) 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--provisions--of--this--section--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.

(~~4~~d) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for the provisions of this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(~~g~~7) (~~1~~a) Beginning and termination of extended benefit period. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the director shall make ~~an-appropriate~~ public announcement~~;~~.

(~~2~~b) Computations required by the provisions of subsection

(a1)(4d) of this section shall be made by the director, in accordance with regulations prescribed by the United States secretary of labor.

(h8) Irrespective--of Notwithstanding any of-the other provisions of this act chapter, 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.

(i9) Whenever a program of unemployment compensation benefits becomes available that is financed entirely by the federal government, and such program will not allow payments to individuals who are entitled to extended benefits pursuant to this section, the governor may, by executive order, trigger off an extended benefit period as defined in subsection (a1)(1a) of this section in order to provide payment of such federal benefits to individuals who have exhausted their right to regular benefits. When the federal benefits are exhausted, or if the director determines that payment of extended benefits would be more economically advantageous to the state of Idaho, the governor shall, by executive order, trigger extended benefits on if the criteria of subsection (a1)(2b) of this section are otherwise met.

(j10) For--weeks--of--unemployment-beginning-after-March-6,-1993, and-uUntil conformity with the federal-state extended unemployment compensation act of 1970,-as-amended, requires otherwise, the eligibility requirements in subsections (a1)(10j) and (c3)(4d) of this section are suspended. Except where inconsistent with the provisions of this section, the eligibility requirements of section 72-1366, Idaho Code, applicable to claims for regular benefits shall apply in lieu of the suspended provisions.

SECTION 87. That Section 72-1368, Idaho Code, be, and the same is hereby amended to read as follows:

72-1368. CLAIMS FOR BENEFITS AND APPELLATE PROCEDURE. (a1) Claims for benefits shall be made in accordance with such rules as the director may prescribe.

(b2) (a) Each employer shall post and maintain in places readily accessible to individuals performing services for him printed statements concerning benefit rights,-claims-for-benefits-and-such other-matters-relating-to-the-administration-of under this act--as the-director-may-by-rules-prescribe.-Each-employer-shall-supply-to such--individuals-copies-of-such-printed-statements-or-other-materials-relating-to-claims-for-benefits-when-and-as-the-director-may by-rules-prescribe.-Such-printed-statements--and--other--materials chapter which shall be supplied provided by the director-to-each covered-employer department without cost to the covered employer.

(b) On and after July 1, 1999, an employer who receives a department request for separation information after a claim has been filed shall provide the information to the department within ten (10) days from the date the request was mailed. The time limit provided in this subsection may be extended by the department at its discretion, upon the request of an employer. Notwithstanding any other provision of this chapter, an employer who fails, without good cause, to provide the requested information within the time provided in this subsection or as extended by the department

shall be precluded from contesting any determinations on the claim, including chargeability determinations, or participating in any hearing on the claim as an interested party. If an employer asserts that there was good cause for such failure or that the requested information was provided by the due date, the employer must so notify the department in writing within fourteen (14) days after notice, as provided in subsection (5) of this section, of the initial determination on the claim. After affording the employer a reasonable opportunity for a hearing on the issue, an appeals examiner shall decide whether the employer has shown that the requested information was provided by the due date or that good cause existed for the failure to provide the requested information by the due date. The decision of the appeals examiner shall be final and shall not be subject to appeal. If the appeals examiner decides that the requested separation information was provided to the department by the due date or that good cause existed for the employer's failure to timely provide the information, the employer shall have fourteen (14) days after notice of the decision to contest any determinations that have been issued on the claim.

(~~c~~3) A representative of the department ~~of-employment,--appointed by--the--director--and~~ hereinafter referred to as a claims examiner~~,~~ shall examine ~~promptly~~ a claim filed pursuant to subsection (~~a~~1) of this section and, on the basis of the facts found by him, shall determine whether ~~or-not~~ the claimant is eligible for benefits and, if eligible, the date ~~of-commencement-of~~ his benefit year begins, the weekly benefit amount~~,~~ ~~payable,~~ the total benefit amount~~,~~ ~~payable,-his~~ the base period wages, and ~~his~~ the base period covered employers. In the event of a denial ~~or-a-finding-by-the-claims-examiner-that-a-claimant is-ineligible-for~~ of benefits, the determination shall include the reasons for the ineligibility. ~~At-any-time-b~~Before the determination becomes final or ~~a-request-for-redetermination-is-received~~ an appeal is filed, the claims examiner, on his own motion, may ~~withdraw-the determination-and~~ issue a revised determination. The determination or revised determination shall become final unless, within fourteen (14) days after notice, as provided in subsection (~~e~~5) of this section, ~~a request--for-redetermination~~ an appeal is filed by an interested party with the department. ~~of-employment.~~

(~~d~~4) ~~A-request-for-redetermination-may-be-filed-by-any-interested party-and-shall-be-filed-in-accordance-with-such-rules-as-may-be--prescribed--by-the-director.-A-redetermination-upon-such-request-shall-be promptly-made-by-a-claims-examiner-and,-on-the-basis-of-facts-found-by him,-shall-include-a-statement-as-to-whether-or-not-the--determination is-affirmed,-reversed-or-modified,-and-if-modified,-to-what-extent,-as well--as-a-statement-showing-the-reasoning-upon-which-the-redetermination-is-based-if-adverse-to-the-claimant-requesting-it;-or,-upon--such request--and--before--notices-of-the-redetermination-have-been-served, the-director-may,-on-his-own-motion,-transfer-the-request-for-redetermination-directly-to-an-appeals-examiner-in-which-event--such--request shall--be--deemed--to--constitute--an--appeal,--as--of-the-date-of-the request,-from-the-determination.-A-redetermination-shall-become--final unless,-within-fourteen-(14)-days-after-notice,-as-provided-in-subsection--(e)--of--this-section,-an-appeal-is-filed-by-an-interested-party~~

~~with-the-department-of-employment-in-accordance-with-such-rules-as-may be-prescribed-by-the-director.~~ The director may make a special redetermination whenever he finds that a departmental error has occurred in connection with a determination, or that additional wages of the claimant or other facts pertinent to such determination have become available or have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosure or misrepresentation of fact. ~~Such~~ The special redetermination must be made within one (1) year from the date of the original determination, except that a special redetermination involving a finding that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosures or misrepresentations of fact may be made within two (2) years from the date of the original determination. Subject to the same limitations and for the same reasons, the director may make a special redetermination in any case in which the final decision has been rendered by an appeals examiner, the commission, or a court and may apply to the appeal tribunal which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a special redetermination is issued, ~~such~~ the appeal, unless withdrawn, shall be treated as an appeal from ~~such~~ the special redetermination.

(~~e~~5) All interested parties ~~as-defined-in-section-72-1323,-Idaho Code,~~ shall be entitled to prompt service of notice of determinations ~~and--redeterminations.-The-claimant-shall-be-served-with-notice-of-all determinations-and-redeterminations,-but-in-the-event-that-a--claimant files--more--than--one-(1)-claim-arising-out-of-the-same-unemployment, the-last-employer-need-not-be-served-with-notice-of-more-than-the-initial-determination-and-redetermination-unless-he-specifically-requests service-of-additional-notices.-For-purposes-of--this--section,--a~~ and decisions. A notice shall be deemed served if delivered to the person being served or if mailed to his last known address; service by mail shall be deemed complete on the date of mailing.

(~~f~~6) To hear and decide appeals from determinations and redeterminations, the director shall appoint ~~one-or-more~~ appeals examiners. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination or redetermination involved, after affording the interested parties reasonable opportunity for a fair hearing, or may refer a matter back to the claims examiner for further action. The appeals examiner shall notify the interested parties of his decision by serving notice in the same manner as provided in subsection (~~e~~5) of this section. ~~Such~~ The decision shall set forth ~~the~~ findings of fact ~~upon-which-the-decision-is based-together-with-a--statement--showing--how--the--appeals--examiner applied--the-employment-security-law-to-such-findings-of-fact-in-order to-reach-his~~ and conclusions of law. The appeals examiner may, either upon application for rehearing by an interested party or on his own motion, ~~proceed-to~~ rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted ~~in such-case~~ or on the basis of additional evidence; provided, that such application or motion be made within ten (10) days after the date of service of ~~such~~ the decision. A ~~full-and~~ complete record shall be kept of all proceedings in connection with an appealed claim. All testimony

at any hearing ~~before an appeals examiner~~ shall be recorded. If a claim for review of the appeals examiner's decision is filed with the commission, the testimony shall be transcribed if ordered by the commission. Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed ~~in the rules of~~ by the director. ~~Such fees shall be deemed a part of the expenses of administering this act.~~ If any interested party to a hearing formally requests the appeals examiner to issue a subpoena for a witness whose evidence is deemed necessary, the appeals examiner shall promptly issue the subpoena, unless such request is determined to be unreasonable. Unless an interested party shall within fourteen (14) days after service of the decision of the appeals examiner file with the commission a claim for review or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final.

(~~g~~7) The commission shall decide all claims for review filed by any interested party in accordance with its own rules of procedure not in conflict herewith. The record before the commission shall consist of the record of proceedings before the appeals examiner, unless it appears to the commission that the interests of justice require that the interested parties be permitted to present additional evidence. In that event, the commission may, in its sole discretion, conduct a hearing ~~to receive additional evidence~~ or may ~~refer~~ remand the matter back to the appeals examiner for an additional hearing and decision. On the basis of the record of proceedings before the appeals examiner as well as ~~any~~ additional evidence, if allowed, the commission shall affirm, reverse, modify, set aside or revise the decision of the appeals examiner or may refer the matter back to the appeals examiner for further proceedings. The commission shall file its decision and shall promptly serve notice of its decision to all interested parties. A decision of the commission shall be final and conclusive as to all matters adjudicated by the commission upon filing the decision in the office of the commission; provided, within twenty (20) days from the date of filing the decision, any party may move for reconsideration of the decision or the commission may rehear or reconsider its decision on its own initiative.~~, and in any such event t~~The decision shall be final upon denial of a motion for rehearing or reconsideration or the filing of the decision on reconsideration.

(~~h~~8) No person acting on behalf of the director or any member of the commission shall participate in any case in which he has a direct or indirect personal interest.

(~~i~~9) An appeal may be made to the Supreme Court ~~by such parties~~ from ~~such~~ decisions and orders of the commission ~~and~~ within ~~such~~ the times and in ~~such~~ the manner ~~as~~ prescribed by rule of the Supreme Court.

(~~j~~10) (~~1~~a) Benefits shall be paid promptly in accordance with ~~a determination, redetermination, appeals examiner~~ any decision ~~or commission findings~~ allowing ~~such~~ benefits, ~~rights,~~ regardless of:

(~~a~~i) The pendency of a time period for ~~requesting a redetermination,~~ filing an appeal or petitioning for commission review~~;~~; or

(~~b~~ii) The ~~p~~Pendency of ~~a request for determination,~~ an appeal~~,~~ or petition for review.

(~~2~~b) Such payments shall not be withheld until a subsequent ~~rede-~~

~~termination,~~ appeals examiner decision~~,~~ or commission ~~findings~~ decision modifies or reverses the previous decision, in which event benefits shall be paid or denied in accordance with such decision.

(~~k~~11) (~~1~~a) Any right, fact, or matter in issue, directly based upon or necessarily involved in a determination, redetermination, decision of the appeals examiner or decision of the commission which has become final, shall be conclusive for all the purposes of this ~~act~~ chapter as between the interested parties who had notice of such determination, redetermination or decision. Subject to appeal proceedings and judicial review by the Supreme Court as set forth in this section, any determination, redetermination or decision as to rights to benefits shall be conclusive for all purposes of this ~~act~~ chapter and shall not be subject to collateral attack irrespective of notice.

(~~2~~b) No finding of fact or conclusion of law contained in a decision or determination rendered pursuant to this ~~act~~ chapter by an appeals examiner, the industrial commission, a court, or any other person authorized to make such determinations shall have preclusive effect in any other action or proceeding, except proceedings that are brought (i) pursuant to this ~~act~~ chapter, (ii) to collect unemployment insurance contributions, (iii) to recover overpayments of unemployment insurance benefits, or (iv) to challenge the constitutionality of provisions of this ~~act~~ chapter or administrative proceedings under this ~~act~~ chapter.

(~~1~~12) The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, regarding contested cases and judicial review of contested cases are inapplicable to proceedings involving claimants under the provisions of this ~~act~~ chapter.

SECTION 88. That Section 72-1369, Idaho Code, as amended by Section 8, Chapter 205, Laws of 1997, be, and the same is hereby amended to read as follows:

72-1369. OVERPAYMENTS, COLLECTION AND WAIVER. (1) Any person who received benefits to which he was not entitled under the provisions of this ~~act~~ chapter or under an ~~unemployment compensation or~~ unemployment insurance law of any state or of the federal government shall be liable to repay ~~said~~ the benefits and ~~said~~ the benefits shall, for the purpose of this ~~act~~ chapter, be considered to be overpayments. ~~Said~~ oOverpayments shall be repaid as follows:

(a) Any overpayment which has not been repaid may, in addition to or alternatively to any other method of collection prescribed in this chapter, including the creation of a lien as provided by section 72-1360, Idaho Code, be collected with interest thereon at the statutory rate by civil action brought in the name of the state of Idaho. In bringing such civil actions for the collection of overpayments, the director shall have all the rights and remedies provided by the laws of this state, and any person ~~found or~~ adjudged liable in such civil action for any overpayments shall pay the costs of such action. Such civil actions may be commenced within the time periods specified in this section without regard to any other statute of limitations.

(b) Collection of overpayments.

(i) Overpayments, other than those resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, which have not been repaid or collected, may, at the discretion of the director ~~or his authorized representative,~~ be deducted from any future benefits payable to ~~said~~ the claimant under the provisions of this ~~act~~ chapter;

(ii) Overpayments resulting from a false statement, misrepresentation, or concealment of a material fact by the claimant which have not been repaid or collected shall be deducted from any benefits payable at any time in the future, without regard to any statute of limitation and such overpayments not recovered within eight (8) years from the date of the final determination establishing liability to repay may be deemed uncollectible;

(iii) A civil action, filed pursuant to subsection (1) of this section, to collect overpayments resulting from a false statement, misrepresentation, or concealment of a material fact by the claimant must be commenced within eight (8) years from the date of the final determination establishing liability to repay;

(c) Overpayments, other than those resulting from a false statement, misrepresentation or failure to report a material fact, not recovered within five (5) years from the date of the final determination establishing liability to repay shall be deemed uncollectible, and a civil action filed pursuant to subsection (1) of this section, to collect such overpayments must be commenced within the same five (5) year time period;

(d) The director ~~or his authorized representative~~ may waive the requirement to repay ~~such~~ an overpayment described in subsection (3) of this section if ~~such~~ the benefit payments were made solely as a result of department error or inadvertence, and made to a claimant who had no way of knowing that he was receiving benefits to which he was not entitled or if such payments were made solely as a result of an employer misreporting wages earned in a claimant's base period, and made to a claimant who could not reasonably have been expected to recognize an error in the wages reported.

(e) Any judgment obtained pursuant to this section shall, upon compliance with the requirements of chapter 19, title 45, Idaho Code, become a lien of the same type, duration, and priority as if it were created pursuant to section 72-1360, Idaho Code.

(2) Neither the director nor any of his agents or employees shall be liable for benefits paid to persons not entitled to the same under the provisions of this ~~act~~ chapter if it appears that such payments have been made in good faith and that ordinary care and diligence have been used in the determination of the validity of the claim or claims under which such benefits have been paid.

SECTION 89. That Section 72-1370, Idaho Code, be, and the same is hereby amended to read as follows:

72-1370. DISTRIBUTION OF BENEFIT PAYMENTS UPON DEATH. Whenever a benefit claimant dies, having completed a compensable period prior to his death, benefits due ~~such~~ the deceased claimant at the time of death~~,~~ shall be payable, without administration, to the surviving spouse, if any,~~;~~ ~~and~~ or, if there be no surviving spouse, ~~then~~ to the dependent child or children. ~~If no spouse or child survives, benefits due such deceased claimant shall be payable in accordance with regulations prescribed by the director.~~

SECTION 90. That Section 72-1371, Idaho Code, be, and the same is hereby amended to read as follows:

72-1371. MISREPRESENTATION TO OBTAIN BENEFITS OR TO PREVENT PAYMENTS OR TO EVADE CONTRIBUTION LIABILITY -- CRIMINAL PENALTY. (~~a~~1) The making of a false statement ~~or representation~~ when the maker knows the statement to be false, or the wilful failure to disclose a material fact in order to obtain or increase any benefit or other payment under this ~~act~~ chapter or under an ~~unemployment compensation or~~ unemployment insurance law of any state or of the federal government, either for the benefit of the maker or for any other person, is hereby declared to be a felony.

(~~b~~2) The making by an employer or any officer or agent of an employer or any other person of a false statement or representation when the maker knows ~~such~~ the statement or representation to be false, or the wilful failure to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining a covered employer or to avoid or reduce any contribution or other payment required from a covered employer ~~from~~ under this ~~act~~ chapter or under any ~~unemployment compensation or~~ unemployment insurance law of any state or of the federal government, or the wilful failure or refusal to make such contributions or other payment or to furnish any such reports required under this ~~act as required for the administration of this act;~~ chapter is hereby declared to be a misdemeanor.

SECTION 91. That Section 72-1373, Idaho Code, be, and the same is hereby amended to read as follows:

72-1373. VIOLATION OF THIS LAW OR RULES ~~AND REGULATIONS~~ THEREUNDER. Any person who shall wilfully violate any provision of this ~~act~~ chapter or any order~~;~~ or rule~~; or regulation~~ thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this ~~act~~ chapter, and for which a penalty is neither prescribed in this ~~act~~ chapter, nor provided by any other applicable statute, shall be ~~punished by a fine of not less than twenty dollars ($20) nor more than two hundred dollars ($200), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment~~ guilty of a misdemeanor, and each day such violation continues shall be deemed to be a separate misdemeanor.

SECTION 92. That Section 72-1374, Idaho Code, be, and the same is hereby amended to read as follows:

72-1374. UNAUTHORIZED DISCLOSURE OF INFORMATION. If any employee or member of the commission ~~or the director~~ or any employee of the ~~director~~ department, in violation of the provisions of chapter 3, title 9, Idaho Code, makes any disclosure of information obtained from any employer or individual in the administration of this ~~act, or if any person who has obtained any list of applicants for work, or of claimants or recipients of benefits, under this act shall use or permit the use of such list for any political purpose, he shall be fined not less than twenty dollars ($20.00) nor more than two hundred dollars ($200), or imprisoned for not longer than ninety (90) days, or both, and~~ chapter, each ~~such~~ unauthorized disclosure shall constitute a separate misdemeanor.

SECTION 93. That Section 72-1375, Idaho Code, be, and the same is hereby amended to read as follows:

72-1375. PROTECTION OF RIGHTS AND BENEFITS. (~~a~~1) Any agreement ~~by an individual~~ to ~~waiver~~ waive, release, or commute ~~his rights~~ any right to benefits or ~~any~~ other rights under this ~~act~~ chapter shall be void. Any agreement by any individual performing services for a covered employer to pay all or any portion of any contributions or penalties required under this ~~act~~ chapter from such employer, shall be void. No covered employer shall directly or indirectly make or require or accept any deduction from wages to finance the contributions required from him, require or accept any waiver of any right under this ~~act~~ chapter by any individual rendering service for him, discriminate in regard to the hiring or tenure of work or any term or condition of work of any individual on account of his claiming benefits under this ~~act~~ chapter, or in any manner obstruct or impede the claiming of benefits. Any employer or officer or agent of an employer who violates any provisions of this subsection shall, for each offense, be ~~fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or be imprisoned for not more than six (6) months, or both~~ guilty of a misdemeanor.

(~~b~~2) No individual claiming benefits shall be charged fees or costs of any kind in any proceeding under this ~~act~~ chapter by the commission, the director, any of its or his employees or representatives, or by any court or any officer thereof, except that a court may assess costs if the court determines that the proceedings ~~for a judicial action~~ have been instituted or continued without reasonable ground. Any individual claiming benefits in any proceeding before the ~~director or~~ department, the commission, ~~or his or its representatives~~ or a court may be represented by counsel or other duly authorized agent~~; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the commission~~. Any person who violates any provision of this subsection shall, for each such offense, be ~~fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), or be imprisoned for not more than six (6) months, or both~~ guilty of a misdemeanor.

(~~c~~3) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this ~~act~~ chapter shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or an order for the payment of attorney's fees.

Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of debts~~;--except-debts-incurred-for-necessaries-furnished-to-such-individual-or-his-spouse-or-dependents-during-the-time-when-such-individual-was-unemployed~~. Any waiver of any exemption provided for in this subsection shall be void.

(~~d~~4) The provisions of this section shall not apply to any action taken pursuant to section 72-1365(~~b~~2), Idaho Code.

SECTION 94. That Section 72-1376, Idaho Code, be, and the same is hereby amended to read as follows:

72-1376. REPRESENTATION IN COURT. (~~a~~1) In any civil action to enforce the provisions of this ~~act~~ chapter the director, the commission, and the state shall be represented by the attorney general~~,;~~ ~~such-assistant-attorneys-general-shall-be-appointed-as-shall-be-necessary-for-this-purpose;~~ or if the action is brought in the courts of any other state, by any attorneys qualified to appear in the courts of that state.

(~~b~~2) All criminal actions for violation of any provision of this ~~act~~ chapter, or of any rules ~~or-regulations~~ issued pursuant thereto, shall be prosecuted by the attorney general of the state, 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.

SECTION 95. That Section 72-1377, Idaho Code, be, and the same is hereby amended to read as follows:

72-1377. SAVING CLAUSE. The legislature reserves the right to amend or repeal all or any part of this ~~act~~ chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this ~~act~~ chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this ~~act~~ chapter at any time.

SECTION 96. That Section 72-1378, Idaho Code, be, and the same is hereby amended to read as follows:

72-1378. SEPARABILITY OF PROVISIONS. If any provision of this ~~act~~ chapter, or the application thereof to any person or circumstance, shall be declared by the courts to be unconstitutional, inoperative or void, the remainder of this ~~act~~ chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 97. That Section 72-1379, Idaho Code, be, and the same is hereby amended to read as follows:

72-1379. ~~TRANSITION;--REPEAL--AND--EFFECTIVE--DATE~~ REFERENCES IN CHAPTER. A reference in this chapter to any state or federal law means the law as it existed on the effective date of this chapter and any amendments or recodifications thereto. ~~(a)-As-used-in-this-section~~

unless the context clearly requires otherwise--

(1) "Old law" means the Unemployment Compensation Law enacted under chapter 12 of the third extraordinary session of the twenty-third session of the state legislature, as amended by chapters 9, 183, 187, and 188 of the 1937 Session Laws, as amended by chapters 202, 203, and 239 of the 1939 Session Laws, as amended by chapters 65, 175, and 182 of the 1941 Session Laws, as amended by chapters 29, 68, and 92 of the 1943 Session Laws as amended and compiled by chapter 203 of the 1945 Session Laws;

(2) "New law" means the Employment Security Law as provided by this act;

(3) "Effective date" means the date upon which the new law becomes effective.

(b) Except as otherwise specifically provided elsewhere in this act, the new law shall be exclusively applicable with respect to any person on and after the effective date and no provision of the old law shall be construed to limit or to extend the rights of any person as fixed by the new law after the new law becomes exclusively applicable with respect to such person as provided in this section.

(c) With respect to any individual who is currently receiving benefits on the effective date a determination of his entitlement of a continuance of benefits shall be made in accordance with provisions of sections 72-1365 to 72-1370, inclusive, of the new law. All credits or rights to benefits accruing to any individual pursuant to the provisions of the old law shall cease and become ineffective on the effective date of the new law, and on that date and thereafter such individual's rights to benefits shall be determined with respect to benefit year, base period, weekly benefit amount, etc., in accordance with the provisions of the new law, provided, that if any individual is in benefit status on the effective date, the payment of benefits for consecutive weeks of unemployment shall not be interrupted by requiring him to serve an additional waiting period.

(d) Except as otherwise specifically provided elsewhere in this act, the provisions of the new law with respect to employer's rights and liabilities shall be applicable on the effective date and thereafter, and contributions or penalties under the provisions of the old law, accruing up to the effective date shall not be waived and shall remain collectible, but on and after the effective date, the penalty rates pursuant to the provisions of the new law shall apply and the total contributions and penalties due, even though accrued in part pursuant to the provisions of the old law and in part pursuant to the provisions of the new law, shall be subject to collection on or after the effective date in accordance with the collection provisions of the new law.

(e) The enactment of the new law and the 1951 amendments shall not in any way interrupt the merit status of any individual who was employed in accordance with the provisions of the old law or the Employment Security Law by the unemployment compensation and employment service divisions of the industrial commission, or the employment security agency.

(f) All moneys, on the effective date, in the unemployment compensation fund, established under the old law, are hereby transferred to the employment security fund; all moneys, on the effective date, in

~~the--unemployment--compensation--administration-fund-established-under the-old-law,-are-hereby-transferred-to-the-employment-security--administration--fund.-All-moneys,-on-the-effective-date,-in-employment-service-fund-received-from-federal-grants-pursuant-to-the--old--law,--are hereby--transferred--to--the-employment-service-fund-established-under the-new-law.~~

~~(g)--The-old-law,-as-defined-in-subsection-(a)(i)-above,-is-hereby repealed,-but-shall-remain-in-full-force-and-effect-until--the--effective-date-of-the-new-law,-and-this-act-shall-in-no-way-be-construed-as affecting--or--waiving-any-right-accrued-or-penalty-incurred-under-any provision-of-the-old-law.~~

SECTION 98. That Section 72-1380, Idaho Code, be, and the same is hereby repealed.

SECTION 99. That Section 72-1381, Idaho Code, be, and the same is hereby amended to read as follows:

72-1381. DIRECTOR TO COOPERATE WITH GOVERNOR IN MEDIATION OF DISPUTES. Upon the request of any interested party to an actual or potential labor dispute, the director shall have the power to mediate ~~in such~~ the dispute. ~~He--shall--use-his-best-efforts-to-conciliate-and resolve-such-dispute-among-the-disputants.~~ The director or any interested party may apply to the governor for appointment of a mediator or a mediation panel of ~~representative~~ not less than three (3) citizens who are ~~fairminded-and~~ objective in matters involving labor disputes, and the governor shall, if the public interest will be served thereby, appoint such a mediator or mediation panel. ~~From-this-panel-the-governor--may--select--one--(1)-member-to-act-as-a-mediator-and-such-member~~ Such mediator or mediation panel shall be paid ~~his~~ actual expenses by the interested parties while engaged ~~upon-the~~ in such public business. Neither the director, the governor, nor any mediator or member of any mediation panel shall be authorized to arbitrate any labor dispute.

SECTION 100. That Section 72-1382, Idaho Code, be, and the same is hereby amended to read as follows:

72-1382. DUTIES OF DIRECTOR -- DETERMINATION OF REPRESENTATIVES. ~~In-order-to-insure-employers,-employees,-and-the-general--public,--the full--benefits--of-the-provisions-of-sections-72-1381-through-72-1385, Idaho-Code,-t~~The director shall, when a question arises concerning the representation of employees in a collective bargaining unit, investigate such controversy and certify to the parties~~,-in-writing,~~ the name or names of the representatives who have been ~~designated-or~~ selected. In any such investigation the director shall provide for an appropriate hearing~~, upon-due-notice,~~ and may take a secret ballot of employees to ascertain such representatives. In all cases where a secret ballot is taken, the ballot shall ~~be-prepared-so-as-to~~ permit a vote against representation by anyone named on the ballot; provided, however, that nothing in this section shall be construed as authorizing the director to conduct an election on any matter which is within the exclusive jurisdiction of any federal ~~act~~ official or board; and~~,~~ provided further that no election shall be directed in any bargaining

unit or subdivision within which, in the preceding twelve (12) month period, a valid election was held.

~~The--director--may-establish-such-rules-as-he-deems-appropriate-to effectuate-the-policies-of-the-provisions-of-sections-72-1381--through 72-1385,-Idaho-Code,-for-the-filing-of-petitions-for-investigation-and certification-by-employees-or-their-representatives.~~

SECTION 101. That Sections 72-1383 and 72-1384, Idaho Code, be, and the same are hereby repealed.

SECTION 102. That Section 72-1385, Idaho Code, be, and the same is hereby amended to read as follows:

72-1385. PROVISIONS NOT TO APPLY TO AGRICULTURAL OR DOMESTIC LABOR. The provisions of sections 72-1381 ~~through~~ and 72-138~~4~~2, Idaho Code, shall not apply to labor engaged in agricultural labor as that term is defined in section 72-1304, Idaho Code, nor to anyone engaged in domestic service in homes.

SECTION 103. That Section 33-1002, Idaho Code, be, and the same is hereby amended to read as follows:

33-1002. EDUCATIONAL SUPPORT PROGRAM. The educational support program is calculated as follows:

1. State Educational Support Funds. Add the state appropriation, including the moneys available in the public school income fund, together with all miscellaneous revenues to determine the total state funds.

2. From the total state funds subtract the following amounts needed for state support of special programs provided by a school district:

a. Pupil tuition-equivalency allowances as provided in section 33-1002B, Idaho Code;

b. Transportation support program as provided in section 33-1006, Idaho Code;

c. Feasibility studies allowance as provided in section 33-1007A, Idaho Code;

d. The approved costs for border district allowance, provided in section 33-1403, Idaho Code, as determined by the state superintendent of public instruction;

e. The approved costs for exceptional child approved contract allowance, provided in subsection 2. of section 33-2004, Idaho Code, as determined by the state superintendent of public instruction;

f. Certain expectant and delivered mothers allowance as provided in section 33-2006, Idaho Code;

g. Salary based apportionment calculated as provided in sections 33-1004 through 33-1004F, Idaho Code;

h. Unemployment insurance benefit payments according to the provisions of section 72-1349~~C~~A, Idaho Code;

i. For programs to provide basic curricula necessary to enable students to enter academic or vocational postsecondary education programs, an allocation of $300 per support unit for the 1994-95

school year only;

j. For provision of teacher supplies to facilitate classroom instruction, an allocation of $200 per support unit for the 1994-95 school year only;

k. For expenditure as provided by the public school technology program, $10,400,000 for the 1994-95 school year;

l. For additional school innovation pilot project grants based on recommendations of the Idaho school reform committee, $2,000,000 for the 1994-95 school year; and

m. For the support of provisions that provide a safe environment conducive to student learning and maintain classroom discipline, an allocation of $300 per support unit;

n. Any additional amounts as required by statute to effect administrative adjustments or as specifically required by the provisions of any bill of appropriation;

to secure the state educational support funds.

3. Local Districts' Contribution Calculation. Without including any allowance as a credit for prepaid taxes as provided by section 63-1607, Idaho Code, the local districts' contribution shall be four-tenths percent (.4%) during fiscal year 1994-95 and each year thereafter, of the total state adjusted market value for assessment purposes for the previous year with such value being determined by the provisions of section 63-315, Idaho Code, and four-tenths percent (.4%) during fiscal year 1994-95 and each year thereafter, of the cooperative electrical associations' property values that have been derived from the taxes paid in lieu of ad valorem taxes for the previous year as provided in section 63-3502, Idaho Code.

4. Educational Support Program Distribution Funds. Add the local districts' contribution, subsection 3. of this section, and the state educational support program funds, subsection 1. of this section, together to secure the total educational support program distribution funds.

5. Average Daily Attendance. The total state average daily attendance shall be the sum of the average daily attendance of all of the school districts of the state. The state board of education shall establish rules setting forth the procedure to determine average daily attendance and the time for, and method of, submission of such report. Average daily attendance calculation shall be carried out to the nearest hundredth. Computation of average daily attendance shall also be governed by the provisions of section 33-1003A, Idaho Code.

6. Support Units. The total state support units shall be determined by using the tables set out hereafter called computation of kindergarten support units, computation of elementary support units, computation of secondary support units, computation of exceptional education support units, and computation of alternative school secondary support units. The sum of all of the total support units of all school districts of the state shall be the total state support units.

COMPUTATION OF KINDERGARTEN SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Units Allowed
41 or more	40.....	1 or more as computed
31 - 40.99 ADA....	-.....	1
26 - 30.99 ADA....	-.....	.85
21 - 25.99 ADA....	-.....	.75
16 - 20.99 ADA....	-.....	.6
8 - 15.99 ADA....	-.....	.5
1 - 7.99 ADA....	-.....	count as elementary

COMPUTATION OF ELEMENTARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
300 or more ADA.....		15
	..23...grades 4,5 & 6....	
	..22...grades 1,2 & 3....1994-95	
	..21...grades 1,2 & 3....1995-96	
	..20...grades 1,2 & 3....1996-97 and each year thereafter.	
160 to 299.99 ADA...	20.....	8.4
110 to 159.99 ADA...	19.....	6.8
71.1 to 109.99 ADA...	16.....	4.7
51.7 to 71.0 ADA...	15.....	4.0
33.6 to 51.6 ADA...	13.....	2.8
16.6 to 33.5 ADA...	12.....	1.4
1.0 to 16.5 ADA...	n/a.....	1.0

COMPUTATION OF SECONDARY SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
750 or more	18.5.....	47
400 - 749.99 ADA....	16.....	28
300 - 399.99 ADA....	14.5.....	22
200 - 299.99 ADA....	13.5.....	17
100 - 199.99 ADA....	12.....	9
99.99 or fewer	Units allowed as follows:	
Grades 7-12	.....	8
Grades 9-12	.....	6
Grades 7- 9	.....	1 per 14 ADA
Grades 7- 8	.....	1 per 16 ADA

COMPUTATION OF EXCEPTIONAL EDUCATION SUPPORT UNITS

Average Daily Attendance	Attendance Divisor	Minimum Units Allowed
14 or more	14.5.....	1 or more as computed
12 - 13.99....	-.....	1
8 - 11.99....	-.....	.75
4 - 7.99....	-.....	.5
1 - 3.99....	-.....	.25

COMPUTATION OF ALTERNATIVE SCHOOL SECONDARY SUPPORT UNITS

Pupils in Attendance	Attendance Divisor	Minimum Units Allowed
12 or more.....	12.....	1 or more as computed

In applying these tables to any given separate attendance unit, no school district shall receive less total money than it would receive if it had a lesser average daily attendance in such separate attendance unit. In applying the kindergarten table to a kindergarten program of less days than a full school year, the support unit allowance shall be in ratio to the number of days of a full school year. The tables for exceptional education and alternative school secondary support units shall be applicable only for programs approved by the state department of education following rules established by the state board of education. Moneys generated from computation of support units for alternative schools shall be utilized for alternative school programs. School district administrative and facility costs may be included as part of the alternative school expenditures.

7. State Distribution Factor per Support Unit. Divide educational support program distribution funds, after subtracting the amounts necessary to pay the obligations specified in subsection 2. of this section, by the total state support units to secure the state distribution factor per support unit.

8. District Share of State Funds for Educational Support Program. Ascertain a district's share of state funds for the educational support program as follows:

a. District Contribution Calculation. Without including any allowance as a credit for prepaid taxes, as provided in section 63-1607, Idaho Code, the district contribution calculation shall be the rate determined under subsection 3. of this section.

b. District Support Units. The number of support units for each school district in the state shall be determined as follows:

(1) Divide the actual average daily attendance, excluding students approved for inclusion in the exceptional child educational program, for the administrative schools and each of the separate schools by the appropriate divisor from the tables of support units in this section, then add the quotients to obtain the district's support units allowance for regular students, kindergarten through grade 12 including alternative school secondary students. Calculations in application of this subsection shall be carried out to the nearest tenth.

(2) Divide the combined totals of the average daily attendance of all preschool, handicapped, kindergarten, elementary, secondary and juvenile detention center students approved for inclusion in the exceptional child program of the district by the appropriate divisor from the table for computation of exceptional education support units to obtain the number of support units allowed for the district's approved exceptional child program. Calculations for this subsection shall be carried out to the nearest tenth when more than one (1) unit is allowed.

(3) The total number of support units of the district shall be the sum of the total support units for regular students,

subsection 8.b.(1) of this section, and the support units allowance for the approved exceptional child program, subsection 8.b.(2) of this section.

c. Total District Allowance Educational Program. Multiply the district's total number of support units, carried out to the nearest tenth, by the state distribution factor per support unit and to this product add the approved amount of programs of the district provided in subsection 2. of this section to secure the district's total allowance for the educational support program.

d. District Share. To secure the district's share of state apportionment, subtract the amount of the local district contribution calculation, subsection 3. of this section, from the amount of the total district allowance, subsection 8.c. of this section.

e. Adjustment of District Share. The contract salary of every noncertificated teacher shall be subtracted from the district's share as calculated from the provisions of subsection 8.d. of this section.

SECTION 104. That Section 67-1003, Idaho Code, be, and the same is hereby amended to read as follows:

67-1003. APPROPRIATION NECESSARY TO AUTHORIZE WARRANT. In all cases of specific appropriations, salaries, pay and expenses, ascertained and allowed by law, found due to individuals from the state, when examined, the state controller must draw warrants upon the treasury for the amount; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrants must be drawn by the state controller, or paid by the treasurer, until appropriation is made by law for that purpose, nor must the whole amount drawn for and paid for any purpose or under any one (1) appropriation ever exceed the amount appropriated, or the cash balance in the account charged, whichever is less. For the purposes of this section, the cash balance in the benefit account established in section 72-1346~~(b)~~, Idaho Code, shall be deemed to be the cash balance in the account of this state in the unemployment trust fund established and maintained pursuant to section 904 of the social security act, as amended.

SECTION 105. That Section 72-1701, Idaho Code, be, and the same is hereby amended to read as follows:

72-1701. PURPOSE AND INTENT OF ACT. The purpose of this act is to promote alcohol and drug-free workplaces and otherwise support private employers in their efforts to eliminate substance abuse in the workplace, and thereby enhance workplace safety and increase productivity. This act establishes voluntary drug and alcohol testing guidelines for private employers that, when complied with, will find an employee who tests positive for drugs or alcohol at fault, and will constitute misconduct under the employment security law as provided in section 72-1366~~(e)~~, Idaho Code, thus resulting in the denial of unemployment benefits.

SECTION 106. That Section 72-1707, Idaho Code, be, and the same

is hereby amended to read as follows:

72-1707. DISCHARGE FOR WORK-RELATED MISCONDUCT -- FAILURE OR REFUSAL OF TESTING. A private employer establishes that an employee was discharged for work-related misconduct, as provided in section 72-1366~~(e)~~, Idaho Code, upon a showing that the employer has complied with the requirements of this act and that the discharge was based on:

(1) A confirmed positive drug test or a positive alcohol test, as indicated by a test result of not less than .02 blood alcohol content (BAC), but greater than the level specified in the employer's substance abuse policy;

(2) The employee's refusal to provide a sample for testing; or

(3) The employee's alteration or attempt to alter a test sample by adding a foreign substance for the purpose of making the sample more difficult to analyze; or

(4) The employee's submission of a sample that is not his or her own.

SECTION 107. That Section 72-1708, Idaho Code, be, and the same is hereby amended to read as follows:

72-1708. PRIVATE EMPLOYER'S DISCIPLINARY OR REHABILITATIVE ACTIONS BASED ON TESTING -- CLAIMANT INELIGIBLE FOR BENEFITS. (1) Upon receipt of a confirmed positive drug or alcohol test result or other proof which indicates a violation of a private employer's written policy, or upon the refusal of an employee to provide a test sample, or upon an employee's alteration of or attempt to alter a test sample, a private employer may use that test result or the employee's conduct as the basis for disciplinary or refusal-to-hire action that will result in a claimant's ineligibility to receive benefits under the provisions of section 72-1366(~~d~~4), (~~e~~5), (~~f~~6) or (~~g~~7), Idaho Code. Actions by the private employer may include, but are not limited to, the following:

(a) A requirement that the employee enroll in a private employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;

(b) Suspension of the employee with or without pay for a period of time;

(c) Termination of the employee;

(d) Other disciplinary measures in conformance with the private employer's usual procedures, including any collective bargaining agreement.

(2) Action taken pursuant to this section shall not create any cause of action against the private employer.

SECTION 108. That Section 72-1709, Idaho Code, be, and the same is hereby amended to read as follows:

72-1709. FAILURE OF CLAIMANT TO ACCEPT SUITABLE WORK. If a claimant for unemployment benefits does not accept otherwise suitable work, as contemplated in section 72-1366(~~d~~4), (~~f~~6) or (~~g~~7), Idaho Code, because he is required to take a preemployment drug or alcohol test, the claimant has failed to accept suitable work, unless the claimant

is required to pay for costs associated with a negative drug or alcohol test result.

SECTION 109. An emergency existing therefor, which emergency is hereby declared to exist, Section 66 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998.

Approved February 4, 1998.

CHAPTER 2
(H.B. No. 420)

AN ACT

RELATING TO LIEN OF UNPAID PERSONAL PROPERTY TAXES ON REAL PROPERTY; AMENDING SECTION 63-504, IDAHO CODE, TO REVISE PROCEDURES ON HOW A LIEN OF UNPAID PERSONAL PROPERTY TAXES ON REAL PROPERTY IS ENTERED.

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

SECTION 1. That Section 63-504, Idaho Code, be, and the same is hereby amended to read as follows:

63-504. LIEN OF UNPAID PERSONAL PROPERTY TAXES ON REAL PROPERTY. ~~All--t~~Taxes upon personal property, where the owners of such personal property are owners of real property in the county, which have not been paid ~~at--the-time-of-the-November-meeting-of-the-county-commissioners,-sitting-as-a-board-of-equalization,-and-which-said--board--of equalization~~ on or before the second Monday of October, and which the board of county commissioners finds to be a lien upon the real property, may be certified to the county auditor and the tax collector. Such taxes, together with all costs, late charges and interest must be entered by the county tax collector upon the property roll against the real property subject to such lien. The tax collector shall immediately notify the property owner of any such taxes which have been added. Such action shall result in cancellation of the taxes and late charges on the personal property roll for the personal property subject to the delinquency.

Approved February 5, 1998.

CHAPTER 3
(S.B. No. 1319)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR PUBLIC HEALTH SERVICES FOR FISCAL YEAR 1998; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 161, Laws of 1997, there is hereby appropriated to the Department of Health and Welfare for Public Health Services the following amount to be expended for the designated program according to the designated standard classification from the listed fund for the period July 1, 1997, through June 30, 1998:

PUBLIC HEALTH SERVICES:

FOR:	
Trustee and Benefit Payments	$400,000
FROM:	
Food Safety Fund	$400,000

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 9, 1998.

CHAPTER 4
(H.B. No. 502)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DIVISION OF FINANCIAL MANAGEMENT FOR FISCAL YEAR 1998; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 256, Laws of 1997, there is hereby appropriated to the Office of the Governor for the Division of Financial Management the following amount to be expended for the designated program according to the designated standard classification from the listed fund for the period July 1, 1997, through June 30, 1998:

SILVER VALLEY TRUST:

FOR:	
Trustee and Benefit Payments	$1,158,700
FROM:	
Natural Restoration Fund	$1,158,700

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 9, 1998.

CHAPTER 5
(H.B. No. 503)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND FOR FISCAL YEAR 1998; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 186, Laws of 1997, there is hereby appropriated to the State Board of Education for the Idaho School for the Deaf and the Blind the following amount to be expended for the designated standard classification from the listed fund for the period July 1, 1997, through June 30, 1998:

FOR:	
Capital Outlay	$20,000
FROM:	
Idaho School for the Deaf and the Blind Income Fund	$20,000

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 9, 1998.

CHAPTER 6
(S.B. No. 1328)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 1998; PROVIDING TRANSFERS TO THE PEST CONTROL DEFICIENCY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 337, Laws of 1997, there is hereby appropriated to the Department of Agriculture the following amounts to be expended for the Plant Industries Program according to the designated standard classifications from the listed fund for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$47,900	$21,200	$69,100

SECTION 2. The State Controller shall make cash transfers from the General Fund to the Pest Control Deficiency Fund, at the request

of the Director of the Department of Agriculture, not to exceed $69,100 as appropriated in Section 1 of this act for Plant Industries.

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 9, 1998.

CHAPTER 7
(S.B. No. 1326)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 1998; PROVIDING TRANSFERS TO THE PEST CONTROL DEFICIENCY FUND; PROVIDING TRANSFERS TO THE FIRE SUPPRESSION DEFICIENCY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 335, Laws of 1997, there is hereby appropriated to the Department of Lands the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR LUMP SUM	TOTAL
FOR:				
A. FOREST RESOURCES MANAGEMENT:				
FROM:				
General Fund	$30,000	$15,000		$ 45,000
FOR:				
B. FOREST AND RANGE FIRE PROTECTION:				
FROM:				
General Fund			$150,000	$150,000
Fire Suppression Deficiency Fund			760,000	760,000
TOTAL			$910,000	$910,000
GRAND TOTAL	$30,000	$15,000	$910,000	$955,000

SECTION 2. The State Controller shall make cash transfers from the General Fund to the Pest Control Deficiency Fund, at the request of the Director of the Department of Lands, not to exceed $45,000 as appropriated in Section 1 of this act for Forest Resources Management.

SECTION 3. The State Controller shall make cash transfers from the General Fund to the Fire Suppression Deficiency Fund, at the request of the Director of the Department of Lands, not to exceed $150,000 as appropriated from the General Fund in Section 1 of this

act for Forest and Range Fire Protection.

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 February 11, 1998.

CHAPTER 8
(H.B. No. 505)

AN ACT

RELATING TO THE APPROPRIATION FOR THE DEPARTMENT OF FISH AND GAME; AMENDING SECTION 1, CHAPTER 285, LAWS OF 1997; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 285, Laws of 1997, is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Department of Fish and Game the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
Fish and Game Fund	$ 1,706,700	$ 2,043,600	$ 51,100	$260,000	$ 4,061,400
Fish and Game Set-aside Fund	16,500	14,700			31,200
Fish and Game Depredation Claim Fund		900			900
Fish and Game Expendable Trust Fund		1,000			1,000
Fish and Game Nonexpendable Trust Fund		100			100
Fish and Game Federal Fund	2,065,800	1,905,000	32,100		4,002,900
TOTAL	$ 3,789,000	$ 3,965,300	$ 83,200	$260,000	$ 8,097,500

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
B. ENFORCEMENT:					
FROM:					
Fish and Game Fund	$ 5,274,600	$ 1,007,800	$ 120,700		$ 6,403,100
Fish and Game Set-aside Fund		35,000			35,000
Fish and Game Expendable Trust Fund		20,000			20,000
Fish and Game Federal Fund	298,300	163,000	128,000		589,300
TOTAL	$ 5,572,900	$ 1,225,800	$ 248,700		$ 7,047,400
C. FISHERIES:					
FROM:					
Fish and Game Fund	$ 2,860,300	$ 1,941,400	$ 158,900		$ 4,960,600
Fish and Game Set-aside Fund	109,500	250,100	375,000		734,600
Fish and Game Expendable Trust Fund	182,700	48,400			231,100
Fish and Game Nonexpendable Trust Fund		31,400			31,400
Fish and Game Federal Fund	7,214,000	4,896,200	2,616,100		14,726,300
TOTAL	$10,366,500	$ 7,167,500	$3,150,000		$20,684,000
D. WILDLIFE:					
FROM:					
Fish and Game Fund	$ 2,275,700	$ ~~1,664,700~~ 1,714,700	$ 76,400		$ ~~4,016,800~~ 4,066,800
Fish and Game Set-aside Fund	223,300	98,600			321,900
Fish and Game Expendable Trust Fund	~~123,500~~ 225,300	~~228,900~~ 293,900			~~352,400~~ 519,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Nonexpendable Trust Fund	8,000	1,900			9,900
Fish and Game Federal Fund	~~2,513,800~~	~~1,124,900~~	86,400		~~3,725,100~~
	2,412,000	1,059,900			3,558,300
TOTAL	~~$ 5,144,300~~	~~$ 3,119,000~~	$ 162,800		~~$ 8,426,100~~
		3,169,000			8,476,100
E. INFORMATION AND EDUCATION:					
FROM:					
Fish and Game Fund	$ 923,300	~~$ 609,800~~	$ 15,900		~~$ 1,549,000~~
		754,100			1,693,300
Fish and Game Expendable Trust Fund		24,000			24,000
Fish and Game Federal Fund	344,300	250,100	33,000		627,400
TOTAL	$ 1,267,600	~~$ 883,900~~	$ 48,900		~~$ 2,200,400~~
		1,028,200			2,344,700
F. ENGINEERING:					
FROM:					
Fish and Game Fund	$ 608,000	$ 50,400	$ 53,000		$ 711,400
G. NATURAL RESOURCE POLICY:					
FROM:					
Fish and Game Fund	$ 502,000	$ 70,200	$ 500		$ 572,700
Fish and Game Federal Fund	1,013,100	295,100	28,000		1,336,200
TOTAL	$ 1,515,100	$ 365,300	$ 28,500		$ 1,908,900
H. WINTER FEEDING AND HABITAT IMPROVEMENT:					
FROM:					
Fish and Game Fund	$ 348,600	$ 50,000	$ 500		$ 399,100
Fish and Game Set-aside Fund	32,700	2,061,300	$1,701,900		3,795,900
Fish and Game Primary Depredation Fund				$ 200,000	200,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Secondary Depredation Fund				100,000	100,000
TOTAL	$ 381,300	$ 2,111,300	$1,702,400	$300,000	$ 4,495,000
GRAND TOTAL	$28,644,700	~~$18,888,500~~ 19,082,800	$5,477,500	$560,000	~~$53,570,700~~ 53,765,000

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, 1998.

CHAPTER 9
(H.B. No. 434)

AN ACT

RELATING TO RECOVERY OF MEDICAL ASSISTANCE; AMENDING SECTION 56-218, IDAHO CODE, AS AMENDED BY SECTION 2, CHAPTER 205, LAWS OF 1997, TO CLARIFY WHAT ESTATES ARE SUBJECT TO RECOVERY, TO DELINEATE THE TIME LIMITATIONS FOR FILING ESTATE RECOVERY LIENS AND TO REQUIRE NOTIFICATION OF THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE WHEN ESTATES SUBJECT TO RECOVERY ARE PROBATED; AND AMENDING SECTION 15-3-801, IDAHO CODE, TO REQUIRE NOTIFICATION OF THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE BY THE PERSONAL REPRESENTATIVE OF AN ESTATE SUBJECT TO RECOVERY.

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

SECTION 1. That Section 56-218, Idaho Code, as amended by Section 2, Chapter 205, Laws of 1997, be, and the same is hereby amended to read as follows:

56-218. RECOVERY OF CERTAIN MEDICAL ASSISTANCE. (1) Except where exempted or waived in accordance with federal law medical assistance pursuant to this chapter paid on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance may be recovered from the individual's estate, ~~or if there be no estate~~ and the estate of the surviving spouse, if any, ~~shall be charged~~ for such aid paid to either or both; provided, however, that claim for such medical assistance correctly paid to the individual may be established against the estate, but there shall be no adjustment or recovery thereof until after the death of the surviving spouse, if any, and only at a time when the individual has no surviving child who

is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c. Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. 1396p, by recipients of such aid, or their spouses, without adequate consideration are voidable and may be set aside by an action in the district court.

(2) Except where there is a surviving spouse, or a surviving child who is under twenty-one (21) years of age or is blind or permanently and totally disabled as defined in 42 U.S.C. 1382c, the amount of any medical assistance paid under this chapter on behalf of an individual who was fifty-five (55) years of age or older when the individual received such assistance is a claim against the estate in any guardianship or conservatorship proceedings and may be paid from the estate.

(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

(4) For purposes of this section, the term "estate" shall include:

(a) All real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law; and

(b) Any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust or other arrangement.

(5) Claims made pursuant to this section shall be classified and paid as a debt with preference as defined in section 15-3-805(5), Idaho Code. Any distribution or transfer of the estate prior to satisfying such claim is voidable and may be set aside by an action in the district court. The personal representative of every estate subject to a claim under this section must, within thirty (30) days of the appointment, give notice in writing to the director of his or her appointment to administer the estate.

(6) The department may file a notice of lien against the property of any estate subject to a claim under this section. In order to perfect a lien against real or personal property, the department shall, within ninety (90) days after the ~~department is notified in writing of~~ personal representative or successor makes a written request for prompt action to the director, or two (2) years from the death of the individual for whom medical assistance was paid under this chapter, whichever is sooner, file a notice of lien in the same general form and manner as provided in section 56-218A(3)(a), Idaho Code, in the office of the secretary of state, pursuant to section 45-1904, Idaho Code. Failure to file a notice of lien does not affect the validity of claims made pursuant to this section.

(7) The director shall promulgate rules reasonably necessary to implement this section including, but not limited to, rules establishing undue hardship waivers for the following circumstances:

(a) The only asset of the estate provides the primary source of

support for other family members; or

(b) The estate has a value below an amount specified in the rules; or

(c) Recovery under the lien by the department will entitle the heirs of the deceased individual to public assistance.

SECTION 2. That Section 15-3-801, Idaho Code, be, and the same is hereby amended to read as follows:

15-3-801. NOTICE TO CREDITORS. (a) Unless notice has already been given under this section, a personal representative upon his appointment may publish a notice to creditors 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.

(b) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within four (4) months after the published notice if given as provided in subsection (a) of this section or within sixty (60) days after the mailing or delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (a) of this section or a similar notice.

(c) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section.

(d) If medical assistance was paid on behalf of the decedent when the decedent was fifty-five (55) years of age or older, the personal representative shall provide written notice as required by section 56-218(5), Idaho Code.

Approved February 11, 1998

CHAPTER 10
(H.B. No. 442, As Amended)

AN ACT

RELATING TO INCOME TAX CREDITS FOR INCOME TAXES PAID ANOTHER STATE; AMENDING SECTION 63-3029, IDAHO CODE, TO CLARIFY CIRCUMSTANCES IN WHICH AN IDAHO TAXPAYER IS ENTITLED TO AN IDAHO INCOME TAX CREDIT FOR INCOME TAXES PAID TO OTHER STATES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-3029, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029. CREDIT FOR INCOME TAXES PAID ANOTHER STATE ~~OR TERRITORY. (a) Whenever a resident individual has become liable for income tax to another state upon his taxable income, or any part thereof, earned~~

~~while--domiciled--in--this-state,-which-income-is-derived-from-sources without-this-state-and-subject-to-taxation--under--this--chapter,--the amount--of-income-tax-payable-by-him-under-this-chapter-shall-be-credited-with-the-income-tax-so-payable-by-him-to-such-other-state-or-territory,-and-shall-also-be-credited-with-the-income-tax,-or--any--franchise-or-excise-tax-measured-by-income,-payable-to-such-other-state-or territory--by--a-subchapter-S-corporation-of-which-the-individual-is-a shareholder-(to-the-extent-of-the-individual's-pro-rata-share--of--the ownership-of-the-subchapter-S-corporation,-as-allocated-in-the-case-of partial--year-ownership-on-the-same-basis-as-allocated-pursuant-to-the Internal-Revenue-Code).-"Income-tax-to-another-state"-includes-only--a tax--imposed--by--one-of-the-United-States,-a-possession-of-the-United States,-a-political-subdivision-of-any-of-the--foregoing,--or--by--the District--of-Columbia.-The-credit-granted-shall-be-limited-to-the-proportion-of-the-tax-computed-under-this-chapter,-but-before-the--allowance--of--this-credit,-which-the-adjusted-gross-income-from-such-other state-or-territory-bears-to-total--adjusted--gross--income;--provided, however,--that--such--credit--shall-not-be-in-excess-of-the-actual-tax payable-to-such-other-state-or-territory-and-that-such-adjusted--gross income--shall-reflect-additions-and-subtractions-required-by-this-act.~~

(1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, an S corporation, partnership, limited liability company, or trust of which the individual is a shareholder, partner, member, or beneficiary (to the extent attributable to the individual as a result of the individual's share of the S corporation's, partnership's, limited liability company's or trust's taxable income in another state), for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter.

(2) For purposes of this section, "state" shall include any state of the United States, the District of Columbia, or any possession or territory of the United States.

(3) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the adjusted gross income of the taxpayer derived from sources in the other state as modified by this chapter bears to the adjusted gross income of the taxpayer as modified by this chapter. This limitation applies to all individuals whether the tax paid to the other state is paid by the individual or by an S corporation, partnership, limited liability company, or trust. Further, the credit shall not exceed the tax paid to the other state.

(4) To substantiate the credit allowed under this section, the state tax commission may require a copy of any receipt showing payment of income taxes to the other state or a copy of any return or returns filed with such other state, or both.

(5) No credit allowed under this section shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction, unless the tax is restored to income on the Idaho return.

(~~b~~6) The credit shall not be allowed if such other state allows a credit against taxes imposed by such state for taxes paid or payable under this act.

~~(c)--To substantiate the credit allowed under--this--section,--the state tax commission may require a copy of any receipt showing payment of--income--taxes--to another state or a copy of any return or returns filed with such other state or territory, or both.~~

(7) For purposes of this section an income tax imposed on an S corporation, partnership, limited liability company, or trust includes:

(a) A direct tax imposed upon the income for the taxable year of the S corporation, partnership, limited liability company or trust; and

(b) An excise or franchise tax that is measured by the income for the taxable year of the S corporation, partnership, limited liability company, or trust.

(8) For purposes of subsection (7) of this section, an excise or franchise tax is "measured by income" only if the statute imposing the excise or franchise tax provides that the base for the tax:

(a) Includes:

(i) Revenue from sales;

(ii) Revenue from services rendered; and

(iii) Income from investments; and

(b) Permits a deduction for the cost of goods sold and the cost of services rendered.

(~~d~~9) A part-year resident is entitled to a credit, determined in the manner prescribed by the state tax commission, for income taxes paid to another state~~, as defined in subsection (a) of this section,~~ in regard to income which is:

(~~1~~a) Earned while the taxpayer is domiciled in this state; and

(~~2~~b) Subject to tax in such other state.

(10) If the interest in an S corporation, partnership, or limited liability company was held for less than the entire taxable year, the share attributable to the individual shall be allocated in the same manner as for federal purposes.

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, 1998.

Approved February 11, 1998.

CHAPTER 11
(S.B. No. 1327)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF REVENUE AND TAXATION FOR FISCAL YEAR 1998; AUTHORIZING AN ADDITIONAL THIRTEEN ONE-HUNDREDTHS FULL-TIME EQUIVALENT POSITION; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 2, Chapter 252, Laws of 1997, there is hereby appropriated to the Department of Revenue and Taxation the following amounts to be expended for the Board of Tax Appeals Program according to the designated standard classifications from the listed fund for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$19,200	$1,800	$21,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Revenue and Taxation is authorized an additional thirteen one-hundredths (.13) full-time equivalent position for the period July 1, 1997, through June 30, 1998.

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 12, 1998.

CHAPTER 12
(H.B. No. 527)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE HUMAN RIGHTS COMMISSION FOR FISCAL YEAR 1998; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 257, Laws of 1997, there is hereby appropriated to the Office of the Governor for the Human Rights Commission the following amount to be expended for the designated program according to the designated standard classification from the listed fund for the period July 1, 1997, through June 30, 1998:

HUMAN RIGHTS COMMISSION:	
FOR:	
Personnel Costs	$13,200
FROM:	
General Fund	$13,200

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 13, 1998.

CHAPTER 13
(H.B. No. 427)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-648, IDAHO CODE, TO INCLUDE A STOP SIGN LOCATED AT A RAILROAD CROSSING IN THE SUMMARY OF LOCATIONS WHERE A MOTORIST IS REQUIRED TO STOP FOR A STOP SIGN.

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

SECTION 1. That Section 49-648, Idaho Code, be, and the same is hereby amended to read as follows:

49-648. OBEDIENCE TO SIGNAL INDICATING APPROACH OF TRAIN. (1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of the railroad, and shall not proceed until he can do so safely. These requirements shall apply when:

(a) A stop sign is in place and there is an absence of any mechanical warning signals;

(b) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(~~b~~c) A crossing gate is lowered or when a flagman gives or continues to give a signal of the approach or passage of a railroad train;

(~~c~~d) A railroad train approaching within approximately fifteen hundred (1,500) feet of the highway crossing emits a signal audible from that distance and the railroad train, by reason of its speed or nearness to the crossing, is an immediate hazard;

(~~d~~e) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(2) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

Approved February 13, 1998.

CHAPTER 14
(H.B. No. 561)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE REGULATORY BOARDS FOR FISCAL YEAR 1998; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 390, Laws of 1997, there is hereby appropriated to the Regulatory Boards in the Department of Self-Governing Agencies the following

amounts to be expended for the designated programs according to the designated standard classifications from the listed fund for the period July 1, 1997, through June 30, 1998:

A. STATE ATHLETIC COMMISSION:

FOR:	
Personnel Costs	$13,900
Operating Expenses	11,900
TOTAL	$25,800
FROM:	
State Regulatory Fund	$25,800

B. BOARD OF MEDICINE:

FOR:	
Operating Expenditures	$50,000
FROM:	
State Regulatory Fund	$50,000

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 19, 1998.

CHAPTER 15
(H.B. No. 572)

AN ACT

RELATING TO THE BUDGET RESERVE FUND; DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS FROM THE GENERAL FUND TO THE BUDGET RESERVE FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. On or before June 30, 1998, the State Controller is hereby directed to make a cash transfer of $8,500,000 from the General Fund to the Budget Reserve Fund.

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 19, 1998.

CHAPTER 16
(H.B. No. 448)

AN ACT

RELATING TO WATER QUALITY; AMENDING SECTION 39-3629, IDAHO CODE, TO ESTABLISH THE WASTEWATER FACILITY LOAN ACCOUNT AND TO PROVIDE FOR TREATMENT OF MONEY IN THE ACCOUNT; AMENDING SECTION 39-3630, IDAHO

CODE, TO PROVIDE THAT MONEYS IN THE WATER POLLUTION CONTROL ACCOUNT ARE PERPETUALLY APPROPRIATED TO PROVIDE GRANTS OR CONTRACTS FOR TRAINING DRINKING WATER SYSTEM OPERATING PERSONNEL AND TO PROVIDE FUNDS TO CAPITALIZE THE DRINKING WATER LOAN ACCOUNT INCLUDING THE REQUIRED MATCHING SHARE OF FEDERAL CAPITALIZATION FUNDS; AMENDING SECTION 39-3631, IDAHO CODE, TO PROVIDE FOR APPROPRIATION OF MONEYS IN THE WASTEWATER FACILITY LOAN ACCOUNT; AND AMENDING SECTION 39-3632, IDAHO CODE, TO PROVIDE THAT THE BOARD OF HEALTH AND WELFARE MAY MAKE LOANS FROM THE WASTEWATER FACILITY LOAN ACCOUNT.

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

SECTION 1. That Section 39-3629, Idaho Code, be, and the same is hereby amended to read as follows:

39-3629. ~~WATER AND~~ WASTEWATER FACILITY LOAN ACCOUNT ESTABLISHED. There is hereby created and established in the agency asset fund in the state treasury an account to be known as the ~~water and~~ wastewater facility loan account. Surplus moneys in the ~~water and~~ wastewater facility loan account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the ~~water and~~ wastewater facility loan account. The account shall have paid into it:

1. Federal funds which are received by the state to provide for ~~water--and~~ wastewater facility loans together with required state matching funds coming from a portion of the moneys in the water pollution control account as established in section 39-3628, Idaho Code;
2. All donations and grants from any source which may be used for the provisions of this section;
3. All principal and interest repayments of loans made pursuant to this chapter; and
4. Any other moneys which may hereafter be provided by law.

SECTION 2. That Section 39-3630, Idaho Code, be, and the same is hereby amended to read as follows:

39-3630. APPROPRIATION OF WATER POLLUTION CONTROL ACCOUNT -- PURPOSE OF CHAPTER. Moneys in the water pollution control account are hereby perpetually appropriated for the following purposes:

1. To provide the state's matching share of grants made under the provisions of this chapter.
2. To provide revenue for the payment of general obligation bonds issued pursuant to section 39-3633, Idaho Code, and general obligation refunding bonds issued pursuant to chapter 115, 1973 laws of the state of Idaho.
3. To provide for the operations of the water quality programs established pursuant to this chapter.
4. To provide direct grants or contracts for the purpose of providing training for <u>drinking</u> water <u>system</u> and sewage treatment plant operating personnel.
5. To provide payments for contracts entered into pursuant to

this chapter.

6. To provide funds to capitalize the ~~water-and~~ wastewater facility loan account established in section 39-3629, Idaho Code, including the required matching share of federal capitalization funds.

7. To provide funds to capitalize the drinking water loan account established in section 39-7602, Idaho Code, including the required matching share of federal capitalization funds.

SECTION 3. That Section 39-3631, Idaho Code, be, and the same is hereby amended to read as follows:

39-3631. APPROPRIATION OF ~~WATER--AND~~ WASTEWATER FACILITY LOAN ACCOUNT -- PURPOSE OF CHAPTER. Moneys in the ~~water--and~~ wastewater facility loan account are hereby perpetually appropriated for the following purposes:

1. To provide loans and other forms of financial assistance authorized under title VI of the federal water quality act of 1987, P.L. 100-4, to any municipality for construction of sewage treatment works.

2. To provide funds, subject to annual federal and state appropriation and applicable federal limitations, for operation of the wastewater facility loan program by the department of health and welfare.

~~3.--To--provide--funds,-subject-to-annual-federal-and-state-appropriations-and-applicable-federal-limitations,--for--operation--of--the water-facility-loan-program-by-the-department-of-health-and-welfare.~~

SECTION 4. That Section 39-3632, Idaho Code, be, and the same is hereby amended to read as follows:

39-3632. GRANTS AND LOANS FOR DESIGN, PLANNING OR CONSTRUCTION -- LIMITS ON AMOUNT OF GRANTS AND LOANS. (1) The board of health and welfare may divide financial assistance for eligible construction projects into separate grants, loans or a combination of grants and loans for the design, planning, and construction stages of project development. The making of a grant or loan for early stages of a project does not obligate the state to make a grant or loans for later stages of the same project.

(2) The board may make grants from the water pollution control account; provided, that the projected payments for such grants would not cause the projected balance in the account to fall below zero at any time. All grant payments shall be subject to the availability of moneys in the account.

(3) The board may make loans from the ~~water-and~~ wastewater facility loan account, provided that the projected payments for such loans would not cause the projected balance in the account to fall below zero at any time. All loan payments shall be subject to the availability of moneys in the account.

Approved February 25, 1998.

CHAPTER 17
(H.B. No. 596)

AN ACT

RELATING TO APPROPRIATIONS FOR THE DEPARTMENT OF JUVENILE CORRECTIONS; AMENDING THE APPROPRIATION MADE IN SECTION 1, CHAPTER 298, LAWS OF 1997; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 298, Laws of 1997, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Department of Juvenile Corrections the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
A. ADMINISTRATION:					
FROM:					
General Fund	$ 453,300	$ 421,400	$186,000		$ 1,060,700
Miscellaneous Revenue Fund	14,300				14,300
TOTAL	$ 467,600	$ 421,400	$186,000		$ 1,075,000
B. FIELD SERVICES:					
FROM:					
General Fund	$ 455,000	$ 81,500		$ 2,632,500	$ 3,169,000
C. INSTITUTIONS:					
FROM:					
General Fund	$ ~~9,166,200~~	$~~1,153,300~~	$~~550,800~~	$ ~~6,100,300~~	$~~16,970,600~~
	8,014,000	838,400	216,800	13,392,700	22,461,900
Juvenile Corrections Fund				140,000	140,000
State Juvenile Corrections Center Fund		774,200			774,200
Federal Grant Fund	77,100	182,000		1,689,900	1,949,000
Miscellaneous Revenue Fund	~~75,000~~			~~140,000~~	~~215,000~~
	475,000			640,000	1,115,000
TOTAL	$ ~~9,318,300~~	$~~2,109,500~~	$~~550,800~~	$ ~~8,070,200~~	$~~20,048,800~~
	8,566,100	1,794,600	216,800	15,862,600	26,440,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
D. JUVENILE JUSTICE COMMISSION:					
FROM:					
General Fund	$ 67,300	$ 11,100			$ 78,400
Federal Grant Fund	56,300	125,700		$ 803,400	985,400
Miscellaneous Revenue Fund		1,000		149,000	150,000
TOTAL	$ 123,600	$ 137,800		$ 952,400	$ 1,213,800
GRAND TOTAL	~~$10,364,500~~ 9,612,300	~~$2,750,200~~ 2,435,300	~~$736,800~~ 402,800	~~$11,655,100~~ 19,447,500	~~$25,506,600~~ 31,897,900

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 25, 1998.

CHAPTER 18
(S.B. No. 1348)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE MILITARY DIVISION FOR FISCAL YEAR 1998; DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE FUND; GRANTING CONTINUOUS APPROPRIATION AUTHORITY FOR A SPECIFIC FUND AND TIME PERIOD; EXPRESSING LEGISLATIVE INTENT REGARDING THE USE OF STATE MONEYS; DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE NATURAL RESTORATION FUND; PROVIDING FOR REAPPROPRIATION OF CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; DIRECTING THE REVERSION OF CERTAIN UNSPENT MONEYS; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 325, Laws of 1997, there is hereby appropriated to the Office of the Governor for the Military Division, the following amounts to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1997, through June 30, 1998:

A. BUREAU OF HAZARDOUS MATERIALS:

FOR:	
Operating Expenditures	$17,400
FROM:	
General Fund	$17,400

B. BUREAU OF DISASTER SERVICES:

FOR:	
Operating Expenditures	$8,170,000
FROM:	
General Fund	$ 975,000
State Highway Fund	367,500
Natural Restoration Fund	150,000
Federal Grant Fund	6,677,500
TOTAL:	$8,170,000

SECTION 2. The State Controller shall make a cash transfer of $17,400 from the General Fund to the Hazardous Substance Emergency Response Fund, as appropriated to the Bureau of Hazardous Materials in Section 1 of this act.

SECTION 3. The Military Division is hereby granted continuous appropriation authority for the Bureau of Hazardous Materials' Miscellaneous Revenue Fund for the period July 1, 1997, through June 30, 1998.

SECTION 4. It is legislative intent that the state moneys appropriated to the Bureau of Disaster Services in Section 1 of this act shall only by used to match grant moneys from nonstate sources for the purposes of funding the Milo Creek Containment Project.

SECTION 5. The State Controller shall make cash transfers of the moneys appropriated to the Bureau of Disaster Services in Section 1 of this act to the Natural Restoration Fund.

SECTION 6. There is hereby reappropriated to the Military Division, the unexpended and unencumbered balance of moneys transferred to the Natural Restoration Fund in Section 5 of this act for the period July 1, 1997, through June 30, 1998, to be used only for nonrecurring expenditures related to the Milo Creek Containment Project for the period July 1, 1998, through June 30, 1999.

SECTION 7. The unexpended and unencumbered moneys appropriated for the Milo Creek Containment Project remaining in the Natural Restoration Fund on June 30, 1999, shall revert to the fund sources listed in Section 1 of this act, in the proportion each fund bears to the total moneys appropriated to the Bureau of Disaster Services in Section 1 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 February 13, 1998.

CHAPTER 19
(S.B. No. 1382)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 1998; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 330, Laws of 1997, there is hereby appropriated to the Industrial Commission the following amount to be expended for the designated program according to the designated standard classification from the listed fund for the period July 1, 1997, through June 30, 1998:

C. CRIME VICTIMS:

FOR:	
Trustee and Benefit Payments	$500,000
FROM:	
Crime Victims Compensation Fund	$500,000

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 25, 1998.

CHAPTER 20
(H.B. No. 484)

AN ACT
RELATING TO INCOME TAXES; AMENDING SECTION 63-3022, IDAHO CODE, TO DELETE PROVISIONS RELATING TO DEDUCTIONS FOR CONTRIBUTIONS TO MEDICAL ASSISTANCE ACCOUNTS AND PERSONAL HEALTH CARE SERVICES; REPEALING SECTIONS 63-3022F AND 63-3089, IDAHO CODE; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022L, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(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, other than those issued by the state of Idaho, its cities and political subdivisions, exempt from federal income tax under the Internal Revenue Code, less applicable

amortization.

(1) In the case of a corporation whose income is taxable under this chapter, no deduction shall be allowed for interest on indebtedness incurred or continued to purchase after January 1, 1983, or to carry obligations acquired after January 1, 1983, the interest of which is wholly exempt from the taxes imposed under this chapter. The amount of interest on indebtedness thus incurred or continued shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as the taxpayer's average adjusted basis of the obligations mentioned in the preceding sentence bears to such average adjusted basis for all assets of the taxpayer, or, at the option of the taxpayer, an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as the taxpayer's interest income from the obligations mentioned in the preceding sentence bears to the taxpayer's total income for the taxable year.

(2) In the case of a corporation whose Idaho taxable income is computed pursuant to section 63-3027, Idaho Code, the interest expense deductible shall be an amount equal to interest and dividend income subject to apportionment, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income not subject to apportionment. Interest expense not included in the preceding sentence shall be directly offset against interest and dividend income not subject to apportionment. This provision shall not apply to dividend income excluded pursuant to section 63-3027C(c) and (e), Idaho Code.

(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.

(c) Add the net operating loss deduction used in arriving at taxable income.

(d) (1) A net operating loss for any taxable year commencing on and after January 1, 1990, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars ($100,000) to the three (3) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the three (3) preceding years may be subtracted in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the three (3) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The term "income" as used in this subsection (d) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho

Code.

(2) Net operating losses incurred by a corporation during a year in which such corporation did not transact business in Idaho may not be subtracted. Net operating losses incurred by a person, other than a corporation, in business activities not taxable by Idaho may not be subtracted.

(e) In the case of a corporation, add the amount deducted under the provisions of sections 243(a) and (c), 244, 245 and 246A of the Internal Revenue Code (relating to dividends received by corporations) as limited by section 246(b)(1) of said code.

(f) In the case of a corporation, subtract an amount determined under section 78 of the Internal Revenue Code to be taxable as dividends.

(g) 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.

(h) In the case of corporations and partnerships, add Idaho taxable income of nonresident officers, directors, shareholders, partners or members to the extent such income is attributed to the corporation or partnership in section 63-3022L, Idaho Code.

(i) For the purpose of determining the Idaho taxable income of the beneficiary of a trust or of an estate, distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section. In the event that a nonresident beneficiary of a trust or estate fails to file an Idaho income tax return reporting all or any part of distributable net income taxable in Idaho or fails to pay any tax due thereon, the trust or estate making the payment or distribution shall be taxable upon the amount of such distribution or payment at the rates established by section 63-3024, Idaho Code.

(j) In the case of an individual who is on active duty as a full-time officer, enlistee or draftee, with the armed forces of the United States, which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid by the armed forces of the United States for services performed outside this state. The deduction is allowed only to the extent such income is included in taxable income, and provided that appropriate adjustments shall be made in determining the deductions and exemptions allowed pursuant to section 63-3026A(4), Idaho Code.

(k) In the case of a corporation, add any capital loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. In the case of persons, other than corporations, add any capital loss deducted which was incurred in business activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to an S corporation or partnership under this section, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (d) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(l) In the case of an individual, there shall be allowed as a deduction from gross income either (1) or (2) at the option of the

taxpayer:

(1) ~~a.~~ The standard deduction as defined in section 63, Internal Revenue Code~~,--plus-contributions-made-to-the-state-of-Idaho for-credit-to-the-medical-assistance-account,-if-such-contributions-were-not-previously-subtracted-in-arriving-at-taxable income,-plus~~

~~b.--Itemized-expenditures-of-not-to-exceed-one-thousand--dollars-($1,000)-per-cared-for-member-incurred-in-providing-personal--care--services--to--or--for-an-immediate-member-of-the taxpayer's-family;-such-services-may-be--provided--either--in the--taxpayer's--home--or--the-family-member's-home;-personal care-services-shall-be-as-defined-in-chapter--56,--title--39, Idaho--Code,--but--the--cared-for-member-need-not-be-medicaid eligible-for-the-purposes-of-this-section-only,--if--he--substantially-meets-all-of-the-other-requirements-of-chapter-56, title--39,--Idaho-Code;-in-order-for-the-deduction-under-this paragraph-to-be-allowed,-the-expenditures--claimed--must--not have--been-reimbursed-by-medicare,-medicaid-or-private-insurance,-and-such-expenditures-must--not--have--been--previously subtracted-in-arriving-at-taxable-income.~~

(2) ~~a.~~ Itemized deductions as defined in section 63 of the Internal Revenue Code except state income taxes as specified in section 164 of the Internal Revenue Code~~,-plus~~

~~b.--Contributions--made--to--the-state-of-Idaho-for-credit-to the-medical-assistance-account,-if--such--contributions--were not-previously-subtracted-in-arriving-at-taxable-income,-plus~~

~~c.--Itemized--expenditures-of-not-to-exceed-one-thousand-dollars-($1,000)-per-cared-for-member-incurred-in-providing-personal-care-services-to-or-for--an--immediate--member--of--the taxpayer's--family;--such--services-may-be-provided-either-in the-taxpayer's-home-or-the--family--member's--home;--personal care--services--shall--be-as-defined-in-chapter-56,-title-39, Idaho-Code,-but-the-cared-for-member--need--not--be--medicaid eligible--for--the--purposes-of-this-section-only,-if-he-substantially-meets-all-of-the-other-requirements-of-chapter-56, title-39,-Idaho-Code;-in-order-for-the-deduction--under--this paragraph-c.-to-be-allowed,-the-expenditures-claimed-must-not have--been-reimbursed-by-medicare,-medicaid-or-private-insurance,-and-such-expenditures-must--not--have--been--previously subtracted-in-arriving-at-taxable-income.~~

(m) ~~Deduct--any-amounts-added-to-gross-income-under-section-87-of the-Internal-Revenue-Code-for-tax-credits-allowable--to--the--taxpayer under-section-40-of-the-Internal-Revenue-Code.~~

~~(n)~~ Add the taxable amount of any lump sum distribution deducted from gross income pursuant to section 402(d)(3) of the Internal Revenue Code. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(~~o~~n) Deduct any amounts included in gross income under the provisions of section 86 of the Internal Revenue Code relating to certain social security and railroad benefits.

(~~p~~o) In the case of a self-employed individual, deduct the actual cost of premiums paid to secure worker's compensation insurance for coverage in Idaho, if such cost has not been deducted in arriving at

taxable income.

~~(q)--Add--the--amount--claimed-as-a-credit-under-section-63-3029G, Idaho-Code,-if-previously-deducted-in-arriving-at-taxable-income.~~

SECTION 2. That Sections 63-3022F and 63-3089, Idaho Code, be, and the same are 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, and retroactively to January 1, 1998.

Approved February 27, 1998.

CHAPTER 21
(H.B. No. 490)

AN ACT

RELATING TO AUDITORIUM DISTRICTS; AMENDING SECTION 67-4902, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-4904, IDAHO CODE, TO REVISE THE CONTENTS FOR A PETITION; AMENDING SECTION 67-4907, IDAHO CODE, TO REDUCE THE POPULATION FOR DISTRICTS THAT SHALL HAVE NO POWER TO LEVY AND COLLECT AD VALOREM TAXES; AMENDING SECTION 67-4912, IDAHO CODE, TO REVISE POWERS OF THE BOARD AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-4913, IDAHO CODE, TO REDUCE THE POPULATION FOR DISTRICTS THAT HAVE THE POWER AND AUTHORITY TO COLLECT AD VALOREM TAXES, TO PROVIDE CLARIFICATION AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-4902, Idaho Code, be, and the same is hereby amended to read as follows:

67-4902. DEFINITIONS. An auditorium or community center district is one to build, operate, maintain, market and manage for public, commercial and/or industrial purposes by any available means public auditoriums, exhibition halls, convention centers, sports arenas and facilities of a similar nature, and for that purpose any such district shall have the power to construct, maintain, manage, market and operate such facilities.

A district may be entirely within or entirely without, or partly within and partly without one (1) or more municipalities or counties, and the district may consist of noncontiguous tracts or parcels of property.

The word "board" as used in this chapter shall mean the board of directors of a district.

A "qualified elector" of a district, within the meaning of and entitled to vote under this chapter, is a person who resides in the district and is otherwise qualified under section 34-104, Idaho Code.

Wherever the term "publication" is used in this chapter it means

publication twice, the first time not less than twelve (12) days prior to an election, and the second time not less than five (5) days prior to an election, as provided in section 34-1406, Idaho Code.

SECTION 2. That Section 67-4904, Idaho Code, be, and the same is hereby amended to read as follows:

67-4904. PETITION -- CONTENTS -- AMENDMENTS. The organization of a district shall be initiated by a petition filed in the office of the clerk of the court vested with jurisdiction, in a county in which the major part of the real property in the proposed district is situated. The petition shall be signed by not less than ten percent (10%) of the qualified electors who reside within the boundaries of the proposed district, and not less than ten (10) of whom shall reside in each election precinct which is wholly or partially within the boundaries of any such proposed district.

The petition shall set forth:

(1) The name of the proposed district consisting of a chosen name preceding the words, "auditorium or community center district."

(2) A general description of the facilities to be constructed <u>or marketing programs or both</u> within and for the district.

(3) The estimated cost of the proposed facilities <u>or marketing programs or both.</u>

(4) A general description of the boundaries of the district or the territory to be included therein, with such certainty as to enable a property owner to determine whether or not his property is within the district.

(5) A prayer for the organization of the district.

No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory, or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one (1) petition. All such petitions filed prior to the hearing on the first petition filed, shall be considered by the court the same as though filed with the first petition placed on file.

SECTION 3. That Section 67-4907, Idaho Code, be, and the same is hereby amended to read as follows:

67-4907. HEARINGS ON PETITIONS -- ELECTION FOR ORGANIZATION AND OFFICERS. On the day fixed for such hearing or at an adjournment thereof the court shall ascertain from the tax rolls of the county or counties in which the district is located or into which it extends, the total number of taxpayers within the proposed district, who pay a general tax on real property owned by him or her within the district.

If the court finds that no petition has been signed and presented in conformity with this chapter, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error

shall lie from an order dismissing said proceedings; but nothing herein shall be construed to prevent the filing of a subsequent petition or petitions for similar improvements or for a similar district, and the right so to renew such proceedings is hereby expressly granted and authorized.

Any time after the filing of the petition for the organization of a district and before the day fixed for the hearing thereon, the owner or owners of any real property within the proposed district may file a petition with the district court stating reasons why said property should not be included therein, why his land or any part thereof will not be benefited directly or indirectly by the proposed district, or should not be embraced in said district and made liable to taxation therefor, and praying that said property be excluded therefrom. Such petition shall be duly verified and shall describe the property sought to be excluded. The court shall conduct a hearing on said petition and shall hear all objections to the inclusion in the district of any lands described in said petition. In case any owner of real estate included in said proposed district shall satisfy the court that his real estate, or any part thereof, has been wrongfully included therein or will not be benefited thereby then the court shall exclude such real estate as will not be benefited.

Upon said hearing, if it shall appear that a petition for the organization of a district has been signed and presented as hereinabove provided, in conformity with this chapter, and that the allegations of the petition are true, the court shall, by order duly entered of record, direct that the question of the organization of the district shall be submitted to the qualified electors of the district at an election to be held, subject to the provisions of section 34-106, Idaho Code, for that purpose, and such order shall appoint three (3) qualified electors of the district as judges of said election. The clerk of the court having jurisdiction shall give published notice of the time and place of an election to be held in the district.

Such election shall be held and conducted in the same manner as general elections in this state.

At any time after the filing of the petition herein referred to and before the day fixed for hearing, nominees for the board of directors of the district may be nominated by the filing of a petition designating the name or names of the nominee or nominees, signed by at least five (5) qualified electors of the district. If upon the hearing as herein provided the court shall order an election for the creation of the district, the court shall also ascertain the names of persons nominated by the board of directors, and shall order that the names of persons whom the court finds to have been properly nominated shall be listed upon a ballot submitted to the electors at such election. In the event the court makes its order providing for such election, it shall prescribe the form of the question and ballot relating to the election of the directors, provided that all matters may be contained upon one (1) ballot to be submitted to the voters.

At such election the voters shall vote for or against the organization of the district, and for five (5) qualified electors, who shall constitute the board of directors of the district, if organized, one (1) director to act until the first biennial election, two (2) until the second, and two (2) until the third biennial election.

The judges of election shall certify the returns of the election to the district court having jurisdiction. If a majority of the votes cast at said election are in favor of the organization, the district court shall declare the district organized and give it a corporate name by which, in all proceedings, it shall thereafter be known, and designated the first board of directors elected, and thereupon the district shall be a governmental subdivision of the state of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation except that districts formed prior to January 1, 1987, or districts with ~~one--hundred~~ twenty-five thousand (~~100~~25,000) or more population shall have no power to levy and collect ad valorem taxes.

If an order be entered establishing the district, such order shall be deemed final and no appeal or writ of error shall lie therefrom, and the entry of such order shall finally and conclusively establish the regular organization of the said district against all persons except the state of Idaho, in an action in the nature of a writ of quo warranto, commenced by the attorney general within thirty (30) days after said decree declaring such district organized as herein provided, and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized.

SECTION 4. That Section 67-4912, Idaho Code, be, and the same is hereby amended to read as follows:

67-4912. GENERAL POWERS OF BOARD. For and on behalf of the district the board shall have the following powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued, and be a party to suits, actions, and proceedings;

(d) Except as otherwise provided in this act, to enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, and contracts with corporations, public or private, municipalities, or governmental subdivisions, and to cooperate with any one (1) or more of them in building, erecting, marketing or constructing facilities within the district. Except in cases in which a district will receive aid from a governmental agency, a notice shall be published for bids on all construction contracts for work or material, or both, involving an expense of five thousand dollars ($5,000) or more. The district may reject any and all bids, and if it shall appear that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do;

(e) To borrow money and incur indebtedness and evidence the same by certificate, notes or debentures, and to issue bonds, in accordance with the provisions of this act;

(f) To acquire, dispose of and encumber real and personal property, and any interest therein, including leases and easements within said district;

(g) To refund any bonded indebtedness of the district without any election; provided, however, that the obligations of the district

shall not be increased by any refund of bonded indebtedness. Otherwise the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds;

(h) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district facilities therein or therefor;

(i) To hire and retain agents, employees, engineers and attorneys;

(j) To construct and maintain works and establish and maintain facilities across or along any public street or highway, and in, upon or over any vacant public lands, which public lands are now, or may become, the property of the state of Idaho, and to construct works and establish and maintain facilities across any stream of water or ~~water course~~ watercourse; provided, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof;

(k) To fix and from time to time to increase or decrease rates, tolls or charges for services or facilities furnished by the district, and to pledge such revenue for the payment of any indebtedness of the district. The board shall fix rates, tolls and charges;

(l) To petition to enlarge the district by obtaining the consent of not less than ten ~~per-cent~~ percent (10%) of the qualified electors of any area to be so included, and then to follow the procedure set forth herein for creating said district;

(m) To promote any functions for said district, provided that said board shall not engage in operations that are inconsistent with the purpose of said district; and it shall be the policy of the board not to compete with existing facilities and services in the district, wherever practicable;

(n) To adopt and amend by-laws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the districts;

(o) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein, except that districts formed prior to January 1, 1987, or districts with ~~one hundred~~ twenty-five thousand (~~100~~25,000) or more population shall have no power to levy and collect ad valorem taxes. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this act.

SECTION 5. That Section 67-4913, Idaho Code, be, and the same is hereby amended to read as follows:

67-4913. TAXES. In addition to the other means providing revenue for such districts as herein provided, in those districts formed after January 1, 1987, or in those districts with ~~one-hundred~~ twenty-five thousand (~~100~~25,000) or fewer population, the board shall have power and authority to levy and collect ad valorem taxes on and against all taxable property within the district, provided said ad valorem taxes shall not exceed a levy of four-hundredths ~~per-cent~~ percent (.04%) of

market value for assessment purposes for all levies provided in sections 67-4913, 67-4914, 67-4915, 67-4916 and 67-4917, Idaho Code. Districts with a population of more than twenty-five thousand (25,000) persons shall not have the power and authority to levy and collect ad valorem taxes on and against all taxable property within the district.

Approved March 2, 1998.

CHAPTER 22
(S.B. No. 1356)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1302, IDAHO CODE, TO CLARIFY THE DEFINITION OF "CREDITED SERVICE" AND TO PROVIDE ADDITIONAL DEFINITIONS RELATED TO APPROVED DOMESTIC RETIREMENT ORDERS; AMENDING SECTION 59-1317, IDAHO CODE, TO AUTHORIZE THE PUBLIC EMPLOYEE RETIREMENT SYSTEM TO ACCEPT DOMESTIC RETIREMENT ORDERS; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1319, IDAHO CODE, TO SET FORTH THE REQUIREMENTS FOR APPROVED DOMESTIC RETIREMENT ORDERS; AND AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1320, IDAHO CODE, TO ADDRESS THE EFFECT OF APPROVED DOMESTIC RETIREMENT ORDERS AND TO GIVE THE EXECUTIVE DIRECTOR OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM THE EXCLUSIVE AUTHORITY TO DETERMINE WHETHER A DOMESTIC RETIREMENT ORDER IS AN APPROVED DOMESTIC RETIREMENT ORDER.

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 chapter, 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 is not establishing the right to receive benefits through his or her employer's participation in any other retirement system established for Idaho public employees, if such participation is mandated by applicable Idaho statutes other than this chapter. In no case will an employee be entitled to any benefit under this chapter for public service if such employee is establishing retirement benefit entitlements by other Idaho statutes or federal statutes other than military service or social security for that same service.

(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.

(5A) "Alternate payee" means a spouse or former spouse of a member who is recognized by an approved domestic retirement order as having a right to all or a portion of the accrued benefits in the retirement system with respect to such member.

(5B) "Approved domestic retirement order" means a domestic retirement order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to all or a portion of the accrued benefits of a member under the retirement system, which directs the system to establish a segregated account or disburse benefits to an alternate payee, and which the executive director of the retirement system has determined meets the requirements of sections 59-1319 and 59-1320, Idaho Code.

(5C) "Average monthly salary" means the member's average salary during the base period as calculated pursuant to rules adopted by the retirement board.

(5BD) (a) "Base period" means the period of fifty-four (54) consecutive calendar months during which the member earned:

(i) The highest average salary; and

(ii) Membership service of at least one-half (1/2) the number of months in the period, excluding months of service attributable to:

A. Military service;

B. Service qualifying as minimum benefit pursuant to section 59-1342(5), Idaho Code; and

C. Worker's compensation income benefits.

(b) Effective October 1, 1993, the consecutive calendar months shall be forty-eight (48). Effective October 1, 1994, the consecutive calendar months shall be forty-two (42).

(c) Entitlement to a base period shall not vest until the effective date of that base period. The retirement benefits shall be calculated on the amounts, terms and conditions in effect at the date of the final contribution by the member.

(d) If no base period exists for a member, the member's average monthly salary shall be determined by the board, using standards not inconsistent with those established in this subsection.

(e) To assure equitable treatment for all members, salary increments inconsistent with usual compensation patterns may be disallowed by the board in determining average monthly salary and base period.

(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.

(7) "Calendar year" means twelve (12) calendar months commencing on the first day of January.

(8) "Credited service" means the aggregate of membership service, prior service and disabled 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" means:

(a) That the member 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 the member will likely remain so disabled permanently and continuously during the remainder of the member's life.

It is not necessary that a person be absolutely helpless or entirely unable to do anything worthy of compensation to be considered disabled. If the person is so disabled that substantially all the avenues of employment are reasonably closed to the person, that condition is within the meaning of "disabled." In evaluating whether a person is disabled, medical factors and nonmedical factors including, but not limited to, education, economic and social environment, training and usable skills may be considered.

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.

(12A) "Disabled service" means the total number of months elapsing from the first day of the month next succeeding the final contribution of a member prior to receiving a disability retirement allowance to the first day of the month following the date of termination of such disability retirement allowance. During such period, the member shall remain classified in the membership category held during the month of final contribution. The total number of months of disabled service credited for a person first becoming disabled after the effective date of this chapter shall not exceed the excess, if any, of three hundred sixty (360) over the total number of months of prior service and membership service.

(12B) "Domestic retirement order" means any judgment, decree, or order, including approval of a property settlement agreement which relates to the provision of marital property rights to a spouse or former spouse of a member, and is made pursuant to a domestic relations law, including the community property law of the state of Idaho or of another state.

(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 twenty (20) hours or more per week for an employer or a school teacher who works half-time or more for an employer and who receives salary for services rendered

for such employer; or

(b) Elected officials or appointed officials of an employer who receive a salary; or

(c) A person who is separated from service with less than five (5) consecutive months of employment and who is reemployed or reinstated by the same employer within thirty (30) days.

(B) "Employee" does not include employment as:

(a) A person rendering service to an employer in the capacity of an independent business, trade or profession; or

(b) A person whose employment with any employer does not total five (5) consecutive months; or

(c) A person provided sheltered employment or made-work by a public employer in an employment or industries program maintained for the benefit of such person; or

(d) An inmate of a state institution, whether or not receiving compensation for services performed for the institution; or

(e) A student enrolled in an undergraduate, graduate, or vocational-technical program at and employed by a state college, university, community college or vocational-technical center when such employment is predicated on student status; or

(f) A person making contributions to the United States civil service commission under the United States Civil Service System Retirement Act except that a person who receives separate remuneration for work currently performed for an employer and the United States government may elect to be a member of the retirement system in accordance with rules of the board; or

(g) A person occupying a position that does not exceed eight (8) consecutive months in a calendar year with a city or county when the city or county has certified, in writing to the system, the position is (i) seasonal or casual; and (ii) affected by weather and the growing season, including parks and golf course positions.

(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. Governmental entity means any organization composed of units of government of Idaho or organizations funded only by government or employee contributions or organizations who discharge governmental responsibilities or proprietary responsibilities that would otherwise be performed by government. All governmental entities are deemed to be political subdivisions for the purpose of this chapter.

(15A) "Final contribution" means the final contribution made by a member pursuant to sections 59-1331 through 59-1334, Idaho Code.

(16) "Firefighter" means an employee, including paid firefighters hired on or after October 1, 1980, 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 chapter.

(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, any thrift institu-

tion or credit union or any investment management firm or individual investment manager selected by the board to hold and/or invest the employers' and members' contributions and pay certain benefits granted under this chapter.

(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.

(20A) "Lifetime annuity" means periodic monthly payments of income by the retirement system to an alternate payee.

(20B) "Lump sum distribution" means a payment by the retirement system of the entire balance in the alternate payee's segregated account, together with regular interest credited thereon.

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

(22) "Membership service" means military service which occurs after the commencement of contributions payable under sections 59-1331 through 59-1334, Idaho Code, and service with respect to which contributions are payable under sections 59-1331 through 59-1334, Idaho Code, ~~and military service which occurs after the commencement of such contributions~~ which, except for benefit calculations described in sections 59-1342 and 59-1353, Idaho Code, includes service transferred to a segregated account under an approved domestic retirement order.

(23) "Military service" means active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States code. Provided, however, for the purposes of this chapter, military service SHALL NOT include:

(a) Any period ended by dishonorable discharge or during which termination of such service is available but not accepted;

(b) 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 unless such ninety (90) day requirements are waived by the board due to circumstances beyond the employee's control; or

(c) Any active duty service in excess of five (5) years if at the convenience of the United States government, or in excess of four (4) years if not at the convenience of the United States government.

(24) (a) "Police officer" for retirement purposes shall be as defined in section 59-1303, Idaho Code.

(b) "POST" means the Idaho peace officer standards and training council established in chapter 51, title 19, Idaho Code.

(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 the member's 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 chapter upon termination of employment.

(29) "Retirement board" or "board" means the board provided for in sections 59-1304 and 59-1305, Idaho Code, to administer the retirement system.

(30) "Retirement system" or "system" means the public employee retirement system of Idaho.

(31) (A) "Salary" means:

(a) The total salary or wages paid to a person who meets the definition of employee by an employer for personal services performed and reported by the employer for income tax purposes, including the cash value of all remuneration in any medium other than cash.

(b) The total amount of any voluntary reduction in salary agreed to by the member and employer where the reduction is used as an alternative form of remuneration to the member.

(B) Salary in excess of the compensation limitations set forth in section 401(a)(17) of the Internal Revenue Code shall be disregarded for any person who becomes a member of the system on or after July 1, 1996. The system had no limitations on compensation in effect on July 1, 1993. The compensation limitations set forth in section 401(1)(17) of the Internal Revenue Code shall not apply for an "eligible employee." For purposes of this subsection, "eligible employee" is an individual who was a member of the system before July 1, 1996.

(C) "Salary" does not include:

(a) Contributions by employers to employee held medical savings accounts, as those accounts are defined in section 63-3022K, Idaho Code.

(b) Lump sum payments inconsistent with usual compensation patterns made by the employer to the employee only upon termination from service including, but not limited to, vacation payoffs, sick leave payoffs, early retirement incentive payments and bonuses.

(31A) "Segregated account" means the account established by the retirement system for the alternate payee of a member who is not a retired member. It shall include the months of credited service and accumulated contributions transferred from the member's account.

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

(33) "Service" means being shown on an employer's payroll as an employee receiving 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 59-1317, Idaho Code, be, and the same is hereby amended to read as follows:

59-1317. RIGHTS TO BENEFITS INALIENABLE. (1) The right of a person to any benefits under this chapter and the money in any fund created by this chapter shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law.~~, except that~~

(2) Notwithstanding subsection (1) of this section, the benefits of a member or alternate payee shall be subject to garnishment, execution, or wage withholding under chapter 12, title 7, Idaho Code, for the enforcement of an order for the support of a minor child.

(3) Notwithstanding subsection (1) of this section, prior to July 1, 1998, s~~S~~hould a court order direct distribution or partial distribution of a member benefit defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, be made to the member's spouse or former spouse, that member's full benefit entitlement will be forwarded to the court for distribution.

(4) Notwithstanding subsection (1) of this section, on or after July 1, 1998, should a court order direct distribution or partial distribution of a member's benefit defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, be made to the member's spouse or former spouse, the court order must be an approved domestic retirement order and shall comply with the requirements of sections 59-1319 and 59-1320, Idaho Code.

(5) Notwithstanding subsection (1) of this section, s~~S~~hould a court order establish a trust pursuant to section 15-5-409, Idaho Code, the full benefit entitlement will be forwarded to the trustee, naming the trustee as payee.

SECTION 3. 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 59-1319, Idaho Code, and to read as follows:

59-1319. APPROVED DOMESTIC RETIREMENT ORDERS -- REQUIREMENTS. (1) An approved domestic retirement order must meet the following requirements:

(a) Clearly specify that such order applies to the retirement system;

(b) Clearly specify the effective date of the order, the name, social security number, date of birth, sex, and last known mailing address of the member and the name, social security number, date of birth, sex, and last known mailing address of the alternate payee covered by the order;

(c) Provide for a proportional reduction of the amount awarded to an alternate payee in the event that benefits available to the member are reduced by law;

(d) For benefits as defined in chapter 13, title 59, Idaho Code, for members who are not retired members: (i) clearly specify the amount or percentage of the member's taxed and tax deferred accumulated contributions which are to be credited to the segregated account or the manner in which such amount or percentage is to be determined, and (ii) clearly specify the member's months of credited service, either by specific amount or percentage, to be transferred by the retirement system to the segregated account or the manner in which such amount or percentage is to be determined. The months of credited service transferred to the alternate payee shall be proportional to the accumulated contributions attributable to such months of credited service. Months of credited service transferred shall be whole months and not partial months;

(e) For benefits as defined in chapter 13, title 59, Idaho Code, for retired members, clearly specify the amount or percentage of the member's benefit being paid that the retirement system is to pay to the alternate payee, or the manner in which such amount or percentage is to be determined; and

(f) For benefits as defined in chapter 14, title 72, Idaho Code, clearly specify the amount or percentage of the member's benefit paid at the time of retirement which the retirement system is to pay to the alternate payee, or the manner in which such percentage is to be determined.

(2) An approved domestic retirement order cannot:

(a) Require the retirement system to provide any type or form of benefit or any option not otherwise provided under the retirement system;

(b) Require the retirement system to provide increased benefits determined on the basis of actuarial value;

(c) Require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be an approved domestic retirement order or a court order entered prior to July 1, 1998;

(d) Require any action on the part of the retirement system contrary to its governing statutes or rules other than the direct payment of the benefit awarded to an alternate payee;

(e) Segregate or attempt to segregate the right to reinstate previous credited service as provided in section 59-1360, Idaho Code, unless such credited service has been fully reinstated by full payment of contributions and interest as provided in section 59-1360, Idaho Code;

(f) Purport to award to the alternate payee any future benefit increases that are provided or required by the legislature, except as provided in subsections (6) and (7) of section 59-1320, Idaho Code; or

(g) Require the payment of benefits to an alternate payee before the date on which the alternate payee attains the earliest retirement age under the retirement system. However, an alternate payee may take a lump sum distribution any time prior to receiving a lifetime annuity payment.

(3) In no event shall an approved domestic retirement order cause the retirement system to pay any benefit or any amount of benefit greater than would have been paid had the member's account not been

segregated.

(4) A party to any domestic retirement order issued prior to July 1, 1998, which distributes benefits defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, may move the court to modify such order to comply with the requirements of this section and section 59-1320, Idaho Code, provided that modifications be limited to issues related to the distribution of benefits defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, that the value of the distribution is not materially changed and that such modified order be submitted and become an approved domestic retirement order before July 1, 2000.

SECTION 4. 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 59-1320, Idaho Code, and to read as follows:

59-1320. APPROVED DOMESTIC RETIREMENT ORDERS -- APPLICATION AND EFFECT. (1) The executive director of the public employee retirement system or his designee upon receipt of a copy of a domestic retirement order, shall determine whether the order is an approved domestic retirement order and shall notify the member and the alternate payee of the determination within ninety (90) days. Orders shall be applied prospectively only from the first day of the month following the order being determined to be an approved domestic retirement order. The retirement system shall then pay benefits or establish a segregated account in accordance with the order.

(2) If the order is determined not to be an approved domestic retirement order, or if no determination is issued within ninety (90) days, the member or the alternate payee named in the order may move the court which issued the order to amend the order so that it will be approved. The court that issued the order or which would otherwise have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

(3) The executive director of the retirement system to which a domestic retirement order is submitted or his designee has exclusive authority to determine whether a domestic retirement order is an approved domestic retirement order. If it is determined that a domestic retirement order does not meet the requirements for an approved domestic retirement order, both the issuing court and the parties to the order shall be notified so action may be taken to amend the order.

(4) Because an approved domestic retirement order cannot cause the retirement system to pay any benefit or any amount of benefit greater than would have been paid had the member's account not been segregated, disputes related to benefits paid under an approved domestic retirement order shall be resolved between the parties to the order by the court issuing that order. The retirement system shall not be made a party to the action. Any cost, including attorney's fees, incurred by the retirement system as a result of such actions shall be distributed by the court among the parties and included in any amended order issued.

(5) Unless the approved domestic retirement order specifies dif-

ferently, if the member has a right to a vested benefit as of the effective date of the order, then both the member and the alternate payee shall have a right to a vested benefit after the transfer of months of service even if the member or the alternate payee has less than sixty (60) months of membership service.

(6) For benefits under chapter 13, title 59, Idaho Code, for members other than retired members, if the domestic retirement order awards to the alternate payee a portion of the member's accumulated contributions the alternate payee shall be entitled to all the same benefits and rights an inactive member has under chapter 13, title 59, Idaho Code. The alternate payee's benefit calculation for a lifetime annuity shall use the member's average monthly salary and base period as of the effective date of the order and the months of credited service transferred to the alternate payee's segregated account. The benefit calculation shall use the alternate payee's age with the appropriate reduction factors based on the alternate payee's age at the time of payment of the lifetime annuity. For the purpose of the lifetime annuity, the bridging factor, as specified in section 59-1355, Idaho Code, shall be the bridging factor between the effective date of the order or the last day of contributions by the member prior to the effective date of the order, whichever is earliest, and the date of the first lifetime annuity payment to the alternate payee. The alternate payee shall have the right to select any of the optional retirement allowances provided in section 59-1351, Idaho Code. The alternate payee shall have the right to name a beneficiary.

(7) For benefits defined under chapter 13, title 59, Idaho Code, for retired members, and for benefits under chapter 14, title 72, Idaho Code, the retirement system shall include in the alternate payee's amount or percentage of the benefit, on a proportional basis, all future adjustments, including postretirement increases that are granted by the retirement system, and any death benefit. Furthermore, upon the death of the alternate payee, his/her percentage of the benefit will revert to the person or persons, including the member, who are entitled to the benefit under the system at the time of the alternate payee's death.

(8) For benefits under chapter 13, title 59, Idaho Code, for retired members, the form of payment previously elected by the member under section 59-1351, Idaho Code, cannot be changed by a domestic retirement order. Furthermore, no segregated account will be established by the retirement system for the alternate payee.

(9) For benefits defined under chapter 14, title 72, Idaho Code, the benefit paid to the alternate payee shall start when the retirement system begins paying benefits to the member, surviving spouse, or surviving children. Unless otherwise ordered, in the event the member dies and leaves a surviving spouse, during the surviving spouse's lifetime, the alternate payee shall be paid his/her designated amount or percentage of the benefit. Unless otherwise ordered, if there is no surviving spouse or the surviving spouse dies and there is a surviving child or children of the member who are under eighteen (18) years of age and unmarried, then the alternate payee shall be paid his/her designated amount or percentage of the benefit until the child or children reach the age of eighteen (18) years or marries, whichever occurs first.

(10) The retirement system shall be authorized to issue any and all appropriate tax forms or reports for any payments made to the alternate payee.

(11) The retirement system, the retirement board, and officers and employees of the retirement system shall not be liable to any person for making payments of any benefits in accordance with an approved domestic retirement order.

Approved March 6, 1998.

CHAPTER 23
(S.B. No. 1292)

AN ACT

RELATING TO EDUCATION OF EXCEPTIONAL CHILDREN; AMENDING SECTION 33-201, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AND AMENDING CHAPTER 20, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2010, IDAHO CODE, TO PROVIDE FOR EDUCATION OF DISABLED ADULT STUDENTS HOUSED IN ADULT CORRECTIONAL FACILITIES.

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

SECTION 1. That Section 33-201, Idaho Code, be, and the same is hereby amended to read as follows:

33-201. SCHOOL AGE. The services of the public schools of this state are extended to any acceptable person of school age. "School age" is defined as including all persons resident of the state, between the ages of five (5) and twenty-one (21) years. For the purposes of this section, the age of five (5) years shall be attained when the fifth anniversary of birth occurs on or before the first day of September of the school year in which the child is to enroll in kindergarten. For a child enrolling in the first grade, the age of six (6) years must be reached on or before the first day of September of the school year in which the child is to enroll. Any child of the age of five (5) years who has completed a private or public out-of-state kindergarten for the required four hundred fifty (450) hours but has not reached the "school age" requirement in Idaho shall be allowed to enter the first grade.

For resident children with disabilities who qualify for special education and related services under ~~public--law--94-142~~ the federal individuals with disabilities education act (IDEA) and subsequent amendments thereto, and applicable state and federal regulations, "school age" shall begin at the attainment of age three (3) and shall continue through the semester of school in which the student attains the age of twenty-one (21) years.

SECTION 2. That Chapter 20, 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 33-2010, Idaho Code, and to read as follows:

33-2010. EDUCATION OF DISABLED ADULT STUDENTS HOUSED IN ADULT CORRECTIONAL FACILITIES. Any individual eighteen (18) years of age through the semester of school in which the person attains the age of twenty-one (21) years, who is incarcerated in an adult correctional facility shall not be entitled to special education and related services unless such person was identified as a child with a disability and had an individualized education program under part B of the federal individuals with disabilities education act (IDEA) in his last educational placement prior to incarceration.

Approved March 11, 1998.

CHAPTER 24
(S.B. No. 1293)

AN ACT

RELATING TO EDUCATION OF EXCEPTIONAL CHILDREN; AMENDING SECTION 33-2002, IDAHO CODE, TO PROVIDE THAT A DISABLED STUDENT SHALL BE INFORMED OF THE RIGHTS THAT WILL TRANSFER TO HIM FROM HIS PARENTS OR GUARDIAN UPON REACHING THE AGE OF MAJORITY PURSUANT TO THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT, TO PROVIDE WHEN SUCH RIGHTS WILL NOT BE TRANSFERRED TO THE STUDENT AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. That Section 33-2002, Idaho Code, be, and the same is hereby amended to read as follows:

33-2002. RESPONSIBILITY OF SCHOOL DISTRICTS FOR EDUCATION OF CHILDREN WITH DISABILITIES. (1) Each public school district is responsible for and shall provide for the special education and related services of children with disabilities enrolled therein.

(2) Every public school district in the state shall provide instruction and training for persons between the ages of three (3) years and twenty-one (21) years who are children with disabilities as defined in this chapter and by the state board of education. The state board of education shall through its department of education determine eligibility criteria for children with disabilities, qualifications of special teachers and special personnel, programs of instruction and minimum standards for classrooms and equipment to be used in administering the provisions of this act.

(3) The child study team shall assess the importance and necessity of teaching Braille to each child who is legally blind. Preference shall be given to Braille. If the child study team determines that learning Braille is important with respect to a particular child, the child shall be given the opportunity to learn Braille.

(4) In accordance with the provisions of part B of the federal individuals with disabilities education act (IDEA), a student with a disability shall be informed by the school district or other public agency providing education to the student, at least one (1) year

before he reaches the age of majority, that rights currently afforded to the parents or guardian of the student pursuant to IDEA, will transfer to the student when he reaches the age of majority. However, such rights shall remain with the parent or guardian after the student reaches the age of majority if the student is determined to be incompetent under Idaho law or if an individualized education program team determines the student lacks the ability to provide informed consent with respect to his educational program.

Approved March 11, 1998.

CHAPTER 25
(S.B. No. 1399)

AN ACT

RELATING TO THE POTATO COMMISSION; AMENDING SECTION 22-1205, IDAHO CODE, TO FURTHER SPECIFY THE ITEMS WHICH MAY BE EXAMINED BY AN AGENT OR REPRESENTATIVE OF THE POTATO COMMISSION WHICH HAVE A BEARING ON THE AMOUNT OF TAXES PAYABLE BY A GROWER, DEALER OR HANDLER OF POTATOES, TO PROVIDE FOR EXAMINATION OF CORRECT USAGE OF TRADE OR CERTIFICATION MARKS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-1207, IDAHO CODE, TO EXPAND THE POWERS AND DUTIES OF THE COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 22-1205, Idaho Code, be, and the same is hereby amended to read as follows:

22-1205. ADMINISTRATION AND ENFORCEMENT OF ACT. The administration of this act shall be vested in the Idaho potato commission which shall have power to prescribe and enforce suitable and reasonable rules ~~and--regulations~~ for the enforcement of the provisions thereof, and shall administer the taxes levied and imposed by this act. Said commission shall have power to cause its duly authorized agent or representative to enter upon the premises of any grower, dealer and/or handler of potatoes, and to examine or cause to be examined by any such agent or representative any of the following items: any books, papers, records, ledgers, purchase journals, sales journals, electronically and/or magnetically recorded data, computers and computer records or memoranda bearing on the amount of taxes payable or the correct usage of any Idaho trade or certification mark, and to secure all other information directly or indirectly concerned in the enforcement of this act.

SECTION 2. That Section 22-1207, Idaho Code, be, and the same is hereby amended to read as follows:

22-1207. POWERS AND DUTIES OF COMMISSION. The powers and duties of the commission shall include the following:

1. To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and the performance of its duties under this act.

2. To contract and be contracted with.

3. To employ and at its pleasure discharge an advertising manager, agents, advertising agencies and such other help as it deems necessary and to outline their powers and duties and fix their compensation.

4. To make in the name of the commission such advertising contracts and other agreements as may be necessary.

5. To keep books, records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller at all times.

6. To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this act.

7. To define and describe such grade or grades of potatoes that may be advertised in accordance with the provisions of this act.

8. To define and designate the character of the brands, labels, stencils, or other distinctive marks under which said potatoes may be marketed in order to secure the greatest returns to producers and meet the requirements of their advertising campaign.

9. To devise and require the application of either a seal, label, brand, package, or any other suitable device that will protect the identity of the original Idaho pack of potatoes as near to the final consumer as possible.

10. Whenever and wherever it deems it to be necessary the commission shall use its offices to prevent any substitution of other potatoes for Idaho potatoes and to prevent the misrepresentation, mislabeling or the misbranding of Idaho potatoes at any and all times at any and all points where they discover the same is being done and to require the disclosure of the growing area of origin upon potato containers by all persons doing business in the state of Idaho.

11. To require all those using any of the Idaho potato trade or certification marks, or handling or packing potatoes grown in Idaho, to execute an agreement in the form prescribed by the commission to ensure compliance with the provisions of this chapter.

12. To devise a suitable system for tracking shipments of Idaho potatoes and Idaho potato products to prevent the misrepresentation, mislabeling or the misbranding of Idaho potatoes.

13. To prevent the unlicensed use of the Idaho potato trade or certification marks including, but not limited to, the marks "Grown in Idaho," "Famous Idaho Potatoes" and "Idaho Potatoes."

14. To make, conduct or carry on studies and research in connection with the raising, production and marketing of potatoes, including study and research dealing with the industrial and other uses of potatoes and their by-products, and the extension and stabilization of markets for such commodities; to disseminate information with respect to such study and research as a part of the commission's advertising, publicity and sales promotion activities authorized by this act and to assist, aid and educate growers, dealers and handlers in the raising, production and marketing of potatoes.

1~~2~~5. To require all persons with their principal place of business located in the state of Idaho to pay a one hundred dollar ($100) annual license fee for use of any Idaho potato trade or certification mark and to require all persons with their principal place of business located outside of the state of Idaho to pay a three hundred dollar ($300) annual license fee for use of any Idaho potato trade or certification mark.

For the accomplishment of such ends the commission is hereby empowered to employ the necessary persons or contract for the performance of required services; to cooperate with any organization of growers in this state, whether organized by authority of law or voluntary, engaged in carrying on similar activities and to participate jointly with any such organization, by contract or otherwise, in financing such study and research or paying for the employment of persons or services required or in carrying out projects and programs as herein contemplated; provided, however, expenditures authorized by the commission for the purposes herein mentioned shall not exceed an amount equal to twelve and one-half ~~per-cent~~ percent (12 1/2%) of the tax collected on potatoes levied and imposed pursuant to section 22-1211, Idaho Code.

Provided, further, that none of the powers specified in subsection 1~~1~~4. of this section shall be exercised, and no expenditure of revenue as provided in subsection 1~~1~~4. of this section shall be authorized except upon the affirmative vote of six (6) or more of the members of the commission.

1~~3~~6. The commission, in furtherance of its duties under this act and under its rules, shall have the power to administer oaths, certify to official acts and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony. The commission may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the commission, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he had not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission and regularly served, the court shall thereupon order that said witness appear before the commission at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court. Provided that in proceedings before the commission where evidence is sought from witnesses who are not residents of this

state, the commission is authorized to obtain subpoenas issued by the clerk of the district court. Subpoenas so requested shall be issued by the clerk of the district court under the seal of the court, shall state the name of the court and the title of the administrative action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. Subpoenas shall be used only to require attendance of a witness at a deposition or hearing. The clerk shall issue a subpoena or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

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, 1998.

CHAPTER 26
(S.B. No. 1505)

AN ACT

RELATING TO THE PERMANENT BUILDING FUND; AMENDING SECTION 57-1108, IDAHO CODE, TO PROVIDE THAT INTEREST EARNINGS FROM THE INVESTMENT OF MONEYS IN THE FUND SHALL BE RETAINED BY THE FUND; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 57-1108, Idaho Code, be, and the same is hereby amended to read as follows:

57-1108. PERMANENT BUILDING FUND CREATED -- USE OF FUND. The permanent building fund is hereby created and established in the state treasury to which shall be deposited all revenues derived from taxes imposed and transfers authorized pursuant to the provisions of this act. All moneys now or hereafter in the permanent building fund are hereby dedicated for the purpose of building needed structures, renovations, repairs to and remodeling of existing structures at the several state institutions and for the several agencies of state government. <u>The state treasurer shall invest the idle moneys in the fund, and the interest earned on such investments shall be retained by the fund.</u>

SECTION 2. This act shall be in full force and effect on and after July 1, 1999.

Approved March 13, 1998.

CHAPTER 27
(S.B. No. 1519)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 1998; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 292, Laws of 1997, there is hereby appropriated to the Attorney General the following amount to be expended for the designated program according to the designated standard classification from the listed fund for the period July 1, 1997, through June 30, 1998:

SPECIAL LITIGATION:	
FOR:	
Operating Costs	$900,000
FROM:	
General Fund	$900,000

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 13, 1998.

CHAPTER 28
(S.B. No. 1521)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 1998; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 334, Laws of 1997, there is hereby appropriated to the Department of Correction the following amounts to be expended for the designated program according to the designated standard classifications from the listed fund for the period July 1, 1997, through June 30, 1998:

A. ADMINISTRATION:	
FOR:	
Operating Expenditures	$ 180,000
Trustee and Benefit Payments	5,100,000
TOTAL	$5,280,000
FROM:	
General Fund	$5,280,000

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 13, 1998.

CHAPTER 29
(S.B. No. 1522)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LAW ENFORCEMENT FOR FISCAL YEARS 1998 AND 1999; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 293, Laws of 1997, there is hereby appropriated to the Department of Law Enforcement the following amounts to be expended for the designated programs according to the designated standard classification from the listed fund for the period July 1, 1997, through June 30, 1999:

B. POLICE SERVICES:	
FOR:	
Personnel Costs	$100,000
FROM:	
General Fund	$100,000
C. IDAHO STATE POLICE:	
FOR:	
Personnel Costs	$270,000
FROM:	
General Fund	$270,000
GRAND TOTAL	$370,000

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 13, 1998.

CHAPTER 30
(S.B. No. 1523)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF LAW ENFORCEMENT FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Law Enforcement the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. CENTRAL ADMINISTRATION:					
FROM:					
General Fund	$ 1,205,000	$ 441,100			$ 1,646,100
Indirect Cost Recovery Fund	58,200				58,200
Miscellaneous Revenue Fund		10,300			10,300
TOTAL	$ 1,263,200	$ 451,400			$ 1,714,600
II. POLICE SERVICES:					
FROM:					
General Fund	$ 6,086,800	$ 2,191,900	$ 576,700		$ 8,855,400
Drug Donation Fund		266,800			266,800
Idaho Law Enforcement Telecommunications Fund	186,700	269,900			456,600
Federal Grant Fund	124,900	533,700	95,000		753,600
Miscellaneous Revenue Fund	408,700	985,600	85,000		1,479,300
TOTAL	$ 6,807,100	$ 4,247,900	$ 756,700		$11,811,700
III. IDAHO STATE POLICE:					
FROM:					
General Fund	$ 2,904,200	$ 24,800	$1,670,500		$ 4,599,500
Idaho Law Enforcement Fund	9,832,400	2,728,400			12,560,800
Hazardous Materials/ Waste Enforcement Fund	116,000	42,200		$ 68,500	226,700
Federal Grant Fund	825,700	1,231,000	365,700	3,585,000	6,007,400
Miscellaneous Revenue Fund	58,900	13,100			72,000
TOTAL	$13,737,200	$ 4,039,500	$2,036,200	$3,653,500	$23,466,400
IV. ALCOHOL BEVERAGE CONTROL:					
FROM:					
General Fund	$ 330,100	$ 77,200			$ 407,300
Miscellaneous Revenue Fund		5,000			5,000
TOTAL	$ 330,100	$ 82,200			$ 412,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
V. PEACE OFFICER STANDARDS AND TRAINING ACADEMY:					
FROM:					
Peace Officers Fund	$ 558,700	$ 822,400	$ 193,800	$ 88,300	$ 1,663,200
Federal Grant Fund	38,400	476,800	31,000	335,000	881,200
Miscellaneous Revenue Fund		5,100			5,100
TOTAL	$ 597,100	$ 1,304,300	$ 224,800	$ 423,300	$ 2,549,500
VI. BRAND INSPECTION:					
FROM:					
State Brand Board Fund	$ 1,794,000	$ 253,000	$ 82,500		$ 2,129,500
VII. RACING COMMISSION:					
FROM:					
Idaho State Racing Commission Fund	$ 252,000	$ 469,200			$ 721,200
Pari-mutuel Distributions Fund				$ 367,500	367,500
TOTAL	$ 252,000	$ 469,200		$ 367,500	$ 1,088,700
GRAND TOTAL	$24,780,700	$10,847,500	$3,100,200	$4,444,300	$43,172,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Law Enforcement is authorized no more than four hundred ninety-five and eight-tenths (495.8) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 13, 1998.

CHAPTER 31
(S.B. No. 1524)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of

Juvenile Corrections the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General Fund	$ 943,200	$ 635,700	$ 31,500		$ 1,610,400
Miscellaneous Revenue Fund	26,000	3,500	4,000		33,500
TOTAL	$ 969,200	$ 639,200	$ 35,500		$ 1,643,900
II. FIELD SERVICES:					
FROM:					
General Fund	$ 569,000	$ 133,600		$ 2,700,900	$ 3,403,500
Juvenile Corrections - Cigarette/Tobacco Tax Fund				4,822,200	4,822,200
TOTAL	$ 569,000	$ 133,600		$ 7,523,100	$ 8,225,700
III. INSTITUTIONS:					
FROM:					
General Fund	$ 9,294,000	$1,130,500	$153,300	$11,339,300	$21,917,100
Juvenile Corrections Fund				143,600	143,600
State Juvenile Corrections Center Fund		796,500			796,500
Federal Grant Fund	81,000	186,700		1,733,800	2,001,500
Miscellaneous Revenue Fund				643,600	643,600
TOTAL	$ 9,375,000	$2,113,700	$153,300	$13,860,300	$25,502,300
IV. JUVENILE JUSTICE COMMISSION:					
FROM:					
General Fund	$ 73,100	$ 11,400			$ 84,500
Federal Grant Fund	59,200	129,000		$ 824,400	1,012,600
Miscellaneous Revenue Fund				51,300	51,300
TOTAL	$ 132,300	$ 140,400		$ 875,700	$ 1,148,400
GRAND TOTAL	$11,045,500	$3,026,900	$188,800	$22,259,100	$36,520,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the

Department of Juvenile Corrections is authorized no more than two hundred sixty-six and one-half (266.5) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 13, 1998.

CHAPTER 32
(S.B. No. 1525)

AN ACT

APPROPRIATING MONEYS FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR FISCAL YEAR 1999; CLARIFYING THE APPROPRIATION FOR THE PORTFOLIO INVESTMENT PROGRAM; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Public Employee Retirement System the following amounts, to be expended for the named programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. RETIREMENT ADMINISTRATION:				
FROM:				
Public Employee Retirement System Fund	$1,865,400	$2,608,200	$ 28,100	$4,501,700
II. PORTFOLIO INVESTMENT:				
FROM:				
Public Employee Retirement System Fund	$ 265,600	$ 202,300	$ 13,000	$ 480,900
III. 401(k) ADMINISTRATION:				
FROM:				
PERSI 401(k) Administration Fund		$ 5,100		$ 5,100
GRAND TOTAL	$2,131,000	$2,815,600	$ 41,100	$4,987,700

SECTION 2. Notwithstanding Section 59-1311(4)(d), Idaho Code, moneys appropriated in Section 1 of this act for the Portfolio Investment Program are for administrative costs of the Portfolio Program as provided in Section 59-1311(3), Idaho Code. Amounts necessary to pay all other investment expenses related to the Portfolio Program are perpetually appropriated to the Public Employee Retirement System

Board as provided in Section 59-1311(4)(a), (b) and (c), Idaho Code.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Public Employee Retirement System is authorized no more than forty-eight (48) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 13, 1998.

CHAPTER 33
(S.B. No. 1376)

AN ACT

RELATING TO PATIENT FREEDOM OF INFORMATION; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 45, TITLE 54, IDAHO CODE, TO ADOPT THE PATIENT FREEDOM OF INFORMATION ACT, TO PROVIDE A DECLARATION OF PURPOSE, TO DEFINE TERMS, TO REQUIRE PATIENT ACCESS TO SPECIFIED INFORMATION, AND TO PROVIDE FOR IMPLEMENTATION AND ACCESS TO PROVIDER PROFILE INFORMATION.

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

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 45, Title 54, Idaho Code, and to read as follows:

CHAPTER 45
PATIENT FREEDOM OF INFORMATION

54-4501. DECLARATION OF PURPOSE. In recognition of the importance of health care to all Idahoans, it is the intent of the legislature to provide patients with easily accessible profile information on specified licensed or registered health care professionals. By creating a database of individual profiles that the public may access, patients will be able to make more informed decisions about whom they wish to engage when in need of health care services. The database should include educational background and work history, disclosure of any final board disciplinary actions, criminal convictions, malpractice history, and other pertinent information as required by this chapter. The following licensed and registered professional health care providers are subject to this chapter: physicians and surgeons and osteopathic physicians and surgeons, physical therapists, dentists, podiatrists, chiropractors, optometric physicians, psychologists, physicians' assistants, nurse practitioners, and certified registered nurse anesthetists.

54-4502. DEFINITIONS. As used in this chapter, the following terms have the following meaning:

(1) "Board" means the professional licensing and registration board, respectively, for each of the named providers.

(2) "Patient" means all past, current or future consumers of health care services.

(3) "Provider(s)" means the following licensed or registered professional health care providers: podiatrists licensed pursuant to chapter 6, title 54, Idaho Code; chiropractors licensed pursuant to chapter 7, title 54, Idaho Code; dentists licensed pursuant to chapter 9, title 54, Idaho Code; nurse practitioners and certified registered nurse anesthetists licensed or registered pursuant to chapter 14, title 54, Idaho Code; optometric physicians licensed pursuant to chapter 15, title 54, Idaho Code; physicians and surgeons and osteopathic physicians and surgeons, licensed pursuant to chapter 18, title 54, Idaho Code; physicians' assistants registered pursuant to chapter 18, title 54, Idaho Code; physical therapists registered pursuant to chapter 22, title 54, Idaho Code; and psychologists licensed pursuant to chapter 23, title 54, Idaho Code.

54-4503. PATIENT ACCESS TO PROVIDER INFORMATION. (1) Each person who applies for initial licensure or registration as a provider must, at the time of application, and each provider who applies for license or registration renewal must, in conjunction with the renewal of a license or registration, and under procedures which shall be adopted by the board, and in addition to any other information that may be required from the applicant, furnish the following information to the board:

(a) Names and addresses of medical/professional schools or other institutions of higher learning that provider attended, including any graduate education, and dates of graduation;

(b) Speciality certifications that are recognized by the board;

(c) Appointments to faculty of any medical/professional school and indication whether provider has had a responsibility for graduate education within the most recent ten (10) years (optional);

(d) Location and type of practice for the most recent ten (10) years;

(e) Current location of provider's primary practice setting, and if more than one (1) setting, the approximate percentage of time spent at each location;

(f) The hospital(s) that serves as the provider's primary admitting facility and at which the provider has active clinical privileges in good standing;

(g) Disclosure of whether the provider participates in medicaid and medicare programs (but not necessarily accepting new patients), or has ever been barred from participation in either program;

(h) Disclosure of any translating services that may be available at the provider's practice location(s) (optional);

(i) Description of any criminal convictions for felonies or other crimes of moral turpitude within the most recent ten (10) years. For purposes of this subsection, a person shall be deemed convicted of a crime if he pled guilty or if he was found or adjudged guilty by a court of competent jurisdiction;

(j) Description of any final board disciplinary actions within

the most recent ten (10) years that are considered to be public in accordance with the provisions of chapter 3, title 9, Idaho Code;
(k) Description of any final disciplinary actions by a board from any other state including, but not limited to, revocation or suspension of license, within the most recent ten (10) years;
(l) Description of revocation or involuntary restriction of hospital privileges, or a reduction in credentialing for more than one hundred eighty (180) days, from any state, for reasons related to competence or character, that have been taken by a hospital's governing body or any other official of a hospital after procedural due process has been afforded; or the resignation from or nonrenewal of a medical staff membership, or the restriction of privileges at a hospital taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital, within the most recent ten (10) years;
(m) Whether the provider carries professional malpractice insurance, and if not, has ever been denied malpractice insurance;
(n) Disclosure of all malpractice court judgments and all malpractice arbitration awards in which a payment was awarded to a complaining party during the most recent ten (10) years. Pending malpractice claims shall not be disclosed by the board to patients; however, nothing herein shall be construed to prevent the board from investigating and disciplining a provider on the basis of pending malpractice claims.
(o) Disclosure of settlements of professional malpractice claims within the most recent five (5) years of continuous practice;

(i) Providers need only disclose malpractice settlements if there have been five (5) or more settlements in the most recent five (5) years of continuous practice, of fifty thousand dollars ($50,000), or more, per settlement, or if there have been more than ten (10) settlements within the most recent five (5) years of continuous practice of any dollar amount;

(ii) Settlements that result solely in an adjustment to the fee charged for a provider's services shall not be disclosed pursuant to this chapter;

(iii) Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of a provider. A payment in settlement of a malpractice action or claim should not be construed as creating presumption that malpractice has occurred. Malpractice histories tend to vary by speciality. Some specialities are more likely than others to be the subject of litigation.";

(iv) Nothing herein shall be construed to limit or prevent the board from providing further explanatory information regarding settlements;

(p) Percentage of ownership interest provider has in other health facilities, laboratories, equipment or therapy, except for ownership interest in the primary practice business, to which the provider's patients are, have been, or may be referred.
(2) Each profile submitted by a provider must include a state-

ment, signed under oath, by the provider attesting to the correctness and completeness of the information contained in the profile.

(3) The board shall not be held liable for the correctness or completeness of the information contained in the provider profiles, and shall include a disclaimer statement on all released profiles, attesting to the self-reporting nature of the program, and that the information has not been verified by the board.

(4) The board shall, at the time of issuing a new license or registration, or in conjunction with license or registration renewal, collect and maintain the information required in this chapter, as submitted by the provider, for the purpose of creating individual profiles on providers that shall be made available to the public as provided in this chapter.

(5) No state law that would otherwise prohibit, limit, or penalize disclosure of information about a provider shall apply to disclosure of information required by this chapter.

(6) If a provider fails to comply with the provisions of this chapter with full and truthful disclosure of information to the board within the time specified by the board, the board may:

(a) Fine the provider up to fifty dollars ($50.00) for each day that the provider is not in compliance with the provisions of this chapter;

(b) Take any other disciplinary action it deems appropriate, except the board may not revoke, suspend, refuse to issue or refuse to renew a provider's license or registration solely because the provider failed to comply with the provisions of this chapter.

54-4504. INFORMATION AND ACCESS TO PROVIDER PROFILE INFORMATION. The boards and providers subject to the provisions of this chapter shall inform the public that provider profile information is available and make the information available upon request.

The boards and providers shall fully implement the provisions of this chapter no later than January 1, 2000.

The boards and providers shall be responsible for promoting public awareness of and access to provider profiles as provided in this chapter, which shall include the creation of printed materials and signs to be available in board and provider offices. Profile information on individual providers shall be available at the office(s) of the provider, and their respective board, in written form, upon request, and electronically where available, and shall be considered public information.

Approved March 16, 1998.

CHAPTER 34
(H.B. No. 576)

AN ACT

RELATING TO ABORTION; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-613, IDAHO CODE, TO PROHIBIT PARTIAL-

BIRTH ABORTIONS, TO PROVIDE AN EXCEPTION, TO PROVIDE DEFINITIONS, TO PROVIDE FOR CIVIL ACTIONS, TO PROVIDE FOR A FACT-FINDING HEARING WITH THE STATE MEDICAL BOARD AND TO PROVIDE LIMITED IMMUNITY TO THE PERSON UPON WHOM THE ABORTION IS PERFORMED; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 6, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-613, Idaho Code, and to read as follows:

18-613. PARTIAL-BIRTH ABORTIONS PROHIBITED. (1) Prohibited acts. Any physician who knowingly performs a partial-birth abortion and thereby kills a human fetus shall be subject to the penalties imposed in section 18-605, Idaho Code. This section shall not apply to partial-birth abortions necessary to save the life of the mother when her life is endangered by a physical disorder, illness or injury.

(2) Definitions. As used in this section;

(a) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

(b) The phrase "vaginally delivers a living fetus before killing the fetus" means deliberately and intentionally delivering into the vagina a living fetus, or a substantial portion of the fetus, for the purpose of performing a procedure the physician knows will kill the fetus, and which kills the fetus.

(c) "Physician" has the same meaning provided in section 18-604, Idaho Code. However, any individual who is not a physician or not otherwise legally authorized by this state to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the prohibitions described in this section.

(3) (a) Civil actions. The father of the aborted fetus, if married to the mother of the aborted fetus at the time of the abortion; or the maternal grandparents of the aborted fetus, if the mother is not at least eighteen (18) years of age at the time of the abortion, may bring a civil action against the defendant physician to obtain appropriate relief. Provided however, that a civil action by the plaintiff father is barred if the pregnancy resulted from criminal conduct by the plaintiff father or he consented to the abortion. Further, a civil action by the plaintiff maternal grandparents is barred if the pregnancy is the result of criminal conduct by a maternal grandparent or a maternal grandparent consented to the abortion.

(b) As used in this section, "appropriate relief" shall include:

(i) Money damages for all mental and physical injuries suffered by the plaintiff as a result of the abortion performed in violation of this section;

(ii) Money damages equal to three (3) times the cost of performing the abortion procedure.

(4) (a) Hearing. A physician accused of violating this section may request a hearing before the state board of medicine to deter-

mine whether the mother's life was endangered by a physical disorder, illness or injury and therefor whether performing the abortion was necessary to save the mother's life.

(b) The findings of the board of medicine regarding the issues described in subsection (4)(a) of this section are admissible at the criminal and civil trials of the defendant physician. Upon a motion by the defendant physician, the court shall delay the beginning of the criminal and civil trials for not more than thirty (30) days to permit the hearing to take place.

(5) Immunity. A woman upon whom a partial-birth abortion is performed shall not be prosecuted for violations of this section, for conspiracy to violate this section, or for violations of section 18-603, 18-605 or 18-606, Idaho Code, in regard to the partial-birth abortion performed.

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, 1998.

CHAPTER 35
(S.B. No. 1527)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Insurance the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. INSURANCE REGULATION:				
FROM:				
Self-Governing Operating Fund	$2,540,700	$1,530,000	$ 90,200	$4,160,900
Federal Grant Fund	97,100	48,200		145,300
TOTAL	$2,637,800	$1,578,200	$ 90,200	$4,306,200
II. STATE FIRE MARSHAL:				
FROM:				
Self-Governing State Fire Marshal Fund	$ 464,800	$ 263,300	$ 67,100	$ 795,200
GRAND TOTAL	$3,102,600	$1,841,500	$157,300	$5,101,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Insurance is authorized no more than sixty-four and one-half (64.5) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 17, 1998.

CHAPTER 36
(S.B. No. 1526)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF COMMERCE FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Commerce the following amounts from the listed funds to be expended according to designated standard classifications for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$1,690,600	$1,006,800	$58,400		$ 2,755,800
Tourism and Promotion Fund	447,900	2,122,400	23,500	$ 2,514,300	5,108,100
Federal Grant Fund	379,200	133,300	2,500	15,102,900	15,617,900
Miscellaneous Revenue Fund		88,200			88,200
Seminars and Publications Fund		365,500			365,500
TOTAL	$2,517,700	$3,716,200	$84,400	$17,617,200	$23,935,500

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Commerce is authorized no more than fifty-two (52) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 17, 1998.

CHAPTER 37
(H.B. No. 516, As Amended)

AN ACT

RELATING TO TELECOMMUNICATION SERVICES; AMENDING SECTION 62-610, IDAHO CODE, TO PROVIDE FOR APPLICATION OF THE UNIVERSAL SERVICE FUND TO ELIGIBLE TELECOMMUNICATIONS CARRIERS; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-610A, IDAHO CODE, TO PROVIDE THE PURPOSE OF THE ACT; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-610B, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-610C, IDAHO CODE, TO PROVIDE FOR UNIVERSAL SERVICE; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-610D, IDAHO CODE, TO PROVIDE FOR DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-610E, IDAHO CODE, TO PROVIDE FOR DESIGNATION OF SERVICE AND SUPPORT AREAS; AMENDING CHAPTER 6, TITLE 62, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 62-610F, IDAHO CODE, TO PROVIDE FOR HIGH COST SUPPORT, ADMINISTRATION AND TRANSITION; AMENDING SECTION 56-901, IDAHO CODE, TO PROVIDE THAT THE TELECOMMUNICATIONS SERVICE ASSISTANCE PROGRAM SHALL MAXIMIZE SPECIFIED FEDERAL CONTRIBUTIONS TO IDAHO'S LOW-INCOME CUSTOMERS AND TO PROVIDE A DEFINITION; AMENDING SECTION 56-902, IDAHO CODE, TO PROVIDE CORRECT NOMENCLATURE, TO INCREASE THE ASSISTANCE RATE DISCOUNT AND TO PROVIDE FOR WAIVERS TO CARRIERS OF RESIDENTIAL BASIC LOCAL EXCHANGE SERVICE FROM PROVIDING CERTAIN SERVICES; AMENDING SECTION 56-903, IDAHO CODE, TO PROVIDE THAT ASSISTANCE ELIGIBILITY SHALL BE BASED ON INCOME CRITERIA AND TO PROVIDE THAT LISTS OF ELIGIBLE RECIPIENTS SHALL BE PROVIDED TO ELIGIBLE TELECOMMUNICATIONS CARRIERS; AMENDING SECTION 56-904, IDAHO CODE, TO PROVIDE FOR A STATEWIDE MONTHLY SURCHARGE ON EACH END USER'S BUSINESS, RESIDENTIAL AND WIRELESS ACCESS SERVICE, TO PROVIDE FOR ISSUANCE OF ORDERS BY THE PUBLIC UTILITIES COMMISSION, TO PROVIDE FOR A THIRD PARTY ADMINISTRATOR, AND TO PROVIDE FOR REMITTANCE AND DISTRIBUTION OF ASSISTANCE SURCHARGE REVENUES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 62-610, Idaho Code, be, and the same is hereby amended to read as follows:

62-610. UNIVERSAL SERVICE FUND. (1) The commission shall establish a universal service fund (USF) for the purpose of maintaining the universal availability of local exchange service at reasonable rates and to promote the availability of message telecommunications service (MTS) at reasonably comparable prices throughout the state of Idaho.

(2) The USF shall be funded by imposing a statewide end user surcharge on local exchange service and MTS and WATS type services.

(a) The local exchange surcharge shall be a cents per line charge with a business-residential differential equal to the statewide average business-residential price ratio. Providers of local

exchange service shall remit the local exchange surcharge revenues to the fund administrator on a monthly basis, unless less frequent remittances are authorized by order or rule of the commission.

(b) The MTS and WATS surcharge shall be recovered on a percentage basis through a surcharge applied to the monthly bill of each end user or by a cents per minute charge applied to the bills of all end users. Providers of MTS or WATS services shall remit the revenues derived from such surcharge to the fund administrator on a monthly basis, unless less frequent remittances are authorized by order or rule of the commission.

(c) The surcharges set forth in paragraphs (a) and (b) of this subsection shall be collected by all telephone corporations, including telephone corporations subject to the provisions of this chapter and mutual nonprofit and cooperative telephone corporations, providing the services upon which the surcharge is levied.

(3) ~~Telephone--corporations~~ Eligible telecommunications carriers that provide local exchange service and access service for MTS/WATS providers and that have rates for these respective services that meet both of the following criteria shall be eligible for distributions from the USF:

(a) The ~~telephone---corporation's~~ eligible telecommunications carrier's average residence and business local exchange service rates for one-party single line service are in excess of one hundred and twenty-five percent (125%) of the weighted statewide average rates for residence and business local exchange service rates for one-party single line service respectively, and

(b) The ~~telephone--corporation's~~ eligible telecommunications carrier's average per minute charge for MTS/WATS access services it provides is in excess of one hundred percent (100%) of the weighted statewide average for the same or similar MTS/WATS access services.

(4) Distributions from the fund shall be available to the individual ~~telephone-corporations~~ eligible telecommunications carrier in Idaho providing basic local exchange service to meet residual revenue requirements remaining after deducting the revenue generated by all intrastate telecommunication services, from the ~~telephone corporation's~~ eligible telecommunications carrier's total intrastate telecommunication service revenue requirement as determined by the commission, including local exchange priced at one hundred twenty-five percent (125%) or more of the weighted statewide average and MTS/WATS access services priced at one hundred percent (100%) or more of the statewide average and contributions from the federal universal service fund. The commission shall provide, by order, for not less than seventy-five percent (75%) nor more than one hundred percent (100%) of the residual revenue requirement of the individual ~~telephone-corporation~~ eligible telecommunications carrier to be funded by the universal service fund. The commission shall retain its authority to approve rate design consistent with this subsection, but notwithstanding such authority, the commission shall supply full funding for any commission determined revenue requirement. Distributions from the fund shall be made monthly.

(5) The commission shall:

(a) Adopt rules for the implementation and administration of the

universal service fund established in this section;

(b) Determine which telephone corporations meet the eligibility standards;

(c) Provide for the receipt and collection of the surcharge for the universal service fund; and

(d) Provide for the administration and distribution of the fund to ~~telephone corporations~~ eligible telecommunications carriers in a manner determined by the commission.

(6) "Local Exchange Service," as used in section 62-610, Idaho Code, means the provision of access lines to customers with the associated transmission of two-way interactive switched voice communication within a local exchange area.

SECTION 2. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-610A, Idaho Code, and to read as follows:

62-610A. PURPOSE. The purpose of this act is to authorize the Idaho public utilities commission to establish a competitively and technologically neutral funding mechanism which will operate in coordination with federal universal service support mechanisms. All consumers in this state, without regard to their location, should have comparable accessibility to basic telecommunication services at just and reasonable rates.

SECTION 3. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-610B, Idaho Code, and to read as follows:

62-610B. DEFINITIONS. For purposes of section 62-610, Idaho Code, and sections 62-610A through 62-610F, Idaho Code, the following words and phrases shall have the following meanings:

(1) "Eligible telecommunications carrier" means a telecommunications carrier designated by the commission who has the obligation to provide universal service throughout the service area for which the designation is received.

(2) "Fund" means the Idaho telecommunications universal service fund established by the commission pursuant to sections 62-610A and 62-610F, Idaho Code.

(3) The "service area" served by a rural telephone company means the company's "study area(s)" as established by the federal communications commission and the public utilities commission. In the case of a nonrural telecommunications company the service area shall be the eligible telecommunications carrier's current or commission approved service territory.

(4) "Support area" means a geographic area designated by the commission as a high-cost area for which eligible telecommunications carrier(s) serving such area may receive financial assistance from the universal service fund. The commission shall consider population distribution, geographic factors, cost model capabilities and other relevant considerations in making such a determination.

(5) "Telecommunications carrier" means a telephone corporation providing telecommunication services for compensation within this state, and shall, for the purposes of sections 62-610A through 62-610F, Idaho Code, include municipal, cooperative or mutual telephone companies and telecommunications companies providing wireless, cellular, personal communications services and mobile radio services for compensation.

(6) "Universal service" means basic local exchange service and other telecommunication services designated by the commission as services which should be widely available to consumers in all regions of the state at just and reasonable rates.

(7) All other terms, words or phrases shall have the meaning set forth in section 62-603, Idaho Code.

SECTION 4. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-610C, Idaho Code, and to read as follows:

62-610C. UNIVERSAL SERVICE. (1) Universal service is an evolving level of telecommunication services to which consumers in all regions of the state should have access.

(2) The commission shall review the level of telecommunication services within the state on a periodic basis and designate those service(s) which should be made available to consumers by eligible telecommunications carriers to meet their obligation to provide universal service. The commission shall, if services in addition to basic local exchange service are to be designated, consider the extent to which such other telecommunication services:

(a) Have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(b) Are being deployed in public telecommunications networks by telecommunications carriers; and

(c) Are consistent with the public interest, convenience and necessity.

(d) The commission shall also consider definitions of universal service adopted by the federal communications commission pursuant to the telecommunications act of 1996.

SECTION 5. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-610D, Idaho Code, and to read as follows:

62-610D. ELIGIBLE TELECOMMUNICATIONS CARRIERS. (1) Only a telecommunications carrier designated as an eligible telecommunications carrier by the commission shall be eligible to receive universal service fund support.

(2) The commission shall upon its own motion or upon request designate a telecommunications carrier that meets the requirements of subsection (3) of this section as an eligible telecommunications carrier for a service area designated by the commission. Upon request and

consistent with the public interest, convenience and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one (1) telecommunications carrier as an eligible telecommunications carrier for a service area designated by the commission, so long as the requesting telecommunications carrier meets the requirements set forth in this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.

(3) A telecommunications carrier requesting designation as an eligible telecommunications carrier shall, throughout the service area for which the designation is made:

(a) Offer the services which are within the definition of universal service adopted by the commission, using its own facilities or a combination of its own facilities and resale of another telecommunications carrier's services (including the services offered by another eligible telecommunications carrier); and

(b) Advertise the availability of such services and the charges therefor using media of general distribution.

(c) For the purpose of being eligible to receive support from the fund, the eligible telecommunications carrier shall also offer low-income telecommunication services pursuant to chapter 9, title 56, Idaho Code.

(4) The commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one (1) eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one (1) eligible telecommunications carrier shall give no less than thirty (30) days notice to the commission of its intent to relinquish such designation. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one (1) eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served.

SECTION 6. That Chapter 6, Title 62, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-610E, Idaho Code, and to read as follows:

62-610E. DESIGNATING SERVICE AND SUPPORT AREAS. The commission shall designate geographic service areas for the purpose of determining universal service obligations of eligible telecommunications carriers. The commission shall also designate geographic support areas for the purpose of determining areas for which financial assistance shall be made available from the fund to assist eligible telecommunications carriers to meet universal service obligations.

SECTION 7. That Chapter 6, Title 62, Idaho Code, be, and the same

is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 62-610F, Idaho Code, and to read as follows:

62-610F. HIGH-COST SUPPORT -- ADMINISTRATION -- TRANSITION. (1) On or before March 1, 1999, the commission shall establish a universal service fund to enable eligible telecommunications carriers to make universal service widely available to all persons within the state of Idaho at reasonable rates. Eligible telecommunication carriers receiving financial support shall use that support only for the provision, maintenance and upgrading of services and facilities for which the support is intended.

(2) The commission shall initiate a proceeding to determine and adopt the appropriate methodology and mechanisms to collect and distribute financial assistance which are specific, predictable and sufficient in conjunction with federal universal service support mechanisms to preserve and advance universal service within the state of Idaho. Revenue for the fund shall be collected through a uniform universal service fund surcharge as calculated by the commission. The surcharge shall be imposed on end users of all retail telecommunication services originating and terminating within the state of Idaho and collected by the telecommunications carrier providing telecommunication services to such end user. Disbursements from the fund shall be used to defray the costs, as determined by the commission, of providing universal service to customers within a geographic support area. Those costs shall be calculated using a forward-looking cost methodology. When providing disbursements from the fund, the commission shall take such actions as may be necessary to prevent redundant cost recovery by recipients of such funds including the reduction of access charges subject to title 61 or 62, Idaho Code.

(3) The commission shall establish procedures to administer the universal service fund and shall contract with a neutral third party for administration of the fund. The administrator shall perform the duties required by the commission including data gathering, collecting the surcharge revenues, disbursing funds, and notifying the commission of any fund violations.

(4) The commission shall develop procedures and provide for a transition period to begin no earlier than January 1, 2001, for rural telephone companies to replace funding available pursuant to section 62-610, Idaho Code, with the funding mechanism established pursuant to this section for the support of universal service.

SECTION 8. That Section 56-901, Idaho Code, be, and the same is hereby amended to read as follows:

56-901. TELECOMMUNICATIONS SERVICE ASSISTANCE PROGRAM -- DEFINITIONS. (1) A telecommunications service assistance program is hereby established within the department of health and welfare to provide eligible recipients with a reduction in costs of telecommunications services to promote universal service. The program shall be administered by the department of health and welfare in accordance with the provisions of this chapter and rules and regulations promulgated in compliance with chapter 52, title 67, Idaho Code, to administer the

program. The telecommunications service assistance program adopted shall maximize federal "lifeline" and "link-up" contributions to Idaho's low-income customers.

(2) For the purposes of this chapter, a "telecommunications carrier" means a telephone corporation providing telecommunication services for compensation within this state, and shall include municipal, cooperative, or mutual nonprofit telephone companies, and telecommunication corporations providing wireless, cellular, personal communications services and mobile radio services for compensation.

SECTION 9. That Section 56-902, Idaho Code, be, and the same is hereby amended to read as follows:

56-902. ASSISTANCE RATE DISCOUNT -- FORM -- APPLICABLE SERVICES -- AMOUNT -- APPLICATION. (1) ~~On the effective date of this chapter and after the federal communications commission has certified the program, the telephone corporations~~ Telecommunication carriers providing residential basic local exchange service shall provide assistance in the form of a monthly discount to eligible subscribers of residential basic local exchange service of ~~either two~~ three dollars and fifty cents ($~~2.03~~3.50) or ~~the same~~ an amount ~~as~~ authorized by the federal communication commission~~'s subscriber line charge,~~ whichever is greater. In no case will the discount exceed the rate charged for the grade of residential basic local exchange service subscribed to by each eligible individual. The Idaho ~~telephone~~ telecommunications service assistance plan shall only be used to provide for a single residence line at the principal residence of the eligible subscriber.

(2) The providers of residential basic local exchange service and the Idaho department of health and welfare shall comply with all requirements expressly provided by federal order, regulation and statute for eligible subscribers to qualify for the federal "lifeline" and "link-up" telephone assistance program. ~~The Idaho telephone assistance program shall be submitted to the federal communications commission for certification and waiver of the federal subscriber line charge. Upon approval of the waiver and certification, the assistance provided by the local exchange telephone company shall be increased to include a waiver of the subscriber line charge~~ In accordance with federal law, the Idaho public utilities commission may grant waivers to carriers of residential basic local exchange service from providing certain services to eligible subscribers.

SECTION 10. That Section 56-903, Idaho Code, be, and the same is hereby amended to read as follows:

56-903. ASSISTANCE ELIGIBILITY. (1) In order to be ~~considered~~ eligible for the telecommunications service assistance program, an applicant~~s~~ shall be the head of a household~~, shall be sixty (60) years of age or older~~ and ~~participate in the low income home energy assistance program (LIHEAP)~~ shall meet narrowly targeted eligibility criteria based solely on income or factors directly related to income established by the department of health and welfare. The department of health and welfare shall develop procedures for taking applications for assistance and for determining and certifying program eligibility.

Such applications shall contain the disclosure of information authorization necessary to process the assistance discounts. Individuals who qualify for assistance under this chapter must be periodically recertified by the department of health and welfare.

(2) At least once each year the department shall provide an electronic list of names, addresses and, if applicable, telephone numbers of all eligible recipients to each ~~local--exchange--telephone--company~~ telecommunications carrier designated as an eligible telecommunications carrier by the public utilities commission. The ~~local--exchange telephone--company~~ eligible telecommunications carrier shall determine from the list those recipients to whom the company provides service.

SECTION 11. That Section 56-904, Idaho Code, be, and the same is hereby amended to read as follows:

56-904. RECOVERY OF TELECOMMUNICATIONS SERVICE REVENUE REDUCTIONS -- ADMINISTRATION. (1) The Idaho public utilities commission shall determine and impose a ~~company-specific~~ uniform statewide monthly surcharge on each end user's business, ~~and~~ residential and wireless access ~~line-in~~ service. The surcharge shall be an amount sufficient to reimburse each ~~provider~~ carrier of residential basic local exchange service for the total amount of telephone assistance discounts provided as well as the carrier's and the administrator's expenses of administering the plan. Such surcharge shall be effective concurrent with the discounts given eligible subscribers. The surcharge shall be explicitly stated on end user billings but shall not be imposed on eligible subscribers.

(2) The Idaho public utilities commission may adopt rules or issue orders necessary to receive matching federal low income telephone assistance and to implement the Idaho telephone assistance program, including procedures for adjustment and true-up of the subscriber surcharge. The commission may contract with a neutral third party to collect the surcharge, distribute assistance revenues, and perform other tasks as assigned.

(3) ~~The--public-utilities-commission-shall-monitor-the-effectiveness-of-the-telephone-assistance-program-and-issue-annual--reports--to the--legislature~~ All carriers of telecommunications services shall remit the assistance surcharge revenues to the fund administrator designated by the commission on a monthly basis, unless less frequent remittances are authorized by order of the public utilities commission. The administrator shall distribute telecommunication service assistance program revenues monthly to eligible telecommunication carriers in an amount that equals their costs of administering the program and the monthly discount provided to eligible subscribers.

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 17, 1998.

CHAPTER 38
(H.B. No. 689)

AN ACT

RELATING TO PROPERTY TAXATION OF CHARITABLE OR NONPROFIT ENTITIES; AMENDING CHAPTER 6, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-602DD, IDAHO CODE, TO PROVIDE THAT THE OWNER OF CERTAIN PROPERTY SHALL BE ALLOWED TO HAVE TAXES DEFERRED FOR A TIME CERTAIN; TO AUTHORIZE AND DIRECT THE LEGISLATIVE COUNCIL TO APPOINT A COMMITTEE TO UNDERTAKE AND COMPLETE A STUDY OF PROPERTY TAX EXEMPTIONS GRANTED TO CHARITABLE ORGANIZATIONS AND NONPROFIT HOSPITALS, INCLUDING RELATED SATELLITE, ANCILLARY AND OUTREACH FACILITIES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Chapter 6, 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 63-602DD, Idaho Code, and to read as follows:

63-602DD. TAXES ON CERTAIN PROPERTY DEFERRED FOR A TIME CERTAIN. (1) Notwithstanding any other provision of law to the contrary, the owner of property enumerated in this section shall be allowed a deferral of property taxes from January 1, 1997, until March 1, 1999, if the real and personal property owned or leased by either a nonprofit corporation organized pursuant to chapter 3, title 30, Idaho Code, or a charitable entity, and:

(a) The property is used or held for use in the operation of a hospital or medical center, which, for purposes of this section, shall include its related satellite, ancillary and outreach facilities; and

(b) The corporation or entity is recognized by the Internal Revenue Service as exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended, as of January 1 of the year for which an exemption is claimed; and

(c) As respecting 1997 taxes, the corporation or entity duly claimed an exemption in 1997 for such property under either section 63-602C or section 63-602D, Idaho Code; and

(d) As respecting 1998 taxes, the corporation or entity: (i) duly claimed an exemption in 1997 for such property under either section 63-602C or section 63-602D, Idaho Code, and (ii) the corporation or entity claims an exemption in 1998 for the same property claimed to be exempt in 1997.

(2) In addition to the deferral of payment of taxes on hospital property in subsection (1) above, there is further deferred from taxation for said period the real and personal property owned by any other nonprofit corporation organized pursuant to chapter 3, title 30, Idaho Code, or any other charitable entity, if:

(a) The corporation or entity is recognized by the Internal Revenue Service as exempt from federal income taxation pursuant to

section 501(c)(3) of the Internal Revenue Code of 1986, as amended, as of January 1 of the year for which an exemption is claimed; and

(b) As respecting 1997 taxes, the corporation or entity duly claimed an exemption in 1997 for such property under either section 63-602B, 63-602C or 63-602E, Idaho Code; and

(c) As respecting 1998 taxes, the corporation or entity: (i) duly claimed an exemption in 1997 for such property under either section 63-602B, 63-602C or 63-602E, Idaho Code, and (ii) the corporation or entity claims an exemption in 1998 for the same property claimed to be exempt in 1997.

SECTION 2. The Legislative Council is hereby authorized and directed to appoint a committee to undertake and complete a study of property tax exemptions granted to charitable organizations and nonprofit hospitals, including related satellite, ancillary and outreach facilities, and to report to the First Regular Session of the Fifty-fifth Idaho Legislature on necessary legislation to ensure that truly charitable organizations providing bona fide charitable works, and nonprofit or charitable hospitals providing a general public benefit to the community, receive the exemption from property taxes while others, whose principal roles and missions may appear to be charitable, benevolent, or public service oriented on their face but really do not have those primary characteristics as their principal roles, missions and purposes, do not. The committee shall report its findings, recommendations and proposed legislation to the First Regular Session of the Fifty-fifth Idaho Legislature.

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, and is applied retroactively to January 1, 1997.

Approved March 17, 1998.

CHAPTER 39
(H.B. No. 661)

AN ACT

RELATING TO PHYSICIANS AND SURGEONS; AMENDING SECTION 54-1805, IDAHO CODE, TO CHANGE THE COMPENSATION OF MEMBERS OF THE STATE BOARD OF MEDICINE; AND AMENDING SECTION 54-1806A, IDAHO CODE, TO CHANGE THE COMPENSATION FOR MEMBERS OF THE BOARD OF PROFESSIONAL DISCIPLINE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 54-1805, Idaho Code, be, and the same is hereby amended to read as follows:

54-1805. THE STATE BOARD OF MEDICINE ESTABLISHED. (1) There is

hereby established in the department of self-governing agencies a state board of medicine to be composed of ten (10) members. The membership of the state board of medicine as it exists on the effective date of this act is hereby confirmed as members of the board for the terms to which they were originally appointed.

(2) (a) The board shall consist of ten (10) members. The director of the department of law enforcement shall be a member of the board. Seven (7) members shall be physicians who are residents of this state and engaged in the active practice of medicine in this state, and two (2) members shall be public members.

(b) All physician appointments to the board shall be for six (6) year terms. The physician members shall consist of six (6) members who are licensed to practice medicine and surgery in this state and one (1) member who is licensed to practice osteopathic medicine or osteopathic medicine and surgery in this state. Whenever a term of a member of the board who is licensed to practice medicine and surgery expires or becomes vacant, the Idaho medical association shall nominate three (3) persons licensed to practice medicine and surgery for each such vacancy, and forward such nominations to the governor who shall appoint from among such nominees, one (1) person to be a member of the board to fill such vacancy. Whenever a term of the member of the board who is licensed to practice osteopathic medicine or osteopathic medicine and surgery expires or becomes vacant, the Idaho osteopathic association shall nominate three (3) persons licensed to practice osteopathic medicine or osteopathic medicine and surgery for such vacancy, and shall forward the nominations to the governor who shall appoint from among such nominees one (1) person to be a member of the board to fill such vacancy.

(c) All public members shall be appointed by the governor for three (3) year terms. Public members must reside in the state and be persons of integrity and good reputation who have lived in this state for at least five (5) years immediately preceding their appointment, who have never been authorized to practice a healing art, and who have never had a substantial personal, business, professional, or pecuniary connection with a healing art or with a medical education or health care facility, except as patients or potential patients.

(3) Appointments to fill vacancies occurring from some other reason than expiration of a term for which a member was appointed, shall be made in the same manner as hereinabove set forth for the unexpired term. The governor may remove any member of the board from the membership of the board, who is guilty of malfeasance, misfeasance or nonfeasance.

(4) The board shall elect a chairman from its membership. The members of the board except for state employees shall be compensated as provided by section 59-509(~~h~~n), Idaho Code. Five (5) members of the board shall constitute a quorum, and the board may act by virtue of a majority vote of members present at a meeting.

SECTION 2. That Section 54-1806A, Idaho Code, be, and the same is hereby amended to read as follows:

54-1806A. MEDICAL DISCIPLINARY ENFORCEMENT. The board of medicine is authorized to create a board of professional discipline and to delegate to it its role and authority in the enforcement and supervision of professional disciplinary enforcement under this chapter and particularly under sections 54-1810 and 54-1814, Idaho Code, including without limitation the power to make rules ~~and regulations~~ and to provide forms and procedures therefor, to the full extent that the board of medicine is authorized or empowered to act; such board of professional discipline, however, shall not act or be authorized to act in connection with licensing of applicants, except as respects proceedings for reinstatement following voluntary surrender of license while under investigation or prosecution for conduct allegedly improper, or following restriction, suspension or revocation of license in the state of Idaho or under any other duly constituted medical licensing authority of any other state or territory of the United States or of any other nation. By its order therefor, the state board of medicine shall provide as follows respecting a board of professional discipline created under this chapter:

(1) Membership. Said board shall consist of five (5) members appointed by the board of medicine. Initially, it shall consist of two (2) members licensed to practice medicine and surgery in the state of Idaho, whose terms shall expire midnight, June 30, 1979; and two (2) members licensed to practice medicine and surgery in the state of Idaho, whose terms shall expire midnight, June 30, 1978, and one (1) member who is an adult Idaho citizen of good character and reputation who shall not be licensed to practice medicine and surgery in the state of Idaho, whose term shall expire midnight, June 30, 1977. Subsequent terms of all members appointed shall be for three (3) years so that there shall be a rotation of membership of a portion of the said board, each year; provided, the board of medicine may, in its discretion, reappoint members and may but need not appoint members of the board of medicine itself to any or all of the positions of membership upon said board initially and/or from time to time as vacancies occur. Subsequent appointees to the board shall have the qualifications required of the original appointees.

(2) Chairman. The board of medicine shall designate one (1) member of the board of professional discipline as its chairman, and he shall serve and function in that capacity for one (1) year or until his successor is duly appointed, whichever is later.

(3) Quorum. Three (3) members shall constitute a quorum though no meeting of said board shall be held without reasonable prior notice of at least three (3) days to all members, which notice may be given by the chairman or any three (3) members. Notice may be waived unanimously; otherwise, it shall be in writing and state the time, place and purpose of the meeting.

(4) Compensation. Members shall be compensated as provided by section 59-509(~~h~~n), Idaho Code, from the state board of medicine fund for expenses incurred in the course of serving on said board or acting on its behalf.

(5) Conflicts and Disqualification. Members shall disqualify themselves and, on motion of any interested party may, on proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias which ~~interfers~~ interferes with

their fair and impartial service.

(6) Additional Powers of Board of Professional Discipline. In addition to its other powers, the board of professional discipline shall be empowered and authorized:

(a) To initiate or commence proceedings, studies or investigations on its own motion and initiative or to proceed on the request or complaint of any person, whether formally or informally stated and whether or not verified; provided, it may impose reasonable requirements respecting the form, content and sufficiency of complaints invoking its jurisdiction.

(b) To investigate or inquire into misconduct or unprofessional behavior, whether real, apparent or merely suspected; and take such action with respect thereto as it deems best in the interest of the public and justice.

(c) To retain and appoint staff to administer, process and assist in the work assigned it under this chapter or by the board of medicine, including, as deemed appropriate, legal counsel to assist in presentation of matters before it and/or to advise it on matters of law.

(d) To appoint hearing committees to take evidence, conduct hearings and make recommended findings and conclusions to it in any matter or proceeding assigned to the committee, which hearing committees shall be of such number and size as the disciplinary board directs composed of licensed physicians resident and licensed to practice medicine and surgery in Idaho, who shall serve without pay and for such term as the board may specify, not to exceed one (1) year or during the pendency of any matters referred to it, whichever is longer. Proceedings before such committees, and before said board, except as otherwise provided or may be inconsistent with the clear intent or conflicting specific provisions of this act, shall be as provided by the ~~A~~administrative ~~P~~procedures ~~A~~act, chapter 52, title 67, Idaho Code; provided, there shall be no hearings de novo on appellate review as a matter of right.

(e) To make findings respecting matters coming before it or before any hearing committee or authorized hearing officer acting on its behalf, and to make conclusions and enter orders dispositive of such proceedings, including, without limitation, disciplinary orders as provided in and by the Idaho Code respecting misconduct or other grounds for discipline respecting any licensed physician and surgeon licensed to practice medicine and surgery in the state of Idaho, which authority shall, for good cause shown, include the power to suspend, restrict, condition, limit or revoke the license or present or future right or privilege to practice medicine of any physician, surgeon or other person licensed or purporting to be qualified or authorized to practice medicine and surgery in the state of Idaho.

(f) To reprimand by informal admonition any licensed physician and surgeon respecting any matter it finds is minor misconduct. Such reprimand shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(g) To accept the resignation and surrender of license of any physician and surgeon under investigation or prosecution who ten-

ders the same, and to impose terms and conditions in connection therewith as it may deem appropriate in the best interest of the public and of justice.

(h) To order, for good cause, nondisciplinary suspension or transfer to inactive status of any licensed physician and surgeon incapacitated by illness, senility, disability, or addiction to drugs, intoxicants or other chemical or like substances, and to provide terms and conditions therefor, including provisions and conditions controlling reinstatement and any request therefor; provided, this subparagraph shall not be construed to amend or repeal specific legislation expressly dealing with disabled physicians whether heretofore or hereafter enacted by the legislature of the state of Idaho but rather shall be construed as complementary thereto.

(i) To provide by order in general and/or in particular for reciprocal discipline in cases involving the discipline of a licensed physician and surgeon disciplined in any other jurisdiction, provided that such licensee or applicant shall be entitled on due motion and notice to appear and show cause why such order should not apply in his or her case.

(j) To provide for and conduct informal proceedings and to provide rules and practices to encourage fair and expeditious disposition of business, complaints and matters properly coming before it.

(7) Substitution of Board of Professional Discipline in Matters of Discipline and Self-Policing. From and after the effective date of the board of medicine creating and establishing the board of professional discipline, references in the laws of the state of Idaho, including the M~~m~~edical P~~p~~ractices A~~a~~ct, this chapter and the Idaho Code in general, to the board shall, when concerned with matters of self-policing or professional discipline within the medical profession, be deemed and construed to be references to the board of professional discipline.

(8) Openness. Except as specifically otherwise ordered in the interest of justice or the public health, hearings and proceedings before the board of professional discipline shall be open in all cases in which the board has determined that there is probable cause to proceed to formal hearing; provided, as respects reprimands for minor misconduct, proceedings shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless the respondent physician in writing rejects the reprimand within ten (10) days of the order providing therefor, in which cases said matters shall promptly be set for hearing and such proceedings and hearings thereafter shall be public and open unless, as hereinabove authorized, the board for good cause otherwise orders and directs. Determination that there is probable cause to proceed may be made informally by the chairman and also by written expression of a majority of the members of the board of professional discipline. The determination that there is not probable cause to proceed shall be made in writing and a copy forwarded to such person whose complaint may have initiated or commenced the proceedings, which person shall have standing to request en banc review of such determination by the entire committee which shall have jurisdiction to reverse or affirm such determination as in its discretion it

deems in the interest of justice and the public health.

(9) Voluntary Restriction of Licensure. A physician may request in writing to the board of professional discipline a restriction of his license to practice medicine and the board is authorized to grant such request and, if it deems it appropriate to do so, it is granted the authority in such cases to attach conditions to the licensure of the physician to practice medicine within specified limitations. The board is also authorized in such cases thereafter to waive the commencement of proceedings under this act or other provisions of the Mmedical Ppractice Aact if in the interest of justice it determines that such voluntary proceedings have rendered the same unnecessary. Removal of a voluntary restriction on or suspension of licensure to practice medicine shall be subject to the procedures for reinstatement elsewhere in this act, in the Mmedical Ppractice Aact or by rule ~~and regulation~~ of the board of professional discipline provided; also, such reinstatements may be subject to further conditions specially imposed in the individual case as a condition of the order entered therein.

(10) Adjudication of Discipline or Exoneration. At the conclusion of the proceedings the board of professional discipline shall make a determination of the merits and, if grounds therefor are found to exist, may issue its order:

(a) Revoking the respondent physician's license to practice medicine;

(b) Suspending or restricting the respondent physician's license to practice medicine;

(c) Imposing conditions or probation upon the respondent physician and requiring rehabilitation planning, commitment and conditions upon such respondent physician's licensure;

(d) Imposing an administrative fine not to exceed ten thousand dollars ($10,000) for each count or offense; and/or

(e) Assessing costs and attorney's fees against the respondent physician for any investigation and/or administrative proceeding.

If grounds for any of the foregoing are not found to exist, the board shall enter its order so stating and dismissing the proceedings and shall provide the respondent and, if there be one, the complainant or petitioner in the proceedings a true copy thereof.

(11) Temporary Suspension or Restriction Pending Final Order. The board of professional discipline may temporarily suspend or restrict the license of any physician or enter an appropriate order of temporary probation, ex parte, on its own motion or on verified petition of any person, pending further or final order, without prior hearing, simultaneously with or at any time after the institution of proceedings under this chapter or the Mmedical Ppractice Aact, but only if it first finds, on the basis of a responsible showing which satisfactorily demonstrates that the physician in his capacity as such and for reasons set forth by petition, affidavit, or other verified showing, or determined by it in reliance upon other reliable proof, is causing great harm to the public or to any patient or group of patients, or is imminently likely to cause such harm, for which reason he or she and his or her license to practice medicine should be immediately suspended or restricted or he or she should be specially controlled, ~~supsended~~ suspended in or restricted from the practice of medicine. In

such cases, the board may summarily, and ex parte, order temporary conditions of probation, ~~supsension~~ suspension or restriction of said physician and his or her license and authority to practice medicine in the state of Idaho, pending further or final order in the proceedings. Thereafter the physician may, for good cause, request dissolution or amendment of any such temporary order by petition filed with the board of professional discipline, which petition shall be set for prompt hearing before said board or, if necessary and if requested by the affected respondent physician in the interest of early consideration, before a designated hearing officer or special committee appointed by the board for that purpose, which officer or committee shall forthwith hear said matter and report to the board its report and recommendations. The board, consistent with due process, shall rule on such petition for dissolution or amendment with the least amount of delay reasonably possible. Neither the record of the proceeding nor any order entered therein may be used against the respondent physician in any other legal proceeding except upon judicial review as provided elsewhere herein.

(12) Judicial Review. All final decisions by the board of professional discipline shall be subject to judicial review pursuant to the procedures of the administrative procedures act, chapter 52, title 67, Idaho Code.

(13) Protected Action and Communication. There shall be no liability on the part of and no action for damages against:

(a) Any member of the board of professional discipline or the staff or officials thereof for any action undertaken or performed within the scope of the functions of said board or this chapter; or

(b) Any person providing information or testimony to the said board or its staff or officials.

Approved March 17, 1998.

CHAPTER 40
(H.B. No. 640)

AN ACT

RELATING TO THE STATE COUNCIL FOR TECHNOLOGY IN LEARNING; AMENDING SECTION 33-4802, IDAHO CODE, TO INCLUDE THE IDAHO SCHOOL FOR THE DEAF AND BLIND WITHIN THE LEGISLATIVE FINDINGS CONCERNING TECHNOLOGY IN THE CLASSROOM; AMENDING SECTION 33-4803, IDAHO CODE, TO FURTHER DEFINE TERMS; AND AMENDING SECTION 33-4806, IDAHO CODE, TO MAKE THE IDAHO SCHOOL FOR THE DEAF AND BLIND ELIGIBLE FOR PUBLIC SCHOOL TECHNOLOGY GRANTS.

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

SECTION 1. That Section 33-4802, Idaho Code, be, and the same is hereby amended to read as follows:

33-4802. FINDINGS. The legislature hereby finds, determines and

declares that the state of Idaho recognizes the importance of applying technology to meet the public need for an improved and thorough public education system for ~~both~~ elementary and secondary education, education of the hearing or visually impaired at the Idaho school for the deaf and blind, postsecondary and higher education and public libraries.

SECTION 2. That Section 33-4803, Idaho Code, be, and the same is hereby amended to read as follows:

33-4803. DEFINITIONS. As used in this chapter:

(1) "Educational segments" are, individually, the public elementary and secondary school system, the Idaho school for the deaf and blind, the vocational education system, the community colleges, and the four-year colleges and universities.

(2) "IPBS" means the Idaho public broadcasting service.

(3) "Instructional video service providers" means publicly and privately funded television agencies that offer instructional video programming and services without commercial advertising.

(4) "Libraries" means district, city, and school/community libraries as described in chapters 26 and 27, title 33, Idaho Code.

(5) "Technology" means technology-based materials, equipment, systems, and networks.

SECTION 3. That Section 33-4806, Idaho Code, be, and the same is hereby amended to read as follows:

33-4806. PUBLIC SCHOOL TECHNOLOGY GRANTS. There is hereby established the public school technology grant program, which shall make available grants for schools to provide Idaho classrooms, including classrooms at the Idaho school for the deaf and blind, with the equipment and resources necessary to integrate information age technology with instruction and to further connect those classrooms with external telecommunications services. Grant applications shall include a project plan that describes proposed equipment and software purchases; how the proposed equipment and software will be used effectively in the classroom; provision for training teachers to make optimal use of the technology; provision for local matching funds as prescribed by the council; and other elements as prescribed by the council.

Approved March 17, 1998.

CHAPTER 41
(H.B. No. 639)

AN ACT

RELATING TO THE SCHOOL DISTRICT BUILDING ACCOUNT; AMENDING SECTION 33-905, IDAHO CODE, TO PROVIDE THAT FOR PURPOSES OF THE DISTRIBUTION FROM THE LOTTERY REVENUE THE IDAHO SCHOOL FOR THE DEAF AND BLIND SHALL BE CONSIDERED A SCHOOL DISTRICT AND SHALL RECEIVE A DISTRIBUTION.

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

SECTION 1. That Section 33-905, Idaho Code, be, and the same is hereby amended to read as follows:

33-905. SCHOOL DISTRICT BUILDING ACCOUNT -- PAYMENTS TO ACCOUNT -- MONEYS APPROPRIATED TO STATE BOARD -- APPLICATION FOR MONEYS -- PAYMENTS TO DISTRICTS -- REPORTS ON APPLICATIONS -- USES OF MONEYS. 1. The state of Idaho, recognizing its responsibility to establish and maintain a general, uniform and thorough system of public, free common schools, in an effort to partially fulfill this responsibility, hereby creates and establishes the school district building account in the state treasury. The school district building account shall have paid into it such appropriations or revenues as may be provided by law.

2. Moneys in the school district building account are hereby appropriated to and may be expended by the state board of education at any time for the purposes provided in this section, any provision of chapter 35, title 67, Idaho Code, or chapter 36, title 67, Idaho Code, notwithstanding.

3. (a) As to any moneys in the account other than lottery dividends distributed pursuant to subsection 4. of this section, the board of trustees of any school district may apply to the state board of education to receive a payment or payments from the school district building account; provided, a district demonstrates to the state board of education that it has a substantial and serious need based upon the district's classroom student-teacher ratios, past efforts to levy for such construction, physical condition of existing structures, and the total assessed market value of the district, all of which shall be further defined by actual need criteria established by the state board of education.

(b) When an application for moneys from the account is approved by the state board of education, the state board shall inform the school district that the application has been approved, citing the amount approved for payment and an estimate of the time when the payment can actually be made to the school district.

4. By not later than August 31, moneys in the account pursuant to distribution from section 67-7434, Idaho Code, the lottery dividends and interest earned thereon, shall be distributed to each of the several school districts, in the proportion that the average daily attendance of that district for the previous school year bears to the total average daily attendance of the state during the previous school year. For the purposes of this subsection 4. only, the Idaho school for the deaf and blind shall be considered a school district, and shall receive a distribution based upon the average daily attendance of the school. Average daily attendance shall be calculated as provided in section 33-1002 4., Idaho Code.

5. All payments from the school district building account shall be paid out directly to the school district in warrants drawn by the state controller upon presentation of proper vouchers from the state board of education. Pending payments out of the school district building account, the moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho

Code, with respect to other idle moneys in the state treasury. Interest earned on the investments shall be returned to the school district building account.

6. Payments from the school district building account received by a school district may be used by the school district for the purposes authorized in section 33-1102, Idaho Code.

7. (a) By not later than December 1, each school district shall report to the state department of education the projects on which moneys received from the school district building account were expended. The state department of education shall transmit a summary of such reports to the legislature by not later than January 15 of the following year.

(b) By not later than December 1, each school district shall report to the state department of education the planned uses for the moneys received from the school district building account. The state department of education shall transmit a summary of the reports to the legislature by not later than January 15 of the following year.

Approved March 17, 1998.

CHAPTER 42
(H.B. No. 541)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3021, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 63-3022, IDAHO CODE, TO DELETE PROVISIONS RELATING TO INTEREST OFFSETS, TO ALLOW CERTAIN DEDUCTIONS FOR CORPORATIONS IN A COMBINED REPORT AND TO DELETE AN OBSOLETE PROVISION; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3022M, IDAHO CODE, TO PROVIDE FOR EXPENSES AND INTEREST RELATING TO TAX EXEMPT INCOME; AMENDING SECTION 63-3026A, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3027, IDAHO CODE, TO PROVIDE FOR EXPENSES AND INTEREST RELATING TO NONBUSINESS INCOME, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE A TECHNICAL CORRECTION; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3021, Idaho Code, be, and the same is hereby amended to read as follows:

63-3021. NET OPERATING LOSS. (a) The term "net operating loss" means the amount by which Idaho taxable income, after making the modifications specified in subsection (b) of this section, is less than zero.

(b) Add the following amounts:

(1) The amount of any net operating loss deduction included in Idaho taxable income.

(2) In the case of a taxpayer other than a corporation:
(i) Any amount deducted due to losses in excess of gains from sales or exchanges of capital assets; and
(ii) Any deduction for long-term capital gains provided by this chapter.
(3) Any deduction allowed under section 151 of the Internal Revenue Code (relating to personal exemption) or any deduction in lieu of any such deduction.
(4) Any deduction for the standard or itemized deductions provided for in section 63 of the Internal Revenue Code, or section 63-3022(~~l~~k), Idaho Code, except for any deduction allowable under section 165(c)(3) of the Internal Revenue Code (relating to casualty losses) pertaining to property physically located inside Idaho at the time of the casualty.

SECTION 2. That Section 63-3022, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022~~L~~M, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(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, other than those issued by the state of Idaho, its cities and political subdivisions, exempt from federal income tax under the Internal Revenue Code, less applicable amortization.~~

~~(1) In the case of a corporation whose income is taxable under this chapter, no deduction shall be allowed for interest on indebtedness incurred or continued to purchase after January 1, 1983, or to carry obligations acquired after January 1, 1983, the interest of which is wholly exempt from the taxes imposed under this chapter. The amount of interest on indebtedness thus incurred or continued shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as the taxpayer's average adjusted basis of the obligations mentioned in the preceding sentence bears to such average adjusted basis for all assets of the taxpayer, or, at the option of the taxpayer, an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as the taxpayer's interest income from the obligations mentioned in the preceding sentence bears to the taxpayer's total income for the taxable year.~~

~~(2) In the case of a corporation whose Idaho taxable income is computed pursuant to section 63-3027, Idaho Code, the interest expense deductible shall be an amount equal to interest and dividend income subject to apportionment, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income not subject to apportionment. Interest expense not included in the preceding sentence shall be directly offset~~

~~against-interest-and-dividend-income-not-subject-to-apportionment. This--provision-shall-not-apply-to-dividend-income-excluded-pursuant-to-section-63-3027C(c)-and-(e),-Idaho-Code.~~

~~(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.

(~~c~~b) Add the net operating loss deduction used in arriving at taxable income.

(~~d~~c) (1) A net operating loss for any taxable year commencing on and after January 1, 1990, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars ($100,000) to the three (3) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the three (3) preceding years may be subtracted in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the three (3) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The term "income" as used in this subsection (~~d~~c) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code.

(2) Net operating losses incurred by a corporation during a year in which such corporation did not transact business in Idaho or was not included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, may not be subtracted. Net operating losses incurred by a person, other than a corporation, in business activities not taxable by Idaho may not be subtracted.

(~~e~~d) In the case of a corporation, add the amount deducted under the provisions of sections 243(a) and (c), 244, 245 and 246A of the Internal Revenue Code (relating to dividends received by corporations) as limited by section 246(b)(1) of said code.

(~~f~~e) In the case of a corporation, subtract an amount determined under section 78 of the Internal Revenue Code to be taxable as dividends.

(~~g~~f) 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.

(~~h~~g) In the case of corporations and partnerships, add Idaho taxable income of nonresident officers, directors, shareholders, partners or members to the extent such income is attributed to the corporation or partnership in section 63-3022L, Idaho Code.

(~~i~~h) For the purpose of determining the Idaho taxable income of the beneficiary of a trust or of an estate, distributable net income as defined for federal tax purposes shall be corrected for the other

adjustments required by this section. In the event that a nonresident beneficiary of a trust or estate fails to file an Idaho income tax return reporting all or any part of distributable net income taxable in Idaho or fails to pay any tax due thereon, the trust or estate making the payment or distribution shall be taxable upon the amount of such distribution or payment at the rates established by section 63-3024, Idaho Code.

(~~j~~i) In the case of an individual who is on active duty as a full-time officer, enlistee or draftee, with the armed forces of the United States, which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid by the armed forces of the United States for services performed outside this state. The deduction is allowed only to the extent such income is included in taxable income, and provided that appropriate adjustments shall be made in determining the deductions and exemptions allowed pursuant to section 63-3026A(4), Idaho Code.

(~~k~~j) In the case of a corporation, add any capital loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho unless the corporation was included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code. In the case of persons, other than corporations, add any capital loss deducted which was incurred in business activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to an S corporation or partnership under this section, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (~~d~~c) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(~~l~~k) In the case of an individual, there shall be allowed as a deduction from gross income either (1) or (2) at the option of the taxpayer:

(1) a. The standard deduction as defined in section 63, Internal Revenue Code, plus contributions made to the state of Idaho for credit to the medical assistance account, if such contributions were not previously subtracted in arriving at taxable income, plus

b. Itemized expenditures of not to exceed one thousand dollars ($1,000) per cared for member incurred in providing personal care services to or for an immediate member of the taxpayer's family; such services may be provided either in the taxpayer's home or the family member's home; personal care services shall be as defined in chapter 56, title 39, Idaho Code, but the cared for member need not be medicaid eligible for the purposes of this section only, if he substantially meets all of the other requirements of chapter 56, title 39, Idaho Code; in order for the deduction under this paragraph to be allowed, the expenditures claimed must not have been reimbursed by medicare, medicaid or private insurance, and such expenditures must not have been previously subtracted in arriving at taxable income.

(2) a. Itemized deductions as defined in section 63 of the Internal Revenue Code except state income taxes as specified

in section 164 of the Internal Revenue Code, plus

b. Contributions made to the state of Idaho for credit to the medical assistance account, if such contributions were not previously subtracted in arriving at taxable income, plus

c. Itemized expenditures of not to exceed one thousand dollars ($1,000) per cared for member incurred in providing personal care services to or for an immediate member of the taxpayer's family; such services may be provided either in the taxpayer's home or the family member's home; personal care services shall be as defined in chapter 56, title 39, Idaho Code, but the cared for member need not be medicaid eligible for the purposes of this section only, if he substantially meets all of the other requirements of chapter 56, title 39, Idaho Code; in order for the deduction under this paragraph c. to be allowed, the expenditures claimed must not have been reimbursed by medicare, medicaid or private insurance, and such expenditures must not have been previously subtracted in arriving at taxable income.

(~~m~~l) Deduct any amounts added to gross income under section 87 of the Internal Revenue Code for tax credits allowable to the taxpayer under section 40 of the Internal Revenue Code.

(~~n~~m) Add the taxable amount of any lump sum distribution deducted from gross income pursuant to section 402(d)(3) of the Internal Revenue Code. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(~~o~~n) Deduct any amounts included in gross income under the provisions of section 86 of the Internal Revenue Code relating to certain social security and railroad benefits.

(~~p~~o) In the case of a self-employed individual, deduct the actual cost of premiums paid to secure worker's compensation insurance for coverage in Idaho, if such cost has not been deducted in arriving at taxable income.

~~(q)--Add--the--amount--claimed-as-a-credit-under-section-63-3029G, Idaho-Code,-if-previously-deducted-in-arriving-at-taxable-income.~~

SECTION 3. That Chapter 30, 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 63-3022M, Idaho Code, and to read as follows:

63-3022M. EXPENSES AND INTEREST RELATING TO TAX EXEMPT INCOME. For taxable years commencing on and after January 1, 1998:

(1) 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.

(2) Subtract interest and dividends received or accrued during the taxable year from securities issued:

(a) By the federal government and its instrumentalities to the extent included in taxable income and not subject to taxation by this state, and

(b) By the state of Idaho, its cities and political subdivisions, exempt from federal income tax under the Internal Revenue Code.

(3) No deduction shall be allowed for interest on indebtedness incurred or continued to purchase or to carry obligations the interest of which is not subject to the taxes imposed under this chapter. The amount of interest on indebtedness thus incurred or continued shall be an amount which bears the same ratio to the aggregate amount allowable (determined without regard to this section) to the taxpayer as a deduction for interest for the taxable year as the taxpayer's interest income from the obligations mentioned in the preceding sentence bears to the taxpayer's total income for the taxable year.

(4) No deduction shall be allowed for expenses (other than interest) attributable to interest or dividend income which is not subject to the taxes imposed under this chapter.

(5) A deduction shall be allowed for expenses disallowed under sections 265 and 291 of the Internal Revenue Code to the extent such expenses are attributable to 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 and not excluded under subsection (3) or (4) of this section. The deduction under this subsection shall not exceed the amount of interest and dividend income added pursuant to subsection (1) of this section less interest and dividend income from the state of Idaho, its cities and political subdivisions, subtracted pursuant to subsection (2) of this section.

SECTION 4. That Section 63-3026A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3026A. COMPUTING IDAHO TAXABLE INCOME OF PART-YEAR OR NONRESIDENT INDIVIDUALS, TRUSTS AND ESTATES. (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(2) For part-year resident individuals, trusts or estates the term "Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

(ii) The ownership or disposition of any interest in real or tangible personal property located in this state;

(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

(iv) A resident estate or trust;

(v) A nonresident estate or trust to the extent the income and deductions of the nonresident estate or trust were derived from or related to sources within this state;

(vi) The conduct of pari-mutuel wagering, charitable gaming or any other form of gambling taking place within this state, except as expressly limited in section 67-7439, Idaho Code.

(b) Notwithstanding the provisions of subsection (3)(a) of this section, transactions and investments made, placed or directed by Idaho resident registered broker-dealers and investment advisers or institutions exempt from registration under the Idaho securities act in securities listed with or through the New York Stock Exchange, the American Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director of the department of finance which generate dividends, interest, capital gains or similar profits or returns for nonresidents not otherwise subject to Idaho income taxation shall not result in the intangible property being deemed to have a situs outside the domicile of the owner.

(c) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or related to sources within this state.

(d) The income of nonresident or part-year resident individuals, trusts or estates which is derived from or related to sources both within and without this state shall be attributable to this state in the manner prescribed in the rules of the state tax commission.

(4) In computing the Idaho taxable income of a part-year or nonresident individual, trust or estate, the standard deduction or itemized deductions, as defined in section 63-3022(~~l~~k), Idaho Code, if applicable, and the exemptions, as defined in section 151 of the ~~i~~Internal ~~r~~Revenue ~~c~~Code or any allowance in lieu of such deduction, shall be allowed in the proportion that paragraph (a) of this subsection bears to paragraph (b) of this subsection:

(a) The Idaho taxable income of the taxpayer modified as follows:

(i) No allowance shall be made for either the standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or

any allowance in lieu of such deduction.

(b) The Idaho taxable income as would be calculated for a resident of Idaho modified as follows:

(i) No allowance shall be made for either a standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction;

(iii) Compensation for active military service in the armed forces shall not be deducted;

(iv) Income earned within the original exterior boundaries of any federally created Indian reservation by an enrolled Indian in a federally recognized Indian tribe on a federally recognized Indian reservation shall be added if not otherwise included.

(5) An adjustment may be made to eliminate distortions in the amount of net income attributable to a taxpayer's activities within the state of Idaho. Such deductions shall be limited to circumstances involving itemized deductions as referred to in subsection (4) of this section and which reflect:

(a) A failure to reflect the net income or deduction after reimbursements have been received; or

(b) A failure to reflect the net amount of mortgage interest income or expense from activities within Idaho.

(6) For the purposes of subsections (1) and (2) of this section, deductions and adjustments allowed in computing the Idaho taxable income of nonresident and part-year resident individuals, trusts and estates shall be prescribed in the rules of the state tax commission. Such rules shall be based upon:

(a) Whether or not the deduction or adjustment is related to the production of income reportable to Idaho;

(b) Whether or not the deduction or adjustment is related to income received, expenses paid, or events of tax consequence which occurred during a portion of a taxable year that the taxpayer was domiciled in or residing in Idaho; or

(c) Any other appropriate basis for making the adjustment. An "appropriate basis" is one which the state tax commission finds is needed to insure that the amount of Idaho taxable income is fairly and reasonably related to a taxpayer's activities in this state.

SECTION 5. That Section 63-3027, Idaho Code, be, and the same is hereby amended to read as follows:

63-3027. COMPUTING IDAHO TAXABLE INCOME OF MULTISTATE OR UNITARY CORPORATIONS. The Idaho taxable income of any multistate or unitary corporation transacting business both within and without this state shall be computed in accordance with the rules set forth in this section:

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

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from the acquisition, management, or disposition of tangible and intangible property when such acquisition,

management, or disposition constitute integral or necessary parts of the taxpayer's trade or business operations. Gains or losses and dividend and interest income from stock and securities of any foreign or domestic corporation shall be presumed to be income from intangible property, the acquisition, management, or disposition of which constitute an integral part of the taxpayer's trade or business; such presumption may only be overcome by clear and convincing evidence to the contrary.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) "Nonbusiness income" means all income other than business income.

(5) "Sales" means all gross receipts of the taxpayer not allocated under subsections (d) through (h) of this section.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) Any taxpayer having income from business activity which is taxable both within and without this state shall allocate and apportion such net income as provided in this section.

(c) For purposes of allocation and apportionment of income under this section, a taxpayer is taxable in another state if:

(1) In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(d) Rents and royalties from real or tangible personal property, capital gains interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (e) through (h) of this section. Allocable nonbusiness income shall be limited to the total nonbusiness income received which is in excess of any related expenses which have been allowed as a deduction during the taxable year. In the case of allocable nonbusiness interest or dividends, related expenses include interest on indebtedness incurred or continued to purchase or carry assets on which the interest or dividends are nonbusiness income.

(e) (1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state, or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a

state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(f) (1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property had a situs in this state at the time of the sale, or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state, unless such gains and losses constitute business income as defined in this section.

(g) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state unless such interest or dividends constitute business income as defined in this section.

(h) (1) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the payer in this state, or

(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patent product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(i) (1) Notwithstanding the election allowed in Article III.1 of the multistate tax compact enacted as section 63-3701, Idaho Code, all business income shall be apportioned to this state under subsection (j) of this section by multiplying the income by a frac-

tion, the numerator of which is the property factor plus the payroll factor plus two (2) times the sales factor, and the denominator of which is four (4), except as provided in paragraph (2) of this subsection.

(2) If a corporation, or a parent corporation of a combined group filing a combined report under sections 63-3027 and 63-3701, Idaho Code, is an electrical corporation as defined in section 61-119, Idaho Code, or is a telephone corporation as defined in section 62-603, Idaho Code, all business income of the corporation shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

(j) (1) In the case of a corporation or group of corporations combined under subsection (t) of this section, Idaho taxable income or loss of the corporation or combined group shall be determined as follows:

(i) from the income or loss of the corporation or combined group of corporations, subtract any nonbusiness income, and add any nonbusiness loss, included in the total,

(ii) multiply the amounts determined under paragraph (1)(i) of this subsection by the Idaho apportionment percentage defined in subsection (i) of this section, taking into account, where applicable, the property, payroll and sales of all corporations, wherever incorporated, which are included in the combined group. The resulting product shall be the amount of business income or loss apportioned to Idaho.

(2) To the amount determined as apportioned business income or loss under paragraph (1)(ii) of this subsection, add nonbusiness income allocable entirely to Idaho under the provisions of this section or subtract nonbusiness loss allocable entirely to Idaho under this section. The resulting sum is the Idaho taxable income or loss of the corporation.

(3) In the case of a corporation not subject to subsection (t) of this section, the income or loss referred to in paragraph (1)(i) of this subsection, shall be the taxable income of the corporation after making appropriate adjustments under the provisions of section 63-3022, Idaho Code.

(k) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(1) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(m) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the state tax commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the

average value of the taxpayer's property.

(n) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(o) Compensation is paid in this state if:

(1) The individual's service is performed entirely within the state; or

(2) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(3) Some of the service is performed in the state and

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(ii) the base of operations or the place from which the 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.

(p) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(q) Sales of tangible personal property are in this state if:

(1) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale, or

(2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and

(i) the purchaser is the United States government or

(ii) the taxpayer is not taxable in the state of the purchaser.

(r) Sales, other than sales of tangible property, are in this state, if:

(1) The income-producing activity is performed in this state; or

(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(s) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the state tax commission may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) Separate accounting, provided that only that portion of general expenses clearly identifiable with Idaho business operations shall be allowed as a deduction;

(2) The exclusion of any one (1) or more of the factors;

(3) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(t) For purposes of this section and sections 63-3027B through 63-3027E, Idaho Code, the income of two (2) or more corporations, wherever incorporated, the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners, when necessary to accurately reflect income, shall be allocated or apportioned as if the group of corporations were a single corporation, in which event:

(1) The Idaho taxable income of any corporation subject to taxation in this state shall be determined by use of a combined report which includes the income, determined under subparagraph (2) of this subsection, of all corporations which are members of a unitary business, allocated and apportioned using apportionment factors for all corporations included in the combined report and methods set out in this section. The use of a combined report does not disregard the separate corporate identities of the members of the unitary group. Each corporation which is transacting business in this state is responsible for its apportioned share of the combined business income plus its nonbusiness income or loss allocated to Idaho, minus its net operating loss carryover or carryback.

(2) The income of a corporation to be included in a combined report shall be determined as follows:

(i) for a corporation incorporated in the United States or included in a consolidated federal corporation income tax return, the income to be included in the combined report shall be the taxable income for the corporation after making appropriate adjustments under the provisions of section 63-3022, Idaho Code;

(ii) for a corporation incorporated outside the United States, but not included in subsection (t)(2)(i) of this section, the income to be included in the combined report shall be the net income before income taxes of such corporation stated on the profit and loss statements of such corporation which are included within the consolidated profit and loss statement prepared for the group of related corporations of which the corporation is a member, which statement is prepared for filing with the United States securities and exchange commission. If the group of related companies is not required to file such profit and loss statement with the United States securities and exchange commission, the profit and loss statement prepared for reporting to shareholders and subject to review by an independent auditor may be used to obtain net income before income taxes. In the alternative, and subject to reasonable substantiation and consistent application by the group of related companies, adjustments may be made to the profit and loss statements of the corporation incorporated outside the United States, if necessary, to conform such statements to tax accounting standards as required by the Internal Revenue Code as if such corporation were incorporated in the United States and required to file a federal income tax return, subject to appropriate adjustments under the provisions of section 63-3022, Idaho Code; and

(iii) if the income computation for a group under paragraphs

(i) and (ii) of this subsection results in a loss, such loss shall be taken into account in other years, subject to the provisions of subsections (~~c~~b) and (~~d~~c) of section 63-3022, Idaho Code.

(u) If compensation is paid in the form of a reasonable cash fee for the performance of management services directly for the United States government at the Idaho national engineering laboratory, separate accounting for that part of the business activity without regard to other activity of the taxpayer in the state of Idaho or elsewhere shall be required; provided that only that portion of general expenses clearly identifiable with Idaho business operations of that activity shall be allowed as a deduction.

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, and retroactively to January 1, 1998.

Approved March 17, 1998.

CHAPTER 43
(H.B. No. 539)

AN ACT

RELATING TO QUALIFICATIONS FOR CIGARETTE WHOLESALER'S LICENSE; AMENDING SECTION 63-2504, IDAHO CODE, TO SPECIFY REQUIREMENTS FOR ISSUANCE OF A CIGARETTE WHOLESALER'S LICENSE TO A CORPORATION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 63-2504, Idaho Code, be, and the same is hereby amended to read as follows:

63-2504. QUALIFICATIONS OF WHOLESALERS. No wholesaler may be issued a permit or otherwise engage in and carry on business as a wholesaler of cigarettes until he first shall qualify under the rules ~~and regulations~~ promulgated by the state tax commission with reference to financial ability. Such restriction shall not apply to any wholesaler lawfully in business on the date this act is passed and approved. In addition no wholesaler's permit shall be issued unless:

(1) in the case of a natural person, he be an Idaho resident, or

(2) in case of a corporation, it is an Idaho corporation or a foreign corporation ~~qualified with~~ holding a certificate of authority issued by the secretary of state ~~to do business in Idaho as a foreign corporation and maintaining a physical business office within this state~~ and maintaining a registered office and registered agent pursuant to the Idaho business corporation act, chapter 1, title 30, Idaho Code.

Approved March 17, 1998.

CHAPTER 44
(H.B. No. 536)

AN ACT

RELATING TO WATER MEASUREMENT DISTRICTS; AMENDING SECTION 42-707, IDAHO CODE, TO CHANGE THE AUTHORIZED DATES FOR HOLDING ANNUAL WATER MEASUREMENT DISTRICT MEETINGS; AND AMENDING SECTION 42-710, IDAHO CODE, TO PERMIT CHANGES IN THE HYDROGRAPHER'S TERM OF SERVICE.

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

SECTION 1. That Section 42-707, Idaho Code, be, and the same is hereby amended to read as follows:

42-707. DISTRICT MEETINGS -- DISTRICT HYDROGRAPHER AND ASSISTANTS -- ELECTION -- REMOVAL -- OATH AND BOND -- ADVISORY COMMITTEE -- DISTRICT TREASURER. (1) There shall be held, except as provided in subsection (2) of this section, on the first Monday in November in each year commencing at two o'clock P.M., a meeting of all persons owning or having the use of a water right in the waters of the stream or water supply comprising such district. For purposes of this chapter, a water right is a right which has been adjudicated by the court, is represented by valid permit or license issued by the department of water resources, or is based upon diversion and beneficial use and is recorded by a claim to water right on file with the department of water resources.

(2) Such meeting shall be held at some place within the water measurement district, or at some nearby location convenient to a majority of those entitled to vote thereat, which place shall be designated by the director of the department of water resources. The director shall provide notice of district meetings by publication of the time, date, location and purpose of the meeting in a newspaper or newspapers in general circulation in the district. Published notice shall be made once per week for two (2) consecutive weeks with the second notice appearing at least thirty (30) and not more than sixty (60) days prior to the meeting. The appropriators or water users of any water measurement district may, by resolution adopted at an annual meeting or at a special meeting properly called for that purpose, change the time of day when the meeting shall commence or change the date for annual meetings in subsequent years to any day, except Saturday or Sunday, between the first Monday of November and the ~~third~~ fourth Monday in ~~December~~ February or change both the time and the date. At an annual meeting the appropriators or water users may adopt resolutions to assure or improve the measurement of the waters of the district within state law, and may provide that such resolutions shall continue from year to year.

(3) At the meeting of the appropriators or water users of a district there shall be elected a qualified district hydrographer for such water measurement district, who may be authorized to employ such other qualified regular assistants as the appropriators or water users shall deem necessary, and who, upon qualification and appointment by

the director of the department of water resources, shall be responsible for measurement of water as in this chapter required within the water measurement district, and the appropriators or water users shall, prior to the election of such district hydrographer and approval of the employment of assistants, fix the compensation to be paid them during the time actually engaged in the performance of their duties. Qualifications for the district hydrographer and hydrographer's assistants include:

(a) Any combination of education or experience that demonstrates to the satisfaction of the director of the department of water resources the applicant's ability to conduct water measurements, to perform mathematical computations associated with water measurements, to keep complete and accurate records of water measurements, to be familiar with common terminology associated with water rights and water diversion and use, and to be able to read public land legal descriptions, translate written public land legal descriptions to map locations and find those locations on the land; and

(b) In addition, the district hydrographer's qualifications shall include any combination of education or experience that demonstrates to the satisfaction of the director of the department of water resources the applicant's ability to keep financial records as those records pertain to the expenses of the district, prepare a budget, and prepare assessments and billings for the appropriators or water users in the district.

(4) The appropriators or water users may, by resolution, authorize the district hydrographer to utilize, through a memorandum of understanding, water delivery organizations as hydrographer's assistants.

(5) Voting shall be by majority vote of the appropriators or water users present at the meeting unless one (1) or more appropriators or water users requests voting using the procedure which follows in this subsection. In such case the meeting chairman shall appoint a credentials committee to determine the number of votes each appropriator or water user present is authorized to cast. If requested, each person present, owning or having the use for the ensuing season of any water right in the stream or water supply comprising such water measurement district shall be entitled to a number of votes equal to the average annual dollar amount and any fraction thereof assessed for that person's qualifying water right for the previous five (5) years, or such lesser number of years as the right has been assessed. If a right has not previously been assessed, a person present, owning or having the use of the right for the ensuing season shall be entitled to a number of votes equal to the dollar amount and any fraction thereof which the right would have been assessed had it existed and been used during the previous year.

(6) At such meeting the appropriators or water users shall choose a meeting chairman and meeting secretary and shall determine the manner and method of electing the district hydrographer. Within five (5) days after such meeting the meeting chairman and meeting secretary shall forward a certified copy of the minutes of such meeting to the department of water resources. The meeting chairman, or the meeting secretary if the meeting chairman from the immediately preceding

annual meeting is not present, shall call the meeting to order and preside over the election of officers for the meeting.

(7) At such meeting the appropriators or water users may choose an advisory committee to be composed of members selected as may be determined at the meeting, which committee shall serve as advisors to the director and the district hydrographer in matters pertaining to the measurement of water within the district. The advisory committee may be authorized to carry out policies pertaining to the measurement of water within the district as set forth in resolutions duly adopted by the appropriators or water users at the annual meeting or at a special meeting.

(8) A corporation or a water delivery organization including, but not limited to a corporation, a water company, an irrigation district, an irrigation company or a canal company, shall be considered a person for the purpose of this section and shall cast its vote by someone to be designated by the corporation or water delivery organization.

(9) Should the meeting not be held, or should the district hydrographer not be elected or the district hydrographer's compensation not be fixed as above provided, then the director of the department of water resources is authorized to appoint a district hydrographer and fix the district hydrographer's compensation.

(10) The director of the department of water resources may remove any district hydrographer whenever such district hydrographer fails to perform the district hydrographer's duty, upon the director's own motion or upon complaint in that respect being made to the director in writing, by one (1) person owning or having the right to the use of a water right in such district provided, that upon investigation the director, after a hearing with the other appropriators or water users of the district, which shall be held in the district or at some location convenient to the appropriators or water users of the district, finds such charge to be true. If at any time a vacancy occurs, for whatever reason, in the position of district hydrographer, the director may appoint a successor for the unexpired term.

(11) Before entering upon the duties of the district hydrographer's office, the district hydrographer shall take and subscribe an oath before some officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of the district hydrographer's office, as provided in section 42-709, Idaho Code, and shall file that oath with the department of water resources. Upon qualification and appointment by the director of the department of water resources, the actions taken by a district hydrographer in fulfillment of the duties of his office are covered by the state group surety bond as provided in sections 59-801 through 59-804, Idaho Code.

(12) The director shall call a special meeting of the appropriators or water users of a district upon receipt of a written request for such meeting from a majority of the members of the advisory committee for a district, a written request from appropriators or water users representing thirty percent (30%) or more of the votes cast at the last regular annual meeting, a written request from the district hydrographer or on the director's own motion if the director determines a meeting is necessary to address matters that cannot be delayed until the next regular annual meeting. Notice of the time, place and purpose of the special meeting shall be given by the direc-

tor in the manner provided in subsection (2) of this section or by regular mail to all holders of rights to the use of the waters of such district known to the director.

(13) The appropriators or water users may, by resolution, authorize the district hydrographer to acquire, hold and dispose of such real and personal property, equipment and facilities in the name of the water measurement district as necessary for the proper measurement of water and shall provide that all such real and personal property shall remain in the custody of the district hydrographer and the district hydrographer's successor.

(14) At such meeting the appropriators or water users shall choose a district treasurer to be selected as may be determined at the meeting. The district treasurer shall assume the duties specified in section 42-715, Idaho Code. If a water measurement district treasurer is not selected at the annual meeting, and one is found to be necessary, the director of the department of water resources shall appoint a water measurement district treasurer.

SECTION 2. That Section 42-710, Idaho Code, be, and the same is hereby amended to read as follows:

42-710. DISTRICT HYDROGRAPHER'S TERM OF SERVICE. A district hydrographer shall serve throughout the year from January 1 through December 31. The appropriators or water users of any water measurement district may, by resolution adopted at an annual meeting or at a special meeting properly called for that purpose, change the hydrographer's term of service to correspond with consecutive annual meeting dates or other annual dates as determined by the appropriators or water users. Assistants to the district hydrographer shall serve when necessary to make the water measurements required of the district or for such period of time as specified by resolution at any annual meeting of the appropriators or water users, provided, the period of time set by resolution is sufficient for the assistants to make all needed water measurements in the district.

Approved March 17, 1998.

CHAPTER 45
(H.B. No. 523)

AN ACT

RELATING TO SALES AND USE TAXES; AMENDING SECTION 63-3627, IDAHO CODE, TO PROVIDE RESPONSIBILITY FOR PAYMENT OF TAXES IMPOSED UPON OR COLLECTED BY ANY CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 63-3627, Idaho Code, be, and the same is hereby amended to read as follows:

63-3627. RESPONSIBILITY FOR TAXES -- CORPORATIONS, PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. (a) Every person with the duty to account for and pay over any tax ~~imposed by~~ which is imposed upon or required to be collected by any corporation, partnership or limited liability company under this ~~act~~ chapter on behalf of ~~a~~ such corporation, partnership or limited liability as an officer, member or employee of ~~the~~ such corporation, ~~or on behalf of a~~ partnership ~~as a member or employee of a partnership~~ or limited liability company, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

(b) Any such individual required to collect, truthfully account for, and pay over any tax imposed by this ~~title~~ chapter who wilfully fails to collect such tax, or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 63-3046 (b), Idaho Code, for any offense to which this subsection (b) is applicable.

Approved March 17, 1998.

CHAPTER 46
(H.B. No. 452)

AN ACT

RELATING TO THE IDAHO PHYSICAL THERAPY ACT; AMENDING SECTION 54-2208, IDAHO CODE, TO PROVIDE THAT EXAMINATIONS OF APPLICANTS FOR REGISTRATION SHALL BE AT TIMES AND PLACES DESIGNATED BY THE BOARD OF MEDICINE.

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

SECTION 1. That Section 54-2208, Idaho Code, be, and the same is hereby amended to read as follows:

54-2208. EXAMINATION -- DATES -- PLACE. The board shall conduct examinations of applicants for registration ~~in the months of January and July of each year on a date to be set by the board. Such examinations shall be held in the city of Boise, Idaho,~~ at ~~a~~ times and places to be designated by the board. ~~Each applicant who has qualified for examinations shall be notified by the board of the day, place, and time of examination at least ten (10) days before such day.~~

Approved March 17, 1998.

CHAPTER 47
(H.B. No. 446)

AN ACT
RELATING TO FISH AND GAME; AMENDING SECTION 36-407, IDAHO CODE, TO CLARIFY THAT A PERSON HOLDING A NONRESIDENT TWO DAY HUNTING LICENSE SHALL PURCHASE THE APPROPRIATE REQUIRED TAGS AND PERMITS.

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

SECTION 1. That Section 36-407, Idaho Code, be, and the same is hereby amended to read as follows:

36-407. NONRESIDENT FISHING, HUNTING, AND TRAPPING LICENSES -- FEES -- RIGHTS UNDER. Licenses of the sixth class shall be issued to nonresidents in the several kinds and for fees as follows:

(a) Nonresident Hunting License. A license issued only to a person twelve (12) years of age or older entitling said person to pursue, hunt, or kill game birds, small game animals, unprotected birds and animals and predatory birds and animals and to purchase game tags as provided in section 36-409(b), Idaho Code. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of one hundred dollars ($100).

(b) Nonresident Season Fishing License. A license entitling a person to fish in the public waters of the state. A license of this kind may be had by persons fourteen (14) years of age or older upon payment of fifty dollars ($50.00).

(c) Nonresident Trapping License. A license entitling a person to trap fur-bearing, unprotected, and predatory animals. A license of this kind may be had upon payment of one hundred and fifty dollars ($150) providing the state of residence of said person grants similar trapping license privileges to residents of Idaho.

(d) Nonresident Nongame License. A license entitling a person to carry a shotgun or rifle for the protection of livestock, or to pursue, hunt and kill unprotected birds and animals and predatory birds and animals of this state. A license of this kind may be had by a nonresident person who is twelve (12) years of age or older upon payment of fifteen dollars ($15.00). This license shall be valid only during the period of January 1 to August 31 of the calendar year in which issued, unless verified by the director that the licensee requires such a license to authorize him to carry a shotgun or rifle for the protection of livestock, in which case said license shall be valid until December 31 of the year in which issued.

(e) Nonresident Two Day Hunting License. A license issued only to a person twelve (12) years of age or older, entitling the person to hunt upland game birds (to include turkeys), migratory game birds, cottontail rabbits, and pygmy rabbits for any two (2) consecutive days. A person holding this license shall purchase the appropriate required tags and permits, and may not hunt pheasants in an area dur-

ing the first five (5) days of the pheasant season in that area. A license of this type may be had upon payment of fifty-five dollars ($55.00).

(f) Falconry Meet Permit. The director may issue a special permit for a regulated meet scheduled for a specific number of days upon payment of ten dollars ($10.00). Only trained raptors may be used under the special permit issued under the provisions of this subsection.

(g) Daily Fishing License -- Resident May Purchase. A license entitling a person to fish in the waters of the state on a day-to-day basis. A license of this kind may be had by a resident or nonresident person (the provisions of section 36-405, Idaho Code, notwithstanding), upon payment of six dollars ($6.00) for the first effective day and three dollars ($3.00) for each consecutive day thereafter.

(h) Nonresident Three Day Fishing License with Steelhead or Salmon Permit. A license entitling a nonresident to fish in the waters of the state for a period of three (3) consecutive days for steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of thirty dollars ($30.00). The three (3) day license holder may fish for and take one (1) steelhead trout and one (1) anadromous salmon or either two (2) steelhead trout or two (2) anadromous salmon subject to the limitations prescribed in this title and rules promulgated by the commission. A nonresident may purchase as many of the licenses provided in this subsection as he desires provided that the nonresident is otherwise eligible to do so. Moneys collected pursuant to this subsection shall be remitted as specified by law.

Approved March 17, 1998.

CHAPTER 48
(H.B. No. 522)

AN ACT

RELATING TO SALES AND USE TAXES; AMENDING SECTION 63-3609, IDAHO CODE, TO REDEFINE "RETAIL SALE"; AMENDING SECTION 63-3619, IDAHO CODE, TO CLARIFY THE IMPOSITION OF THE TAX ON RETAIL SALES AND TO DELETE PROVISION FOR IMPOSING TAX ON CERTAIN SALES TO UNITED STATES GOVERNMENT CONTRACTORS; AMENDING SECTION 63-3620, IDAHO CODE, TO AUTHORIZE THE STATE TAX COMMISSION TO ISSUE TEMPORARY SELLER'S PERMITS AND TEMPORARY WHOLESALER'S PERMITS; AMENDING SECTION 63-3622BB, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE TO THE IDAHO NATIONAL ENGINEERING AND ENVIRONMENTAL LABORATORY; AND AMENDING SECTION 63-3633, IDAHO CODE, TO PROHIBIT THE STATE TAX COMMISSION FROM CERTAIN ENFORCEMENT ACTIONS UNTIL ALL APPEAL RIGHTS HAVE BECOME FINAL.

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

SECTION 1. That Section 63-3609, Idaho Code, be, and the same is hereby amended to read as follows:

63-3609. RETAIL SALE -- SALE AT RETAIL. The terms "retail sale"

or "sale at retail" means a sale ~~of tangible personal property~~ for any purpose other than resale ~~of that property~~ in the regular course of business or lease or rental of ~~that~~ property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

(b) For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.

SECTION 2. That Section 63-3619, Idaho Code, be, and the same is hereby amended to read as follows:

63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby imposed upon each sale at retail at the rate of five per cent (5%) of the sales price of all ~~property~~ retail sales subject to taxation under this ~~act~~ chapter and such amount shall be computed monthly on all sales at retail within the preceding month.

(a) The tax shall apply to, be computed on, and collected for all credit, instalment, conditional or similar sales at the time of the sale or, in the case of rentals, at the time the rental is charged.

(b) The tax hereby imposed shall be collected by the retailer from the consumer.

(c) The state tax commission shall provide schedules for collection of the tax on sales which involve a fraction of a dollar. The retailer shall calculate the tax upon the entire amount of the purchases of the consumer made at a particular time and not separately upon each item purchased. The retailer may retain any amount collected under the bracket system prescribed which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting the tax.

(d) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded. Any person violating any provision of this section is guilty of a misdemeanor.

(e) The tax commission may by rule provide that the amount collected by the retailer from the customer in reimbursement of the tax be displayed separately from the list price, the price advertised on the premises, the marked price, or other price on the sales slip or other proof of sale.

(f) The taxes imposed by this ~~act~~ chapter shall apply to the sales ~~of any tangible personal property~~ to contractors purchasing ~~such property for resale to the United States or~~ for use in the performance of contracts with the United States.

SECTION 3. That Section 63-3620, Idaho Code, be, and the same is

hereby amended to read as follows:

63-3620. PERMITS -- ISSUANCE -- REVOCATION -- ~~RESALE CERTIFICATES~~ -- PENALTIES. (a) Every retailer engaged in business in this state, before conducting business within this state, shall file with the state tax commission an application for a seller's permit. Every application for a permit shall be made upon a form prescribed by the state tax commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the state tax commission may require. The applications, or any information contained thereon, may be made available by the tax commission to authorized representatives of state or federal agencies. The application shall be signed by the owner if he is a natural person or by an individual authorized by the seller to sign the application. Except as provided in subsection (~~e~~f) of this section, permits shall be issued without charge.

(b) The state tax commission, for the efficient administration of this chapter, may issue:

(1) Temporary seller's permits. No retailer shall be issued more than three (3) temporary permits in one (1) calendar year. A temporary permit shall be valid only for the period of time shown on the face thereof.

(2) Wholesaler's permits to persons who are not retailers but who purchase tangible personal property for resale. A wholesaler's permit shall be valid for no more than twelve (12) consecutive months and may be renewed by the commission.

(c) The person signing the application shall certify that the applicant will actively engage in or conduct a business making sales subject to tax under this chapter.

(~~c~~d) After compliance by the applicant with the requirements set out above and in section 63-3625, Idaho Code, the state tax commission shall grant and issue to each applicant a permit. A permit shall not be assignable, and shall be valid only for the person in whose name it is issued. The permit or a copy thereof shall at all times be conspicuously displayed at each place where the person to whom it is issued conducts business.

(~~d~~e) A seller whose permit has been previously suspended or revoked shall pay the state tax commission a fee of ten dollars ($10.00) for the renewal or issuance of a permit in the event of a first revocation and twenty-five dollars ($25.00) for renewal after each successive revocation unless the suspension or revocation is for inactivity pursuant to section 63-3620A, Idaho Code.

(~~e~~f) Whenever any person fails to comply with any provision of this chapter relating to the sales tax or any rules of the state tax commission relating to the sales tax prescribed and adopted under this chapter, the state tax commission may revoke or suspend any one or more of the permits held by the person. Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code. The state tax commission shall not issue a new permit after the revocation of a permit unless the commission is satisfied that the former holder of the permit will comply with the

provisions of this chapter relating to the sales tax and the rules of the state tax commission.

(~~f~~g) A person who engages in business as a seller in this state without a permit or permits, or after a permit has been suspended, and each officer of any corporation which so engages in business is guilty of a misdemeanor punishable by a fine not in excess of one hundred dollars ($100), and each day shall constitute a separate offense.

SECTION 4. That Section 63-3622BB, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622BB. RESEARCH AND DEVELOPMENT AT THE INEEL. There is exempted from the taxes imposed by this chapter, the sale or use of that property primarily or directly used or consumed in connection with research, development, experimental and testing activities, when exclusively financed by the United States in connection with the Idaho national engineering and environmental laboratory and any successor thereto.

SECTION 5. That Section 63-3633, Idaho Code, be, and the same is hereby amended to read as follows:

63-3633. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION. Except as otherwise provided in this section:

(a) The amount of taxes imposed by this ~~act~~ chapter shall be assessed within three (3) years after the due date of the return or the date the return was filed, whichever is the later, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; provided, however, if an assessment has been made within the prescribed time, such tax may be collected by levy or by a proceeding in court within a period of six (6) years after assessment of the tax and, provided further, that this shall not be in derogation of any of the remedies elsewhere herein provided. The running of the period of limitations provided by this section shall be suspended for the period during which the state tax commission is prohibited from making the assessment or from collecting by levy or a proceeding in court, and for thirty (30) days thereafter.

(b) In the case of a false or fraudulent return with the intent to evade tax, or a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(c) In the case of taxes owed by a person who has failed to file a return as provided in section 63-3623, Idaho Code, the amount of taxes imposed in this chapter shall be assessed within seven (7) years of the time the return upon which the tax asserted to be due should have been filed.

(d) The periods of limitation upon assessment and collection provided in this section shall not apply:

(1) In cases where the facts disclose a false or fraudulent act with the intent to evade tax, or

(2) To taxes collected by a retailer, seller or any other person who has failed to pay over such taxes to the state tax commission.

(e) In the case of taxes due during the lifetime of a decedent,

or by his estate during the period of administration, a notice of deficiency shall be issued, a claim shall be made, the tax shall be assessed, or any proceeding in court without assessment for the collection of such tax shall be begun, within twelve (12) months after written request for prompt action is filed with the state tax commission by the executor, administrator, or other fiduciary representing the estate of such decedent. This subsection shall not apply if the return for which the request for prompt action relates has not been filed with the state tax commission.

(f) No assessment of a deficiency with respect to the tax imposed by this chapter, and no distraint or proceedings in court for its collection shall be made, begun, or prosecuted until a notice under section 63-3629, Idaho Code, has been mailed to the taxpayer, nor until all appeal rights relating to the deficiency have become final.

(g) Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this act, both the state tax commission or its delegate or deputy and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Approved March 17, 1998.

CHAPTER 49
(H.B. No. 521)

AN ACT

RELATING TO SALES AND USE TAX; AMENDING SECTION 63-3611, IDAHO CODE, TO EXPAND THE DEFINITION OF "RETAILER ENGAGED IN BUSINESS IN THIS STATE"; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3620B, IDAHO CODE, TO PROVIDE THAT THE STATE TAX COMMISSION MAY ENTER INTO AGREEMENTS FOR THE COLLECTION AND REMITTANCE OF SALES TAX WITH PERSONS WHO MAY NOT BE OTHERWISE LIABLE FOR SUCH COLLECTION AND REMITTANCE ON SALES OF TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES TO IDAHO CUSTOMERS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 63-3611, Idaho Code, be, and the same is hereby amended to read as follows:

63-3611. RETAILER ENGAGED IN BUSINESS IN THIS STATE. "Retailer engaged in business in this state" as used in this chapter means ~~and~~ any retailer who:

(1) Engages in recurring solicitation of purchases from residents of this state or otherwise purposefully directs its business activities at residents of this state; and

(2) Has sufficient contact with this state, in accordance with

the constitution of the United States, to allow the state to require the seller to collect and remit use tax on sales of tangible personal property or services made to customers in this state.

(3) The term includes any of the following:

(a) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business or maintaining a stock of goods.

(b) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing or the taking of orders for any tangible personal property.

(c) Any retailer, with respect to a lease or rental, deriving rentals from a lease or rental of tangible personal property situated in this state.

(d) Any retailer engaging in any activity in connection with servicing or installing tangible personal property in this state.

(e) Any retailer owned or controlled by the same interests which own or control any retailer engaged in business in the same or a similar line of business in this state.

(f) Any retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under the provisions of this section.

SECTION 2. That Chapter 36, 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 63-3620B, Idaho Code, and to read as follows:

63-3620B. AGREEMENTS TO COLLECT AND REMIT SALES TAX. The state tax commission may enter into agreements with persons who may not be otherwise liable to collect and remit sales or use taxes for the collection of sales and use taxes due on their sales of tangible personal property or taxable services to customers in this state. These agreements shall be made on terms and conditions determined by the commission to be in the best interests of the state.

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, 1998.

CHAPTER 50
(H.B. No. 519)

AN ACT

RELATING TO SALES AND USE TAX; AMENDING SECTION 63-3616, IDAHO CODE, TO EXPAND THE DEFINITION OF TANGIBLE PERSONAL PROPERTY TO CLARIFY

THAT ADVERTISING SPACE IS NOT SUBJECT TO SALES AND USE TAX WHEN SOLD TO AN ADVERTISER OR ITS AGENT BY THE PUBLISHER OF THE NEWSPAPER OR THE MAGAZINE IN WHICH THE ADVERTISEMENT IS DISPLAYED OR CIRCULATED.

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

SECTION 1. That Section 63-3616, Idaho Code, be, and the same is hereby amended to read as follows:

63-3616. TANGIBLE PERSONAL PROPERTY. (a) The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

(b) The term "tangible personal property" includes any computer software which is not a custom computer program.

(i) As used in this subsection, the term "computer software" means any computer program, part of a program or any sequence of instructions for automatic data processing equipment or information stored in an electronic medium. Computer software is deemed to be tangible personal property for purposes of this chapter regardless of the method by which the title, possession or right to use the software is transferred to the user.

(ii) As used in this subsection, the term "custom computer program" means any computer software (as defined in this subsection) which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer. The term does not include a "canned" or prewritten program which is held or existing for general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the purchaser.

(c) The term "tangible personal property" does not include advertising space when sold to an advertiser or its agent by the publisher of the newspaper or the magazine in which the advertisement is displayed or circulated.

Approved March 17, 1998.

CHAPTER 51
(H.B. No. 496)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3030, IDAHO CODE, TO DELETE OBSOLETE REFERENCES TO INCOME EARNED ABROAD AND FROM SALE

OF RESIDENCE; AMENDING SECTION 63-3045, IDAHO CODE, TO PROVIDE FOR COMPUTATION OF INTEREST DUE ON DEFICIENCIES AND REFUNDS, TO REMOVE THE REQUIREMENT THAT THE STATE TAX COMMISSION SET ANNUAL INTEREST RATES FOR DEFICIENCIES, OVERPAYMENTS AND REFUNDS, AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3073, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION RELATING TO INTEREST ON REFUNDS AND CREDITS BY ADDING REFERENCE TO CAPITAL LOSSES; AMENDING SECTION 63-3082, IDAHO CODE, TO IMPOSE THE PERMANENT BUILDING FUND TAX ON CORPORATIONS AND PARTNERSHIPS THAT PAY TAXES ON BEHALF OF THEIR NONRESIDENT OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS OR MEMBERS; AMENDING SECTION 67-7439, IDAHO CODE, TO CLARIFY THAT THE EXCLUSION FROM IDAHO TAXES OF CERTAIN LOTTERY PRIZES IS LIMITED TO PRIZES AWARDED BY THE IDAHO STATE LOTTERY; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3030, Idaho Code, be, and the same is hereby amended to read as follows:

63-3030. PERSONS REQUIRED TO MAKE RETURNS OF INCOME. (a) Returns with respect to taxes measured by income in this chapter shall be made by the following:

(1) Every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code.

(2) Any nonresident individual having for the current taxable year a gross income from Idaho sources in excess of two thousand five hundred dollars ($2,500), or any part-year resident individual having for the current taxable year a gross income from all sources while domiciled in or residing in Idaho, and from Idaho sources while not domiciled in and not residing in Idaho, which in total are in excess of two thousand five hundred dollars ($2,500);

(3) Every corporation which is transacting business in this state, authorized to transact business in this state or having income attributable to this state, unless exempt from the tax imposed in this chapter;

(4) Every corporation reporting as an S corporation pursuant to Internal Revenue Code sections 1361 through 1379 to the federal government, which is transacting business in this state, authorized to transact business in this state or which has one (1) or more shareholder who is a resident of this state. A corporation which is reporting as an S corporation to the federal government must report to the state of Idaho as an S corporation for and during the same period or periods in which its election to report as such a corporation is effective for federal tax purposes and must identify itself as an S corporation on its income tax return filed with this state;

(5) Every estate, the residence of which estate is in Idaho, having a gross income of six hundred dollars ($600) or more for the current taxable year;

(6) Every estate, the residence of which is in a state other than Idaho, having a gross income from Idaho sources in excess of six hundred dollars ($600);

(7) Every trust, the residence of which trust is in Idaho, having gross income of one hundred dollars ($100) or more for the current taxable year;
(8) Every trust, the residence of which is in a state other than Idaho, having a gross income from Idaho sources in excess of one hundred dollars ($100);
(9) Every partnership which transacts business or which has one (1) or more partner which is a resident of this state. Such return shall be a supplemental information return and shall include the names and addresses of the persons who would be entitled to share in the net income of the partnership if distributed and the amount of the distributive share of each person. Such return shall be signed by one (1) of the partners.
(b) Returns of fiduciaries and receivers:
(1) Fiduciaries and receivers shall file returns with the state tax commission in accordance with the provisions of section 6012(b) of the Internal Revenue Code.
~~(c) Certain income earned abroad or from sale of residence: For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 of the Internal Revenue Code (relating to one-time exclusion of gain from sale of principal residence by an individual who has attained age fifty-five (55)) and without regard to the exclusion provided for in section 911 of the Internal Revenue Code (relating to income earned abroad).~~

SECTION 2. That Section 63-3045, Idaho Code, be, and the same is hereby amended to read as follows:

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST.
(1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.
(b) If the taxpayer files a protest with the tax commission within the period set forth in subsection (1)(a) of this section, and such protest does not comply with the rules of the tax commission and is therefore inadequate to perfect the taxpayer's right to a redetermination of the deficiency determination, then, the tax commission shall notify the taxpayer, in the same manner as set forth in subsection (1)(a) of this section, of such inadequacies, setting forth in said notice the corrective action to be taken by the taxpayer to perfect his protest. The taxpayer shall thereafter have twenty-eight (28) days from the date of said

notice to perfect his protest.

(c) No assessment of a deficiency in respect ~~of~~ to the tax imposed by this chapter, and no distraint or proceedings in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until all appeal rights relating to the deficiency have become final.

(2) Following a protest, the taxpayer has the right to a hearing. The purpose of the hearing is to discuss the deficiency determination and the taxpayer's protest with a commissioner or duly authorized representative of the commission. The meeting shall be held informally and evidence shall be freely admitted regardless of the rules of evidence.

(3) Any hearing conducted under the provisions of this section may be conducted, in whole or in part, by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) A taxpayer has the right to be represented by, or be accompanied by, any person of his choice in any proceeding before the tax commission. If the taxpayer is not present at a proceeding, the representative of that taxpayer must be designated in writing by the taxpayer as shall be prescribed in administrative rules or in any manner acceptable to the tax commission.

(5) If the taxpayer does not file a protest with the state tax commission within the time prescribed in subsection (1)(a) of this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the state tax commission.

(6) (a) Interest shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest. Interest relating to deficiencies or refunds accruing after the original due date of the return, but not including extensions of the due date, shall be computed on the net of any underpayments and overpayments of a tax liability required to be shown as due on the same return.

(b) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate per annum determined under the provisions of subsection (6)(c) of this section from the date prescribed for the payment of the tax. In the event any of the deficiency is reduced by reason of a carryback of a net operating loss or a capital loss carryback, such reduction in deficiency shall not affect the computation of interest under this subsection for the period ending with the last day of the taxable year in which the net operating loss or capital loss arises.

(c) ~~By November 1 of each year, the tax commission shall fix t~~The rate of interest ~~due for the succeeding~~ accruing during any calendar year, or portion thereof, upon any deficiency, or payable upon an overpayment or refund~~. The rate of interest, rounded to the nearest whole number,~~ shall be two percent (2%) plus the rate determined under section 1274(d), Internal Revenue Code, by the secretary of the treasury of the United States as the midterm federal rate as it applies on October 15 of ~~that~~ the immediately pre-

ceding calendar year rounded to the nearest whole number.

(7) When the time provisions contained in this section conflict with the provisions of section 63-4208, Idaho Code, relating to the assessment of taxes on illegal possession of controlled substances, the provisions of section 63-4208, Idaho Code, shall prevail.

SECTION 3. That Section 63-3073, Idaho Code, be, and the same is hereby amended to read as follows:

63-3073. INTEREST ON REFUNDS AND CREDITS. Upon the allowance of a credit or refund of any tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate provided in section 63-3045, Idaho Code, from the date such tax, penalty, or sum was paid or from the date the return was required to be filed, whichever date is the later, to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken; provided, however, that in case of a voluntary and unrequested payment in excess of actual tax liability, no interest shall be allowed when such excess is refunded or credited.

Interest on refunds resulting from net operating loss carryback claims or from capital loss carryback claims shall be computed from the last day of the taxable year in which the net operating loss or capital loss arises.

SECTION 4. That Section 63-3082, Idaho Code, be, and the same is hereby amended to read as follows:

63-3082. ADDITIONAL TAX REQUIRED WHEN FILING INCOME TAX RETURN. (1) Every person required to file an income tax return shall pay a tax of ten dollars ($10.00). For this purpose, a husband and wife filing a joint return shall be deemed a single person. This tax shall be in the nature of an excise tax upon the receipt of the income which requires the filing of such return.

(2) When, pursuant to section 63-3022L, Idaho Code, the income of a nonresident officer, director, shareholder, partner or member of a corporation or partnership is taxed as Idaho taxable income of the corporation or partnership, the corporation or partnership shall also pay the tax imposed in subsection (1) of this section for each nonresident individual. For purposes of this section, a husband and wife filing a joint federal return may be deemed a single individual.

SECTION 5. That Section 67-7439, Idaho Code, be, and the same is hereby amended to read as follows:

67-7439. TAXES. Income taxes shall only be imposed on lottery prizes received from lottery tickets purchased after the effective date of this act. Lottery prizes awarded by the Idaho state lottery under six hundred dollars ($600) shall not be subject to the state income tax. No taxes of any kind whatsoever shall be imposed upon the sale, purchase, storage, use or other consumption of Idaho lottery

tickets or shares, or upon equipment, devices or systems directly used in the production, operation, sales, distribution, tracking, drawing, accounting, communication of or computation of lottery games.

The state lottery shall pay to a city, county, the state or any political subdivision or municipality thereof in which the state lottery occupies a premises owned by the state a grant not to exceed the amount that would be payable as taxes on the property in that year, if the property were not exempt from taxation.

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, and retroactively to January 1, 1998.

Approved March 17, 1998.

CHAPTER 52
(H.B. No. 489)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE TO THE INTERNAL REVENUE CODE; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3004, Idaho Code, be, and the same is hereby amended to read as follows:

63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 199~~7~~8.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

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, 1998.

Approved March 17, 1998.

CHAPTER 53
(H.B. No. 488)

AN ACT

RELATING TO COLLECTION OF TAXES AND LICENSE FEES; AMENDING SECTION 63-3038, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE AND PROPER TERMINOLOGY; AND REPEALING SECTIONS 63-3401, 63-3402a, 63-3403, 63-3404 AND 63-3406, IDAHO CODE.

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

SECTION 1. That Section 63-3038, Idaho Code, be, and the same is hereby amended to read as follows:

63-3038. ADMINISTRATION. It shall be the duty of the state tax commission of the state of Idaho as established in chapter ~~34~~1 of title 63, Idaho Code, to administer and enforce the provision of this ~~act~~ title. The state tax commission is authorized to designate deputies and employees to specifically administer the provisions of this ~~act~~ title and such deputies and employees may be authorized to act in the name of the state tax commission and in its place and stead, provided, however, that such designation shall be made in writing.

SECTION 2. That Sections 63-3401, 63-3402a, 63-3403, 63-3404 and 63-3406, Idaho Code, be, and the same are hereby repealed.

Approved March 17, 1998.

CHAPTER 54
(H.B. No. 486)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3033, IDAHO CODE, TO PROVIDE FOR AN AUTOMATIC EXTENSION OF TIME FOR FILING INCOME TAX RETURNS AND TO PROVIDE PENALTIES FOR FAILURE TO FILE, FAILURE TO PAY TAXES DUE, OR FOR UNDERPAYMENT OF TAXES DUE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-3033, Idaho Code, be, and the same is hereby amended to read as follows:

63-3033. EXTENSION OF TIME. (a) ~~The--state--tax--commission--may grant-a-reasonable~~ Taxpayers shall have an automatic extension of time for filing any return, declaration, statement or other document, or payment required by this chapter~~;-provided,-however,-that:-(1)-no-such extension-shall-be~~ for a period ~~in-excess~~ of six (6) months~~;--(2)--a payment--must--accompany--the-initial-request-for-extension-of-time-to file-an-income-tax-return-which-must-be~~ if on or before the unextended

due date the taxpayer has paid at least eighty per cent (80%) of the total tax reported on the income tax return when it is filed, or ~~must be the same as~~ the total tax reported on the income tax return for the prior year if a return was filed for the prior year.

(b) Taxpayers residing outside any of the United States and Puerto Rico (including persons in military or naval service) shall have an automatic extension of time within which to file income tax returns with this state for a period which shall expire on the fifteenth day of the sixth month following the close of their taxable year.

(c) Taxpayers who are military personnel or residents of foreign nations and entitled to extensions for filing federal income tax returns as a result of the application of the provisions of sections 911 and 7508 of the Internal Revenue Code, shall be entitled to extensions of time for the same period for filing income tax returns with the state of Idaho subject to the requirements imposed in implementation of the indicated sections.

(d) Any taxpayer entitled to an extension under subsection (b) or (c) of this section shall attach a statement to his return claiming his right to the extension.

(e) If the amount of payment made under subsection (a) ~~(2)~~ of this section is less than eighty per cent (80%) of the total tax due under the provisions of this chapter and is less than the amount of the total tax reported on the income tax return for the prior year, a penalty may be applied to the total of the balance due ~~in the amount prescribed by section 63-3046(a), Idaho Code,~~ unless reasonable cause can be established. The penalty shall be:

(1) If the return is filed and taxes for the taxable year are paid on or before the extended due date, two per cent (2%) per month from the original due date to the date of payment.

(2) If the return is not filed or the taxes for the taxable year are not paid on or before the extended due date, the penalty provided in section 63-3046(c), Idaho Code, from the original due date.

(f) In all cases~~, where the state tax commission has granted~~ of an extension of time in which to file any return, interest shall be paid on any tax due from the original due date to date of payment at the rate provided in section 63-3045, Idaho Code.

SECTION 2. This act shall be in full force and effect on and after January 1, 1999, and shall apply to returns first due on or after that date.

Approved March 17, 1998.

CHAPTER 55
(H.B. No. 485)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3005, IDAHO CODE, TO EXPAND THE DEFINITION OF "PERSON" TO INCLUDE ASSOCIATIONS AND LIM-

ITED LIABILITY COMPANIES; AMENDING SECTION 63-3006, IDAHO CODE, TO EXPAND THE DEFINITION OF "CORPORATION" TO INCLUDE ENTITIES AS CLASSIFIED AND TAXED UNDER THE FEDERAL INTERNAL REVENUE CODE; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3006B, IDAHO CODE, TO DEFINE "PARTNERSHIP"; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3005, Idaho Code, be, and the same is hereby amended to read as follows:

63-3005. PERSON. The term "person" means an individual, a trust or estate, a partnership, <u>an association, a limited liability company</u> or a corporation.

SECTION 2. That Section 63-3006, Idaho Code, be, and the same is hereby amended to read as follows:

63-3006. CORPORATION. The term "corporation" includes any corporation formed under the laws of any government, any common law trust and any association of whatever kind other than a partnership. <u>"Corporation" also includes any entity classified or taxed as a corporation pursuant to section 7701 of the Internal Revenue Code and the regulations of the U.S. department of the treasury issued thereunder.</u>

SECTION 3. That Chapter 30, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a <u>NEW SECTION,</u> to be known and designated as Section 63-3006B, Idaho Code, and to read as follows:

63-3006B. PARTNERSHIP. "Partnership" shall be as defined in section 7701 of the Internal Revenue Code and shall include any entity classified as a partnership pursuant to regulations of the U.S. department of the treasury issued under section 7701 of the Internal Revenue 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, 1998.

Approved March 17, 1998.

CHAPTER 56
(H.B. No. 471)

AN ACT

RELATING TO SCHOOL ELECTIONS; AMENDING SECTION 33-406, IDAHO CODE, TO CLARIFY THE METHOD OF CONDUCTING ABSENTEE VOTING IN SCHOOL ELECTIONS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-406, Idaho Code, be, and the same is hereby amended to read as follows:

33-406. ABSENTEE VOTING. For the purposes of this section the term clerk shall mean the clerk of the board of county commissioners whenever an election involves changing the boundaries of school districts, or the creation of new school districts by consolidation of districts or division of a district. In all other school elections the term clerk shall mean the clerk of the board of trustees of the school district.

In any school election, a qualified school elector who expects to be absent from the district on the day of the election, or who will be unable, because of physical disability or blindness, to go to the polling place, may vote in such election in the manner herein provided.

Any such elector may make written application to the clerk for a ballot or ballots of the kind or kinds to be voted on at such election, which application shall contain the name of the elector, the trustee zone of the district in which he resides, and his present address. The application for an absent elector's ballot shall be filed with the clerk not later than one (1) hour prior to the opening of the polls.

The clerk receiving such application shall, not more than twenty-eight (28) days prior to the day of the election, deliver to said applicant elector personally or by mail to the mailing address given in the application, postage prepaid, a ballot or ballots, one (1) of each kind thereof, to be voted on in the election, and a form of oath of qualification.

The elector shall vote in secret and shall ~~inclose~~ enclose his ballot or ballots in an envelope to be supplied by the clerk~~,~~ and seal the same~~,-and-place-thereon-his-name-and-the-date-the-vote--was--cast,~~ and. The elector shall then place the ~~said~~ secrecy envelope in ~~another~~ a return envelope, together with the form of oath of qualification executed by him, and address and mail, or deliver, the same to the clerk. The absentee ballot must be received by the clerk, not later than 8:00 p.m. on the day of the election, before such ballot may be counted.

Any elector physically unable to mark his own ballot may receive assistance in marking his ballot from the officer delivering same or an available person of his own choosing. In the event the officer is requested to render assistance in marking an absent elector's ballot, the officer shall ascertain the desires of the elector and shall vote the applicant's ballot accordingly. No election officer or any other person assisting a disabled voter shall attempt to influence the vote of such elector in any manner.

The written applications shall be kept by the clerk as a part of the records of the election and he shall, on the day of the election and before the polling places are closed, deliver to the proper board of election all such envelopes together with a list, compiled and signed by him, of the electors making application to vote in absentia.

The board of election shall verify all return envelopes delivered

to it by the clerk against the names appearing on the said list, open the return envelopes and examine the elector's oath. If these are found to be in order, the ballots shall ~~be removed from~~ remain in the secrecy envelopes and be placed in the ballot box in the same manner as though the elector were personally present and voting; and the voter's name shall thereupon be subscribed in any polling book or other record kept at such election.

Approved March 17, 1998.

CHAPTER 57
(H.B. No. 450)

AN ACT

RELATING TO THE STATE LIBRARY BOARD; REPEALING CHAPTER 25, TITLE 33, IDAHO CODE; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 25, TITLE 33, IDAHO CODE, TO ESTABLISH THE STATE LIBRARY, TO ESTABLISH THE STATE LIBRARY BOARD, MEMBERSHIP, OFFICERS, MEETINGS AND COMPENSATION, TO PROVIDE POWERS AND DUTIES OF THE STATE LIBRARY BOARD, TO PROVIDE FOR TREATMENT OF ACCOUNTS OF THE STATE LIBRARY BOARD INCLUDING CERTIFICATION AND PAYMENT OF CLAIMS, TO PROVIDE THAT THE STATE LIBRARIAN IS THE DEPOSITORY FOR PUBLIC DOCUMENTS AND TO PROVIDE FOR SUBMISSION AND DISTRIBUTION OF DOCUMENTS, TO ESTABLISH THE LIBRARY IMPROVEMENT ACCOUNT AND TO PROVIDE FOR OPERATION OF THE ACCOUNT; AND TO STATE LEGISLATIVE INTENT TO WITHDRAW FROM THE INTERSTATE LIBRARY COMPACT AND TO DIRECT THE STATE LIBRARIAN TO PROVIDE THE REQUIRED NOTICES FOR WITHDRAWAL.

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

SECTION 1. That Chapter 25, Title 33, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 25, Title 33, Idaho Code, and to read as follows:

CHAPTER 25
STATE LIBRARY

33-2501. STATE LIBRARY ESTABLISHED. The state of Idaho recognizes that libraries are uniquely suited to making the benefits of information and information technologies available to the citizens of the state of Idaho. Therefore, the Idaho state library is hereby established.

33-2502. STATE LIBRARY BOARD -- MEMBERSHIP -- OFFICERS -- MEETINGS -- COMPENSATION. The state library shall be governed by the state library board. The state library board shall be maintained within the office of the state board of education and shall consist of the state

superintendent of public instruction or the superintendent's designee, as ex officio member, and five (5) members appointed by the state board of education. On the first Monday of July, 1998, the state board of education shall appoint 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. Thereafter, the state board of education shall annually, on the first Monday of July, appoint one (1) member to the state library board to serve for a term of five (5) years. The state library board shall annually elect a chairman, vice chairman, secretary and other officers as it deems reasonably necessary. The state library board shall meet at least twice each year. Members shall be compensated as provided by section 59-509(n), Idaho Code.

33-2503. STATE LIBRARY BOARD -- POWERS AND DUTIES. The state library board is designated as the policymaking body for the Idaho state library. The state library board shall have the following powers and duties:

(1) To foster and promote library service in the state of Idaho.

(2) To make policies and rules governing the use of the state library and its materials.

(3) To employ a qualified librarian to serve as the chief executive officer of the state library. The librarian shall be a graduate of an accredited library school.

(4) To receive donations of money, books, and other real and personal property, for the benefit of the Idaho state library. Title to donations in any form shall vest in the state of Idaho. Donations shall be held and controlled by the state library board.

(5) To promote and facilitate the establishment, use, and cooperation of libraries throughout the state so all Idahoans have access to the resources of those libraries.

(6) To provide services to state government employees and the public as the Idaho state government information center.

(7) To support or deliver statewide library programs and services.

(8) To accept, receive, administer and expend, in accordance with the terms thereof, any moneys, materials or other aid granted, appropriated, or made available to Idaho by the United States, or any of its agencies, or by any other public or private source, for library purposes. The board is authorized to file any accounts required with reference to receiving and administering all such moneys, materials and other aid.

(9) To assist in the establishment of financing of a statewide program of cooperative library services, which may be in cooperation with any taxing unit, or public or private agency.

(10) To contract with other libraries or agencies, within or without the state of Idaho, to render library services to people of the state of Idaho. The state library board shall have authority to reasonably compensate other library units or agencies for the cost of the services provided by the other library unit or agency under any such contract. Such contracts and compensation shall be exempt from the provisions of chapter 57, title 67, Idaho Code.

(11) The board shall have authority to promulgate all rules neces-

sary for the proper conduct of its business.

33-2504. STATE LIBRARY BOARD -- ACCOUNTS -- CERTIFICATION -- PAYMENT OF CLAIMS. The secretary of the state library board shall keep a full report of the proceedings of the board, and accurate accounts of expenses incurred by the board in carrying out the provisions of this chapter. The chairman of the board may issue certificates, countersigned by the secretary, for all claims against the board required to be examined pursuant to chapter 20, title 67, Idaho Code. The claims, when approved by the board of examiners, shall be paid by warrants drawn upon the fund in the state treasury provided for that purpose.

33-2505. STATE LIBRARIAN -- DEPOSITORY FOR PUBLIC DOCUMENTS -- DISTRIBUTION. It shall be the duty of the head of every agency, board, bureau, commission or department of the state of Idaho, including all state supported institutions of higher education in Idaho, to deposit with the librarian of the Idaho state library twenty (20) copies of all documents, reports, surveys, monographs, serial publications, compilations, pamphlets, bulletins, leaflets, circulars, maps, charts or broadsides of a public nature which it produces for public distribution. The deposit of information with the state librarian is intended to allow the information to be used and distributed to academic, regional, public, and special libraries in Idaho, the Library of Congress, and to others within the discretion of the state librarian.

33-2506. LIBRARY IMPROVEMENT ACCOUNT -- ESTABLISHED. (1) The state of Idaho recognizes its responsibility to provide public library services to its citizens in both the urban and rural areas of the state. The state realizes that many citizens of the state receive few library services. Some citizens receive no library services at all. Therefore, there is established in the state treasury the library improvement account. The library improvement account shall have paid into it appropriations or revenues as may be provided by law.

(2) Moneys in the library improvement account are appropriated to and may be expended by the state library board at any time for the purposes provided in this section.

(3) (a) The board of trustees of any tax-supported city or district library may apply to the state library board to receive a payment or payments from the library improvement account. Provided however, they must demonstrate to the state library board that their community has a substantial and serious need to have improved library services or a need to expand library services to adjacent rural areas.

(b) When an application for moneys from the account is approved by the state library board, the state librarian shall inform the applying library that the application has been approved, citing the amount approved for payment and an estimate of the time when the payment can actually be made to the applying library.

(4) All payments from the library improvement account shall be paid directly to the library in warrants drawn by the state controller upon presentation of proper vouchers from the state library. Pending payments out of the library improvement account, the moneys in the account shall be invested by the state treasurer in the same manner as

provided under section 67-1210, Idaho Code, with respect to idle moneys in the state treasury. Interest earned on the investments shall be returned to the library improvement account.

(5) No tax-supported city or district library is automatically entitled to any payments from the library improvement account, but must demonstrate to the state library board an actual need for payment as set forth in subsection (3)(a) of this section. The state library board shall establish the criteria upon which actual need is to be determined. The state library board shall give priority to projects which will improve library services in a community or expand library services into the rural areas of the state.

(6) Payments from the library improvement account received by a library may be used by the library only for the purposes stated in the application as approved by the state library board.

SECTION 3. The Legislature hereby declares its intent to withdraw from the Interstate Library Compact, enacted at section 33-2505, Idaho Code, and directs the state librarian to give all notices of withdrawal and repeal required by section 33-2509, Idaho Code, and section XI(b) of the Interstate Library Compact.

Approved March 17, 1998.

CHAPTER 58
(H.B. No. 438)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1401, IDAHO CODE, TO CORRECT AN OBSOLETE REFERENCE TO A SIGNED MIGRATORY WATERFOWL STAMP AND AN UPLAND GAME PERMIT.

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

SECTION 1. That Section 36-1401, Idaho Code, be, and the same is hereby amended to read as follows:

36-1401. VIOLATIONS. (a) Infractions. Any person who pleads guilty to or is found guilty of a violation of the following provisions of the fish and game code or the following rules promulgated pursuant thereto is guilty of an infraction:

1. Statutes

(A) Take, transport, use or have in possession bait fish as set forth in section 36-902(d), Idaho Code.

(B) Chumming as set forth in section 36-902(e), Idaho Code.

(C) Nonresident child under the age of fourteen (14) years fishing without a valid license and not accompanied by a valid license holder as set forth in section 36-401(a)2., Idaho Code.

(D) Use or cut a hole larger than ten (10) inches in the ice for ice fishing as set forth in section 36-1509(a), Idaho Code.

(E) Store fish without required tags/permits/statements as set forth in section 36-503, Idaho Code.
(F) Own, possess or harbor any dog found running loose and which is tracking, pursuing, harassing or attacking a big game animal as set forth in section 36-1101(b)6.(B), Idaho Code.
(G) Hunt migratory waterfowl without having in possession a signed federal migratory bird hunting stamp as set forth in section 36-1102(b)2., Idaho Code.
(H) Hunt migratory waterfowl without having in possession a ~~signed~~ license validated for the Idaho migratory waterfowl stamp as set forth in section 36-414(2), Idaho Code.
(I) Hunt upland game birds without having in possession ~~an~~ a license validated for the upland game permit as set forth in section 36-409(h), Idaho Code.
(J) Trap in or on, destroy or damage any muskrat house as provided in section 36-1103(c), Idaho Code.
(K) Hunt migratory game birds with a shotgun capable of holding more than three (3) shells as provided and incorporated in section 36-1102(b), Idaho Code.

2. Rules
(A) Fish from a raft or boat with motor attached in waters where motors are prohibited.
(B) Fish with hooks larger than allowed in that water.
(C) Fish with barbed hooks in waters where prohibited.
(D) Exceed any established bag limit for fish by one (1) fish, except bag limits for anadromous fish, landlocked chinook salmon, kamloops rainbow trout, lake trout, or bull trout.
(E) Fish with more than the approved number of lines or hooks.
(F) Fail to leave head and/or tail on fish while fish are in possession or being transported.
(G) Snag or hook fish other than in the head and fail to release, excluding anadromous fish.
(H) Fail to attend fishing line and keep it under surveillance at all times.
(I) Fail to comply with mandatory check and report requirements.
(J) Fail to leave evidence of sex or species attached as required on game birds.
(K) Hunt or take migratory game birds or upland game birds with shot exceeding the allowable size.
(L) Fail to release, report or turn in nontarget trapped animals.
(M) Fail to complete required report on trapped furbearer.
(N) Fail to present required furbearer animal parts for inspection.
(O) Fail to attach identification tags to traps.
(P) Possess not more than one (1) undersized bass.
(Q) Park or camp in a restricted area, except length of stay violations.
(R) Fail to leave evidence of sex attached as required on

game animals.

(b) Misdemeanors. Any person who pleads guilty to, is found guilty or is convicted of a violation of the provisions of this title or rules promulgated pursuant thereto, or orders of the commission, except where an offense is expressly declared to be an infraction or felony, shall be guilty of a misdemeanor.

(c) Felonies. Any person who pleads guilty to, is found guilty or is convicted of a violation of the following offenses shall be guilty of a felony:

1. Knowingly and intentionally selling or offering for sale or exchange, or purchasing or offering to purchase or exchange, any wildlife, or parts thereof, which has been unlawfully killed, taken or possessed.

2. Releasing into the wild, without a permit from the director, any of the following wildlife, whether native or exotic: ungulates, bears, wolves, large felines, swine, or peccaries.

3. Unlawfully killing, possessing or wasting of any combination of numbers or species of wildlife within a twelve (12) month period which has a single or combined reimbursable damage assessment of more than one thousand dollars ($1,000), as provided in section 36-1404, Idaho Code.

4. Conviction within ten (10) years of three (3) or more violations of the provisions of this title, penalties for which include either or both a mandatory license revocation or a reimbursable damage assessment.

Approved March 17, 1998.

CHAPTER 59
(H.B. No. 430, As Amended)

AN ACT

RELATING TO INCOME TAX; AMENDING SECTION 63-3029A, IDAHO CODE, TO INCLUDE THE IDAHO STATE LIBRARY AMONG THOSE ENTITIES FOR WHICH AN INCOME TAX CREDIT FOR CHARITABLE INSTITUTIONS IS AVAILABLE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 63-3029A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029A. INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS -- LIMITATION. At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to a nonprofit corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of institutions of higher learning located within the state of Idaho, to nonprofit private or

public institutions of elementary, secondary, or higher education or their foundations located within the state of Idaho, to Idaho education public broadcast system foundations within the state of Idaho, to the Idaho state historical society or its foundation, to the Idaho state library, and to public libraries or their foundations and library districts or their foundations located within the state of Idaho, and to nonprofit public or private museums or their foundations located within the state of Idaho.

1. In the case of a taxpayer other than a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer's total income tax liability imposed by section 63-3024, Idaho Code, for the year, or fifty dollars ($50.00), whichever is less.

2. In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or five hundred dollars ($500), whichever is less.

For the purposes of this section, "institution of higher learning" means only an educational institution located within this state meeting all of the following requirements:

(a) It maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are carried on.

(b) It regularly offers education above the twelfth grade.

(c) It is accredited by the Northwest Association of Schools and Colleges, or by the state board of education.

For the purposes of this section, a nonprofit institution of secondary or higher education means a private nonprofit secondary or higher educational institution located within the state of Idaho, which is accredited by the Northwest Association of Schools and Colleges, or by the state board of education. A nonprofit private institution of elementary education means a private nonprofit elementary educational institution located within the state of Idaho and approved by the state board of education.

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 17, 1998.

CHAPTER 60
(H.B. No. 439)

AN ACT

RELATING TO THE STATE BOARD FOR VOCATIONAL EDUCATION; AMENDING SECTION 33-2211, IDAHO CODE, TO SUBSTITUTE THE TITLE OF PRESIDENT FOR SUPERINTENDENT WHEN REFERRING TO THE PERSON EMPLOYED BY THE STATE BOARD FOR VOCATIONAL EDUCATION TO SUPERVISE OPERATIONS AT EASTERN IDAHO TECHNICAL COLLEGE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-2211, Idaho Code, be, and the same is hereby amended to read as follows:

33-2211. POWERS OF STATE BOARD FOR VOCATIONAL EDUCATION. The state board for vocational education shall have the power:

1. To adopt rules ~~and regulations~~ for its own government and the government of the Eastern Idaho Technical College;

2. To employ professional and nonprofessional persons and to prescribe their qualifications;

3. To acquire and hold, and to dispose of, real and personal property, and to construct, repair, remodel and remove buildings;

4. To contract for the acquisition, purchase or repair of buildings, in the manner prescribed for trustees of school districts;

5. To dispose of real and personal property in the manner prescribed for trustees of school districts;

6. To convey and transfer real property of the college upon which no buildings used for instruction are situated, to nonprofit corporations, school districts, community college housing commissions, counties or municipalities, with or without consideration; to rent real or personal property for the use of the college, its students or faculty, for such terms as may be determined by the state board for vocational education; and to lease real or personal property of the college not actually in use for instructional purposes on such terms as may be determined by the state board for vocational education;

7. To acquire, hold, and dispose of, water rights;

8. 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;

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

10. To employ a ~~superintendent~~ president of the college and, with his advice, to appoint such assistants, instructors, specialists and other employees as are required for the operation of the college; to fix salaries and prescribe duties; and to remove the ~~superintendent~~ president or any other employee for cause;

11. With the advice of the ~~superintendent~~ president, to prescribe the courses and programs of study, the requirements for admission, the time and standards for completion of such courses and programs, and to grant certificates of completion for those students entitled thereto;

12. 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 so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof;

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

Approved March 18, 1998.

CHAPTER 61
(H.B. No. 472, As Amended, As Amended)

AN ACT

RELATING TO DOGS; AMENDING SECTION 25-2805, IDAHO CODE, TO DEFINE A VICIOUS DOG AND TO REQUIRE CONTROL AND PROVIDE PENALTIES FOR FAILURE TO CONTROL A VICIOUS DOG.

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

SECTION 1. That Section 25-2805, Idaho Code, be, and the same is hereby amended to read as follows:

25-2805. DOGS RUNNING AT LARGE -- VICIOUS DOGS -- PENALTY. (1) Any person, who, after complaint has been made by any person to the sheriff, who shall serve a copy of said notice upon such person Complained of, wilfully or negligently permits any dog owned or possessed or harbored by him to be, or run, at large without a competent and responsible attendant or master, within the limits of any city, town, or village or in the vicinity of any farm, pasture, ranch, dwelling house, or cultivated lands of another, or who wilfully or negligently fails, neglects or refuses to keep any such dog securely confined within the limits of his own premises when not under the immediate care and control of a competent and responsible attendant or master, shall be guilty of a misdemeanor.

(2) Any dog which, when not physically provoked, physically attacks, wounds, bites or otherwise injures any person who is not trespassing, is vicious. It shall be unlawful for the owner or for the owner of premises on which a vicious dog is present to harbor a vicious dog outside a secure enclosure. A secure enclosure is one from which the animal cannot escape and for which exit and entry is controlled by the owner of the premises or owner of the animal. Any vicious dog removed from the secure enclosure must be restrained by a Chain sufficient to control the vicious dog. Persons guilty of a violation of this subsection, and in addition to any liability as provided in section 25-2806, Idaho Code, shall be guilty of a misdemeanor. For a second or subsequent violation of this subsection, the Court may, in the interest of public safety, order the owner to have the vicious dog destroyed or may direct the appropriate authorities to destroy the dog.

Approved March 18, 1998.

CHAPTER 62
(H.B. No. 504)

AN ACT

RELATING TO INCOME TAX AND THE STATE REFUND ACCOUNT; AMENDING SECTION 63-3067, IDAHO CODE, TO INCREASE THE UNENCUMBERED BALANCE WHICH MAY REMAIN IN THE STATE REFUND ACCOUNT ON JUNE 30 OF EACH YEAR;

DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-3067, Idaho Code, be, and the same is hereby amended to read as follows:

63-3067. REVENUE RECEIVED -- STATE REFUND ACCOUNT. All moneys, except as hereinafter provided, received by the state of Idaho under this act shall be deposited by the state tax commission, as received by it, with the state treasurer and shall be placed in and become a part of the general account under the custody of the state treasurer. Providing however, that an amount equal to twenty per cent (20%) of the amount deposited with the state treasurer shall be placed in the "state refund account" which is hereby created for the purpose of repaying overpayments, for the purpose of depositing in the trust accounts specified in section 63-3067A, Idaho Code, such amounts as may be designated by individuals for the purpose of depositing in the Idaho ag in the classroom account an amount as may be designated by the individual receiving a refund for such overpayment, and for the purpose of paying any other erroneous receipts illegally assessed or collected, penalties collected without authority and taxes and licenses unjustly assessed, collected or which are excessive in amount. Whenever necessary for the purpose of making prompt payment of refunds, the board of examiners, upon request from the state tax commission, and after review, may authorize the state tax commission to transfer any additional specific amount from income tax collections to the "state refund account." There is appropriated out of the state refund account so much thereof as may be necessary for the payment of the refunds herein provided. Claims for, and payment of refunds under the provisions of this section shall be made in the same manner as other claims against the state of Idaho.

Any unencumbered balance remaining in the state refund account on June 30 of each and every year in excess of the sum of ~~four~~ one million five hundred thousand dollars ($1,500,000) shall be transferred to the general account and the state controller is hereby authorized and directed on such dates to make such transfers unless the board of examiners, which is hereby authorized to do so, changes the date of transfer or sum to be transferred.

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 June 30, 1998.

Approved March 18, 1998.

CHAPTER 63
(H.B. No. 537)

AN ACT
RELATING TO THE COMPREHENSIVE STATE WATER PLAN; AMENDING SECTION 42-1734A, IDAHO CODE, TO PROVIDE THAT THE COMPREHENSIVE STATE

WATER PLAN SHALL CONSIST OF PART A -- STATEWIDE POLICIES, GOALS AND OBJECTIVES, AND PART B -- COMPONENT WATER RESOURCE PLANS; AND AMENDING SECTION 42-1734B, IDAHO CODE, TO PROVIDE THAT THE BOARD SHALL REVIEW AND REEVALUATE PART A OR ANY ONE OR MORE OF THE COMPONENTS OF PART B OF THE PLAN UPON THE ADOPTION OF A CONCURRENT RESOLUTION OF THE LEGISLATURE DIRECTING THE REVIEW OR REQUESTING A SPECIFIC AMENDMENT TO THE PLAN, TO PROVIDE THAT THE BOARD ALSO MAY UNDERTAKE THE REVIEW IN RESPONSE TO AN APPROPRIATELY FILED PETITION, OR UPON THE BOARD'S OWN INITIATIVE, AND TO PROVIDE THAT ANY AMENDMENTS TO PART A OR PART B OF THE PLAN SHALL BE ADOPTED IN THE SAME MANNER AS THE ORIGINAL PLAN.

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

SECTION 1. That Section 42-1734A, Idaho Code, be, and the same is hereby amended to read as follows:

42-1734A. COMPREHENSIVE STATE WATER PLAN. (1) The board shall, subject to legislative approval, progressively formulate, adopt and implement a comprehensive state water plan for conservation, development, management and optimum use of all unappropriated water resources and waterways of this state in the public interest. The comprehensive state water plan shall consist of: Part A -- statewide policies, goals and objectives; and Part B -- component water plans for individual waterways, river basins, drainage areas, river reaches, ground water aquifers or other geographic designations. As part of Part B of the comprehensive state water plan, the board may designate selected waterways as protected rivers as provided in this chapter. The comprehensive state water plan shall be based upon studies and public hearings in affected areas at which all interested parties shall be given the opportunity to appear, or to present written testimony in response to published proposals for such policy programs and proposed designations. A minimum of sixty (60) days shall be allowed between publication of a proposal and the date on which no further testimony on the proposal will be accepted. All comments in writing shall be preserved as a part of the record of the board. In adopting a comprehensive state water plan the board shall be guided by these criteria:

(a) Existing rights, established duties, and the relative priorities of water established in article XV, section 3, of the constitution of the state of Idaho, shall be protected and preserved;

(b) Optimum economic development in the interest of and for the benefit of the state as a whole shall be achieved by integration and coordination of the use of water and the augmentation of existing supplies and by protection of designated waterways for all beneficial purposes;

(c) Adequate and safe water supplies for human consumption and maximum supplies for other beneficial uses shall be preserved and protected;

(d) Subject to prior existing water rights for the beneficial uses now or hereafter prescribed by law, minimum stream flow for aquatic life, recreation and aesthetics and the minimization of pollution and the protection and preservation of waterways in the manner hereafter provided shall be fostered and encouraged and

consideration shall be given to the development and protection of water recreation facilities;

(e) Watershed conservation practices consistent with sound engineering and economic principles shall be encouraged.

(2) The board may develop a comprehensive state water plan in stages based upon waterways, river basins, drainage areas, river reaches, groundwater aquifers, or other geographic considerations. The component of the comprehensive state water plan prepared for particular water resources and waterways shall contain, among other things, the following:

(a) A description of the water resources and waterway or waterways that are the subject of the plan, including pertinent maps detailing the geographic area of the plan;

(b) A description of the significant resources of the water resources and waterway or waterways;

(c) A description of the various existing and planned uses for these resources including currently undeveloped areas of the waterway and future plans for those areas, with a discussion of the advantages and disadvantages associated with each planned use; and

(d) A discussion of goals, objectives, and recommendations for improving, developing, or conserving the water resources and waterway or waterways in relation to these resources, including an examination of how different uses will promote the overall public interest, a statement as to the goals the plan expects to achieve, and an analysis of how any specific recommendations further those goals. A description of the methodology used in developing the plan shall be included.

(3) The description of the resources and uses in subsections (2)(b) and (2)(c) of this section shall contain, among other things:

(a) navigation;
(b) power development;
(c) energy conservation;
(d) fish and wildlife;
(e) recreational opportunities;
(f) irrigation;
(g) flood control;
(h) water supply;
(i) timber;
(j) mining;
(k) livestock watering;
(l) scenic values;
(m) natural or cultural features;
(n) domestic, municipal, commercial and industrial uses; and
(o) other aspects of environmental quality and economic development.

(4) The comprehensive state water plan may designate protected rivers. Designations shall be based upon a determination by the board that the value of preserving a waterway for particular uses outweighs that of developing the waterway for other beneficial uses and shall specify whether a protected river is designated as a natural or recreational river. The plan may also describe those water resources and waterways which are not designated as protected rivers.

(5) In designating a natural river, the board shall prohibit the following activities:

(a) construction or expansion of dams or impoundments;

(b) construction of hydropower projects;

(c) construction of water diversion works;

(d) dredge or placer mining;

(e) alterations of the stream bed; and

(f) mineral or sand and gravel extraction within the stream bed.

(6) In designating a recreational river, the board shall determine which of the activities listed in subsection (5) of this section shall be prohibited and may specify the terms and conditions under which activities that are not prohibited may go forward.

(7) Any prohibition or terms and conditions imposed pursuant to subsections (5) and (6) of this section shall remain in effect until the legislature acts upon the recommendation of the board as provided in section 42-1734B, Idaho Code, or until the legislature revokes its earlier approval of a protected river by law.

SECTION 2. That Section 42-1734B, Idaho Code, be, and the same is hereby amended to read as follows:

42-1734B. BOARD PROCEDURES FOR ADOPTING A COMPREHENSIVE STATE WATER PLAN. (1) Prior to the adoption of the comprehensive state water plan or any component of the comprehensive plan, the board shall conduct hearings in the manner provided in section 42-1734A, Idaho Code.

(2) In the preparation, adoption, and implementation of the comprehensive state water plan, the board shall encourage the cooperation, participation, and assistance of state agencies. The board also shall solicit economic, energy, environmental, and other technical studies and recommendations from state agencies with particular expertise. All agencies of the state of Idaho shall cooperate with the board by providing requested existing information and studies pertaining in any manner to any matters which are the subject of this act. The board shall have discretion to balance all factors relevant to the formulation, adoption and implementation of the comprehensive state water plan and implementation and the designation of protected rivers.

(3) Any state agency may petition the board to amend the comprehensive state water plan. The board shall review any petition filed pursuantto this section within six (6) months after it is filed and shall either commence action to amend the comprehensive plan or set forth its reasons for denying the request in writing.

(4) All state agencies shall exercise their duties in a manner consistent with the comprehensive state water plan. These duties include but are not limited to the issuance of permits, licenses, and certifications; provided, however, that nothing in this chapter shall be construed to affect the authority of any state agency with respect to activities not prohibited by the comprehensive state water plan. The designation of a waterway as a natural or recreation river shall not preclude the department of health and welfare from establishing water quality standards for such waterway.

(5) When a comprehensive state water plan is adopted, copies thereof shall be filed in the office of the governor and director of

the department of water resources, and published and distributed generally.

(6) The comprehensive state water plan and any component thereof developed for a particular waterway or waterways is subject to review and amendment by the legislature of the state of Idaho by law at the regular session immediately following the board's adoption of the comprehensive state water plan or component thereof. The board shall submit all subsequent modifications to the legislature in the same manner as provided in this subsection.

(7) The board shall review and reevaluate Part A of the comprehensive state water plan, ~~at least every five (5) years, with~~ or any one (1) or more of the component water plans comprising Part B of the comprehensive state water plan, upon the adoption of a concurrent resolution of the legislature directing the review or requesting a specific amendment to the plan. The board also may undertake the review in response to a petition for amendment filed pursuant to subsection (3) of this section, or upon the board's own initiative, as determined necessary by the board. A~~a~~mendments to Part A or Part B of the comprehensive state water plan shall be adopted in the same manner as the original plan.

(8) A protected river designated by the board shall not become a final part of the comprehensive state water plan until approved by law. If the legislature does not approve a protected river by law at the regular session immediately following the board's designation of such protected river, then the designation of such protected river shall terminate and any prohibition or terms and conditions imposed on such protected river pursuant to subsection (5) or (6) of section 42-1734A, Idaho Code, shall be terminated ten (10) days following the end of the session. The failure to approve a protected river shall not operate to invalidate a comprehensive plan or component thereof. Nothing in this subsection shall prevent the legislature, however, from approving such protected river and reinstituting or modifying such prohibitions or terms and conditions in a subsequent session.

(9) After adoption of a comprehensive plan or component thereof, the board shall administer the implementation of the plan.

Approved March 18, 1998.

CHAPTER 64
(S.B. No. 1520)

AN ACT
APPROPRIATING MONEYS TO THE STATE TAX COMMISSION FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the State Tax Commission in the Department of Revenue and Taxation the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. GENERAL SERVICES:				
FROM:				
General Fund	$ 3,153,100	$2,835,000	$1,588,100	$ 7,576,200
Administration and Accounting Fund		37,100		37,100
Administration ServiceS for Transportation Fund	315,900	117,000	120,500	553,400
Abandoned Property Trust-Unclaimed Property Fund		3,200	10,400	13,600
Seminars and Publications Fund		30,800	3,000	33,800
TOTAL	$ 3,469,000	$3,023,100	$1,722,000	$ 8,214,100
II. AUDIT AND COLLECTIONS:				
FROM:				
General Fund	$ 8,416,200	$1,502,800	$ 203,300	$10,122,300
Multi-State Tax Compact Fund	486,700	376,400	46,700	909,800
Administration and Accounting Fund		9,500		9,500
Administration Services for Transportation Fund	992,200	239,300	7,200	1,238,700
Abandoned Property Trust-Unclaimed Property Fund	310,200	98,500	900	409,600
TOTAL	$10,205,300	$2,226,500	$ 258,100	$12,689,900
III. REVENUE OPERATIONS:				
FROM:				
General Fund	$ 2,389,500	$1,229,700	$ 197,800	$ 3,817,000
Administration and Accounting Fund		26,300		26,300
Administration Services for Transportation Fund	305,400	169,000	10,100	484,500
Seminars and Publications Fund		18,000		18,000
TOTAL	$ 2,694,900	$1,443,000	$ 207,900	$ 4,345,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
IV. COUNTY SUPPORT:				
FROM:				
General Fund	$ 1,992,200	$ 525,900	$ 14,900	$ 2,533,000
Seminars and Publications Fund		94,800	3,100	97,900
TOTAL	$ 1,992,200	$ 620,700	$ 18,000	$ 2,630,900
GRAND TOTAL	$18,361,400	$7,313,300	$2,206,000	$27,880,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Tax Commission is authorized no more than four hundred fourteen (414) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 18, 1998.

CHAPTER 65
(S.B. No. 1295)

AN ACT

RELATING TO THE UNIFORM PARTNERSHIP ACT; REPEALING CHAPTER 3, TITLE 53, IDAHO CODE; AMENDING TITLE 53, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 3, TITLE 53, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR KNOWLEDGE AND NOTICE, TO PROVIDE THE EFFECT OF A PARTNERSHIP AGREEMENT AND TO SPECIFY NONWAIVABLE PROVISIONS, TO PROVIDE SUPPLEMENTAL PRINCIPLES OF LAW, TO PROVIDE FOR EXECUTION AND FILING OF STATEMENTS, TO PROVIDE FEES, TO PROVIDE GOVERNING LAW, TO PROVIDE THAT A PARTNERSHIP IS SUBJECT TO ANY AMENDMENT OR REPEAL OF THE ACT, TO PROVIDE THAT A PARTNERSHIP IS AN ENTITY, TO PROVIDE FOR THE FORMATION OF A PARTNERSHIP, TO PROVIDE THAT PROPERTY ACQUIRED BY A PARTNERSHIP IS PROPERTY OF THE PARTNERSHIP, TO PROVIDE WHEN PROPERTY IS PARTNERSHIP PROPERTY, TO PROVIDE THAT A PARTNER IS AN AGENT OF A PARTNERSHIP, TO PROVIDE FOR TRANSFER OF PARTNERSHIP PROPERTY, TO PROVIDE FOR A STATEMENT OF PARTNERSHIP AUTHORITY, TO PROVIDE FOR A STATEMENT OF DENIAL, TO PROVIDE THAT A PARTNERSHIP IS LIABLE FOR A PARTNER'S ACTIONABLE CONDUCT, TO PROVIDE A PARTNER'S LIABILITY, TO PROVIDE FOR ACTIONS BY AND AGAINST A PARTNERSHIP AND PARTNERS, TO PROVIDE FOR LIABILITY OF A PURPORTED PARTNER, TO PROVIDE A PARTNER'S RIGHTS AND DUTIES, TO PROVIDE FOR DISTRIBUTIONS IN KIND, TO PROVIDE A PARTNER'S RIGHTS AND DUTIES WITH RESPECT TO INFORMATION, TO PROVIDE GENERAL STANDARDS OF A PARTNER'S CONDUCT, TO PROVIDE FOR ACTIONS BY A PARTNERSHIP AND PARTNERS, TO PROVIDE FOR CONTINUATION OF A PARTNERSHIP BEYOND A DEFINITE TERM OR PARTICULAR UNDERTAKING, TO PROVIDE THAT A PART-

NER IS NOT CO-OWNER OF PARTNERSHIP PROPERTY, TO SPECIFY A PARTNER'S TRANSFERABLE INTEREST IN A PARTNERSHIP, TO PROVIDE FOR TRANSFER OF A PARTNER'S TRANSFERABLE INTEREST, TO PROVIDE WHEN A PARTNER'S TRANSFERABLE INTEREST IS SUBJECT TO A CHARGING ORDER, TO PROVIDE THE EVENTS CAUSING A PARTNER'S DISSOCIATION, TO PROVIDE FOR A PARTNER'S POWER TO DISSOCIATE AND WRONGFUL DISSOCIATION, TO PROVIDE THE EFFECT OF A PARTNER'S DISSOCIATION, TO PROVIDE FOR THE PURCHASE OF A DISSOCIATED PARTNER'S INTEREST, TO PROVIDE FOR DISSOLUTION WITHIN NINETY DAYS AFTER DISSOCIATION, TO PROVIDE FOR A DISSOCIATED PARTNER'S POWER TO BIND THE PARTNERSHIP AND THE PARTNER'S LIABILITY TO THE PARTNERSHIP, TO PROVIDE FOR A DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS, TO PROVIDE FOR A STATEMENT OF DISSOCIATION, TO PROVIDE FOR CONTINUED USE OF A PARTNERSHIP NAME, TO SPECIFY THE EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS, TO PROVIDE FOR CONTINUATION OF THE PARTNERSHIP AFTER DISSOLUTION, TO PROVIDE FOR RIGHTS TO WIND UP PARTNERSHIP BUSINESS, TO PROVIDE FOR A PARTNER'S POWER TO BIND A PARTNERSHIP AFTER DISSOLUTION, TO PROVIDE FOR A STATEMENT OF DISSOLUTION, TO PROVIDE FOR A PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION, TO PROVIDE FOR A SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG PARTNERS, TO PROVIDE DEFINITIONS, TO PROVIDE FOR CONVERSION OF A PARTNERSHIP TO A LIMITED PARTNERSHIP, TO PROVIDE FOR CONVERSION OF A LIMITED PARTNERSHIP TO A PARTNERSHIP, TO PROVIDE THE EFFECT OF CONVERSION, TO PROVIDE FOR MERGER OF PARTNERSHIPS, TO PROVIDE THE EFFECT OF MERGER, TO PROVIDE FOR A STATEMENT OF MERGER, TO PROVIDE THAT THE PROVISIONS OF THE ACT AS TO CONVERSION OR MERGER ARE NOT EXCLUSIVE, TO PROVIDE FOR A STATEMENT OF QUALIFICATION OF A PARTNERSHIP TO BECOME A LIMITED LIABILITY PARTNERSHIP, TO PROVIDE FOR A CONSOLIDATED STATEMENT OF PARTNERSHIP AUTHORITY AND QUALIFICATION, TO PROVIDE FOR A CHANGE OF REGISTERED AGENT, TO STATE REQUIREMENTS FOR THE NAME OF A LIMITED LIABILITY PARTNERSHIP, TO PROVIDE FOR AN ANNUAL REPORT, TO PROVIDE FOR REVOCATION OF A STATEMENT OF QUALIFICATION, TO PROVIDE THE LAW GOVERNING A FOREIGN LIMITED LIABILITY PARTNERSHIP, TO PROVIDE FOR A STATEMENT OF FOREIGN QUALIFICATION, TO PROVIDE THE EFFECT OF A FAILURE TO QUALIFY, TO SPECIFY THE ACTIVITIES OF A FOREIGN LIMITED LIABILITY PARTNERSHIP WHICH DO NOT CONSTITUTE TRANSACTING BUSINESS, TO PROVIDE FOR ACTION BY THE ATTORNEY GENERAL, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE A SHORT TITLE, TO PROVIDE A SEVERABILITY CLAUSE, TO PROVIDE FOR APPLICABILITY OF THE ACT AND TO PROVIDE A SAVINGS CLAUSE; AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Chapter 3, Title 53, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 53, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 3, Title 53, Idaho Code, and to read as follows:

CHAPTER 3
UNIFORM PARTNERSHIP ACT

PART 1
GENERAL PROVISIONS

53-3-101. DEFINITIONS. In this act:

(1) "Business" includes every trade, occupation and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(i) An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) Comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Execution" means any signature, mark or symbol affixed to a writing with the intent to authenticate the writing. It includes an electronically transmitted signature or symbol.

(5) "Foreign limited liability partnership" means a partnership that:

(i) Is formed under laws other than the laws of this state; and

(ii) Has the status of a limited liability partnership under those laws.

(6) "Legal entity" means an association of one (1) or more persons created pursuant to statute for the purpose of transacting business, whether for profit or otherwise. It includes, but is not limited to, a corporation, a limited liability company, a partnership or a limited liability partnership.

(7) "Limited liability partnership" means a partnership that has filed a statement of qualification under section 53-3-1001, Idaho Code, and does not have a similar statement in effect in any other jurisdiction.

(8) "Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit formed under section 53-3-202, Idaho Code, predecessor law, or comparable law of another jurisdiction.

(9) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(10) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(11) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, association, joint venture, limited liability company, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(14) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Statement" means a statement of partnership authority under section 53-3-303, Idaho Code, a statement of denial under section 53-3-304, Idaho Code, a statement of dissociation under section 53-3-704, Idaho Code, a statement of dissolution under section 53-3-805, Idaho Code, a statement of merger under section 53-3-907, Idaho Code, a statement of qualification under section 53-3-1001, Idaho Code, a statement of foreign qualification under section 53-3-1102, Idaho Code, or an amendment or cancellation of any of the foregoing.

(16) "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance.

53-3-102. KNOWLEDGE AND NOTICE. (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) Knows of it;

(2) Has received a notification of it; or

(3) Has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows of it.

(d) A person receives a notification when:

(1) The person knows of the notification; or

(2) The notification is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

53-3-103. EFFECT OF PARTNERSHIP AGREEMENT -- NONWAIVABLE PROVI-

SIONS. (a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this act governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) Vary the rights and duties under section 53-3-105, Idaho Code, except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records under section 53-3-403(b), Idaho Code, or the right to be furnished with information under section 53-3-403(c), Idaho Code;

(3) Eliminate the duty of loyalty under section 53-3-404(b) or section 53-3-603(c), Idaho Code, but if not manifestly unreasonable:

(i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty; or

(ii) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care under section 53-3-404(c) or section 53-3-603(c), Idaho Code;

(5) Eliminate the obligation of good faith and fair dealing under section 53-3-404(d), Idaho Code, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) Vary the power to dissociate as a partner under section 53-3-602(a), Idaho Code, except to require the notice under section 53-3-601(1), Idaho Code, to be in writing;

(7) Vary the right of a court to expel a partner in the events specified in section 53-3-601(5), Idaho Code;

(8) Vary the requirement to wind up the partnership business in cases specified in section 53-3-801(4), (5) or (6), Idaho Code;

(9) Vary the law applicable to a limited liability partnership under section 53-3-106(b), Idaho Code; or

(10) Restrict rights of third parties under this act.

53-3-104. SUPPLEMENTAL PRINCIPLES OF LAW. (a) Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.

(b) If an obligation to pay interest arises under this act and the rate is not specified, the rate is that specified in subsection (1) of section 28-22-104, Idaho Code.

53-3-105. EXECUTION AND FILING OF STATEMENTS. (a) A statement may be filed in the office of the secretary of state. A filed statement has the effect provided in this act with respect to partnership property located in or transactions that occur in this state.

(b) A statement filed by a partnership must be executed by at

least two (2) partners. Other statements must be executed by a partner or other person authorized by this act. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(c) A person authorized by this act to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(d) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

53-3-105A. FEES. The secretary of state shall collect the following fees for the services described:

(a) Filing a statement of partnership authority, a statement of qualification as a limited liability partnership, or a combined statement of partnership authority and qualification as a limited liability partnership.....$100.00

(b) Filing a statement of qualification of a foreign limited liability partnership.....$100.00

(c) Filing a statement of amendment, cancellation, limitation of authority, cancellation of a limitation of authority, denial, dissociation, dissolution, conversion or merger; filing a statement of partnership authority by a limited liability partnership; filing a statement of qualification as a limited liability partnership by a partnership which has previously filed a statement of partnership authority; or filing a statement not otherwise specified herein.....$ 30.00

(d) Filing an application for reinstatement following revocation of the statement of qualification of a domestic or foreign limited liability partnership.....$ 30.00

(e) Filing an annual report of a domestic or foreign limited liability partnership, a statement of resignation of registered agent or a change of registered agent's name or address.....No fee

(f) Issuing a certificate of existence, authorization or other fact.....$ 10.00

(g) Filing of any document when the filing party requires evidence of filing to be returned within eight (8) working hours, a surcharge of.....$ 20.00

(h) Any nontyped document or any document not on a standard form prescribed by the secretary of state, a surcharge of.....$ 20.00

53-3-106. GOVERNING LAW. (a) Except as otherwise provided in subsection (b) of this section, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

53-3-107. PARTNERSHIP SUBJECT TO AMENDMENT OR REPEAL OF ACT. A

partnership governed by this act is subject to any amendment to or repeal of this act.

PART 2
NATURE OF PARTNERSHIP

53-3-201. PARTNERSHIP AS ENTITY. (a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 53-3-1001, Idaho Code.

53-3-202. FORMATION OF PARTNERSHIP. (a) Except as otherwise provided in subsection (b) of this section, the association of two (2) or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this act, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this act.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) Of a debt by installments or otherwise;

(ii) For services as an independent contractor or of wages or other compensation to an employee;

(iii) Of rent;

(iv) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) For the sale of the goodwill of a business or other property by installments or otherwise.

53-3-203. PARTNERSHIP PROPERTY. Property acquired by a partnership is property of the partnership and not of the partners individually.

53-3-204. WHEN PROPERTY IS PARTNERSHIP PROPERTY. (a) Property is partnership property if acquired in the name of:

(1) The partnership; or

(2) One (1) or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) The partnership in its name; or

(2) One (1) or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one (1) or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one (1) or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

PART 3
RELATIONS OF PARTNERS TO
PERSONS DEALING WITH PARTNERSHIP

53-3-301. PARTNER AGENT OF PARTNERSHIP. Subject to the effect of a statement of partnership authority under section 53-3-303, Idaho Code:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

53-3-302. TRANSFER OF PARTNERSHIP PROPERTY. (a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under section 53-3-303, Idaho Code, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one (1) or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer exe-

cuted by the persons in whose name the property is held.

(3) Partnership property held in the name of one (1) or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 53-3-301, Idaho Code, and:

(1) As to a subsequent transferee who gave value for property transferred under subsections (a)(1) and (2) of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) As to a transferee who gave value for property transferred under subsection (a)(3) of this section, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b) of this section, from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

53-3-303. STATEMENT OF PARTNERSHIP AUTHORITY. (a) A partnership may file a statement of partnership authority, which:

(1) Must include:

(i) The name of the partnership which shall not include words of organization which deceptively imply that the partnership is a different kind of legal entity and shall not be the same as or deceptively similar to the name of any other legal entity whose organizational documents are filed with the secretary of state, unless such other entity consents in writing to the use of the name;

(ii) The street address of its chief executive office and of one (1) office in this state, if there is one;

(iii) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (b) of this section; and

(iv) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the

agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown, and shall be authorized to accept service of process on behalf of the partnership.

(c) If a filed statement of partnership authority is executed pursuant to section 53-3-105(b), Idaho Code, and states the name of the partnership but does not contain all of the other information required by subsection (a) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e) of this section.

(d) A grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a statement containing the limitation has been filed in the office of the secretary of state.

(f) Except as otherwise provided in subsections (d) and (e) of this section and sections 53-3-704 and 53-3-805, Idaho Code, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

53-3-304. STATEMENT OF DENIAL. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to section 53-3-303(b), Idaho Code, may file a statement of denial stating the name of the partnership, the date of filing of its statement of partnership authority, and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 53-3-303(d) and (e), Idaho Code.

53-3-305. PARTNERSHIP LIABLE FOR PARTNER'S ACTIONABLE CONDUCT. (a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

53-3-306. PARTNER'S LIABILITY. (a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred

before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under section 53-3-1001(b), Idaho Code. This subsection shall not affect the liability of a partner in a limited liability partnership for his own omissions, negligence, wrongful acts, misconduct or malpractice or that of any person under his direct supervision and control.

53-3-307. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS. (a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with section 53-3-306, Idaho Code, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 53-3-306, Idaho Code, and:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The partnership is a debtor in bankruptcy;

(3) The partner has agreed that the creditor need not exhaust partnership assets;

(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 53-3-308, Idaho Code.

53-3-308. LIABILITY OF PURPORTED PARTNER. (a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one (1) or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or

by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one (1) or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b) of this section, persons who are not partners as to each other are not liable as partners to other persons.

PART 4
RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

53-3-401. PARTNER'S RIGHTS AND DUTIES. (a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to con-

tribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under section 53-3-301, Idaho Code.

53-3-402. DISTRIBUTIONS IN KIND. A partner has no right to receive, and may not be required to accept, a distribution in kind.

53-3-403. PARTNER'S RIGHTS AND DUTIES WITH RESPECT TO INFORMATION. (a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this act; and

(2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

53-3-404. GENERAL STANDARDS OF PARTNER'S CONDUCT. (a) The fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c) of this section.

(b) A partner's duty of loyalty to the partnership and the other

partners includes the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, or information including the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner related to performance or enforcement are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

53-3-405. ACTIONS BY PARTNERSHIP AND PARTNERS. (a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) Enforce the partner's rights under the partnership agreement;

(2) Enforce the partner's rights under this act, including:

(i) The partner's rights under section 53-3-401, 53-3-403 or 53-3-404, Idaho Code;

(ii) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 53-3-701 or section 53-3-701A, Idaho Code, or enforce any other right under part 6 or 7 of this chapter; or

(iii) The partner's right to compel a dissolution and winding up of the partnership business under section 53-3-801, Idaho Code, or enforce any other right under part 8 of this chapter; or

(3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of

the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

53-3-406. CONTINUATION OF PARTNERSHIP BEYOND DEFINITE TERM OR PARTICULAR UNDERTAKING. (a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

PART 5
TRANSFEREES AND CREDITORS OF PARTNER

53-3-501. PARTNER NOT CO-OWNER OF PARTNERSHIP PROPERTY. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

53-3-502. PARTNER'S TRANSFERABLE INTEREST IN PARTNERSHIP. The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

53-3-503. TRANSFER OF PARTNER'S TRANSFERABLE INTEREST. (a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(1) Is permissible;

(2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) To seek under section 53-3-801(6), Idaho Code, a judicial determination that it is equitable to wind up the partnership

business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

53-3-504. PARTNER'S TRANSFERABLE INTEREST SUBJECT TO CHARGING ORDER. (a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) By the judgment debtor;

(2) With property other than partnership property, by one (1) or more of the other partners; or

(3) With partnership property, by one (1) or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This act does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

PART 6
PARTNER'S DISSOCIATION

53-3-601. EVENTS CAUSING PARTNER'S DISSOCIATION. A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if any of the following apply:

(i) It is unlawful to carry on the partnership business with that partner;

(ii) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(iii) Within ninety (90) days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) A partnership, limited partnership or limited liability company that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because of any of the following:

(i) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(ii) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 53-3-404, Idaho Code; or

(iii) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner's action or failure to act in any of the following instances:

(i) Becoming a debtor in bankruptcy;

(ii) Executing an assignment for the benefit of creditors;

(iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(iv) Failing, within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual, by any of the following:

(i) The partner's death;

(ii) The appointment of a guardian or general conservator for the partner; or

(iii) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the

trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

53-3-602. PARTNER'S POWER TO DISSOCIATE -- WRONGFUL DISSOCIATION. (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 53-3-601(1), Idaho Code.

(b) A partner's dissociation is wrongful only if any of the following apply:

(1) It is in breach of an express provision of the partnership agreement; or

(2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following apply:

(i) The partner withdraws by express will, unless the withdrawal follows within ninety (90) days after another partner's dissociation by death or otherwise under section 53-3-601(6) through (10), Idaho Code, inclusive, or wrongful dissociation under this subsection;

(ii) The partner is expelled by judicial determination under section 53-3-601(5), Idaho Code;

(iii) The partner is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

53-3-603. EFFECT OF PARTNER'S DISSOCIATION. Upon a partner's dissociation, all of the following apply:

(a) The partner's right to participate in the management and conduct of the partnership business terminates.

(b) The partner's duty of loyalty under section 53-3-404(b)(3), Idaho Code, terminates.

(c) The partner's duty of loyalty under section 53-3-404(b)(1) and (2), Idaho Code, and duty of care under section 53-3-404(c), Idaho Code, continue only with regard to matters arising and events occurring before the partner's dissociation.

PART 7
PARTNER'S DISSOCIATION WHEN
BUSINESS NOT WOUND UP

53-3-701. PURCHASE OF DISSOCIATED PARTNER'S INTEREST. Except as otherwise provided in section 53-3-701A, Idaho Code:

(a) If a partner is dissociated from a partnership the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this section.

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 53-3-807(b), Idaho Code, if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership was wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under section 53-3-602(b), Idaho Code, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 53-3-702, Idaho Code.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty (120) days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c) of this section.

(f) If a deferred payment is authorized under subsection (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) of this section must be accompanied by all of the following:

(1) A statement of partnership assets and liabilities as of the date of dissociation;

(2) The latest available partnership balance sheet and income statement, if any;

(3) An explanation of how the estimated amount of the payment was calculated; and

(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty (120) days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c) of this section, or other terms of the obligation to pur-

chase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment shall be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to section 53-3-405(b)(2)(ii), Idaho Code, to determine the buyout price of that partner's interest, any offsets under subsection (c) of this section, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty (120) days after the partnership has tendered payment or an offer to pay or within one (1) year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g) of this section.

53-3-701A. DISSOLUTION WITHIN NINETY DAYS AFTER DISSOCIATION. If a partnership dissolves under section 53-3-801, Idaho Code, within ninety (90) days after a dissociation, then section 53-3-701, Idaho Code, does not apply to dissociations within the ninety (90) days prior to the dissolution and:

(a) All partners who dissociated within the ninety (90) days prior to the dissolution shall be treated as partners under section 53-3-807, Idaho Code; and

(b) Any damages for wrongful dissociation under section 53-3-602(b), Idaho Code, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be taken into account in determining the amount distributable to the dissociated partner under section 53-3-807, Idaho Code.

53-3-702. DISSOCIATED PARTNER'S POWER TO BIND AND LIABILITY TO PARTNERSHIP. (a) For two (2) years after a partner dissociates, the partnership, including a surviving partnership under part 9 of this chapter (commencing with section 53-3-901, Idaho Code), is bound by an act of the dissociated partner that would have bound the partnership under section 53-3-301, Idaho Code, before dissociation only if at the time of entering into the transaction all of the following apply to the other party:

(1) The other party reasonably believed that the dissociated partner was then a partner;

(2) The other party did not have notice of the partner's dissoci-

ation; and

(3) The other party is not deemed to have had knowledge under section 53-3-303(e), Idaho Code, or notice under section 53-3-704(c), Idaho Code.

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a) of this section.

53-3-703. DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS. (a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b) of this section.

(b) A partner who dissociates is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under part 9 of this chapter, within two (2) years after the partner's dissociation, only if the partner is liable for the obligation under section 53-3-306, Idaho Code, and at the time of entering into the transaction all of the following apply to the other party:

(1) The other party reasonably believed that the dissociated partner was then a partner.

(2) The other party did not have notice of the partner's dissociation.

(3) The other party is not deemed to have had knowledge under section 53-3-303(e), Idaho Code, or notice under section 53-3-704(c), Idaho Code.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

53-3-704. STATEMENT OF DISSOCIATION. (a) A partnership which has filed a statement of partnership authority, or a dissociated partner thereof, may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section 53-3-303(d) and (e), Idaho Code.

(c) For the purposes of sections 53-3-702(a)(3) and 53-3-703(b)(3), Idaho Code, a person not a partner is deemed to have notice of the dissociation ninety (90) days after the statement of dissociation is filed.

53-3-705. CONTINUED USE OF PARTNERSHIP NAME. Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the

dissociated partner liable for an obligation of the partners or the partnership continuing the business.

PART 8
WINDING UP PARTNERSHIP BUSINESS

53-3-801. EVENTS CAUSING DISSOLUTION AND WINDING UP OF PARTNERSHIP BUSINESS. A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, by the express will to dissolve and wind up the partnership business of at least half of the partners, including partners, other than wrongfully dissociating partners, who have dissociated within the preceding ninety (90) days and for which purpose a dissociation under section 53-3-601(1), Idaho Code, constitutes an expression of that partner's will to dissolve and wind up.

(2) In a partnership for a definite term or particular undertaking, when any of the following occurs:

(i) After the expiration of ninety (90) days after a partner's dissociation by death or otherwise under section 53-3-601(6) through (10), Idaho Code, or a partner's wrongful dissociation under section 53-3-602(b), Idaho Code, unless before that time a majority in interest of the partners, including partners who have rightfully dissociated pursuant to section 53-3-602(b)(2)(i), Idaho Code, agree to continue the partnership.

(ii) The express will of all of the partners to wind up the partnership business.

(iii) The expiration of the term or the completion of the undertaking.

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business.

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety (90) days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section.

(5) On application by a partner, a judicial determination that any of the following apply:

(i) The economic purpose of the partnership is likely to be unreasonably frustrated.

(ii) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner.

(iii) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer.

53-3-802. PARTNERSHIP CONTINUES AFTER DISSOLUTION. (a) Subject to subsection (b) of this section, a partnership continues after dissolu-

tion only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event both of the following apply:

(1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred.

(2) The rights of a third party accruing under section 53-3-804(1), Idaho Code, or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

53-3-803. RIGHT TO WIND UP PARTNERSHIP BUSINESS. (a) After dissolution, a partner who has not dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the court, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 53-3-807, Idaho Code, settle disputes by mediation or arbitration, and perform other necessary acts.

53-3-804. PARTNER'S POWER TO BIND PARTNERSHIP AFTER DISSOLUTION. Subject to section 53-3-805, Idaho Code, a partnership is bound by a partner's act after dissolution that is either of the following:

(1) Is appropriate for winding up the partnership business;

(2) Would have bound the partnership under section 53-3-301, Idaho Code, before dissolution, if the other party to the transaction did not have notice of the dissolution.

53-3-805. STATEMENT OF DISSOLUTION. (a) After dissolution, a partner of a partnership which has filed a statement of partnership authority who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of section 53-3-303(d), Idaho Code, and is a limitation on authority for the purposes of section 53-3-303(e), Idaho Code.

(c) For the purposes of sections 53-3-301 and 53-3-804, Idaho Code, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the

statement of dissolution ninety (90) days after it is filed.

(d) After filing a statement of dissolution, a dissolved partnership may file a statement of partnership authority that will operate with respect to a person not a partner as provided in section 53-3-303(d) and (e), Idaho Code, in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

53-3-806. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION. (a) Except as otherwise provided in subsection (b) of this section and section 53-3-306, Idaho Code, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 53-3-804, Idaho Code.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under section 53-3-804(2), Idaho Code, by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

53-3-807. SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG PARTNERS. (a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 53-3-306, Idaho Code.

(c) If a partner fails to contribute the full amount required under subsection (b) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 53-3-306, Idaho Code. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 53-3-306, Idaho Code.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 53-3-306, Idaho Code.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

PART 9
CONVERSIONS AND MERGERS

53-3-901. DEFINITIONS. In this part:

(1) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(2) "Limited partner" means a limited partner in a limited partnership.

(3) "Limited partnership" means a limited partnership created under chapter 2, title 53, Idaho Code, predecessor law, or comparable law of another jurisdiction.

(4) "Partner" includes both a general partner and a limited partner.

53-3-902. CONVERSION OF PARTNERSHIP TO LIMITED PARTNERSHIP. (a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(1) A statement that the partnership was converted to a limited partnership from a partnership;

(2) Its former name; and

(3) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety (90) days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter 2, title 53, Idaho Code.

53-3-903. CONVERSION OF LIMITED PARTNERSHIP TO PARTNERSHIP. (a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is cancelled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in section 53-3-306, Idaho Code, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

53-3-904. EFFECT OF CONVERSION -- ENTITY UNCHANGED. (a) A partnership or limited partnership that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

53-3-905. MERGER OF PARTNERSHIPS. (a) Pursuant to a plan of merger approved as provided in subsection (c) of this section, a partnership may be merged with one (1) or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) The name of each partnership or limited partnership that is a party to the merger;

(2) The name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) The terms and conditions of the merger;

(5) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

(6) The street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) In the case of a limited partnership that is a party to the

merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) The approval of the plan of merger by all parties to the merger, as provided in subsection (c) of this section;

(2) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) Any effective date specified in the plan of merger.

53-3-906. EFFECT OF MERGER. (a) When a merger takes effect:

(1) The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(2) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) Service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger shall be made by mailing the process by registered or certified mail, return receipt requested, to the registered agent of the surviving entity, if any, or to a partner of the surviving entity.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) All obligations of a party to the merger for which the partner was personally liable before the merger;

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) Except as otherwise provided in section 53-3-306, Idaho Code, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 53-3-807, Idaho Code, or in the limited partnership act of the jurisdiction in which the

party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 53-3-701, Idaho Code, or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 53-3-702, Idaho Code, by an act of a general partner dissociated under this subsection, and the partner is liable under section 53-3-703, Idaho Code, for transactions entered into by the surviving entity after the merger takes effect.

53-3-907. STATEMENT OF MERGER. (a) After a merger which involves as a party thereto at least one (1) partnership which has filed a statement of partnership authority or a statement of qualification, the surviving partnership or limited partnership may file a statement that one (1) or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) The name of each partnership or limited partnership that is a party to the merger;

(2) The name of the surviving entity into which the other partnerships or limited partnerships were merged;

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any; and

(4) Whether the surviving entity is a partnership or a limited partnership.

(c) Except as otherwise provided in subsection (d) of this section, for the purposes of section 53-3-302, Idaho Code, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of section 53-3-302, Idaho Code, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording:

(1) A certified copy of the statement of merger in the office for recording transfers of that real property, if a statement of merger was previously filed with the office of the secretary of state; or

(2) An original statement of merger in the office for recording transfers of real property, if a statement of merger was not previously filed with the office of the secretary of state.

(e) A properly filed statement of merger, executed and declared to be accurate pursuant to section 53-3-105(b), Idaho Code, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b) of this section, operates with respect to the partnerships or limited partnerships named to the

extent provided in subsections (c) and (d) of this section.

53-3-908. NONEXCLUSIVE. This part is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

PART 10
LIMITED LIABILITY PARTNERSHIP

53-3-1001. STATEMENT OF QUALIFICATION. (a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by subsection (b) of this section, a partnership may become a limited liability partnership by filing a statement of qualification pursuant to section 53-3-105, Idaho Code. The statement must contain:

(1) The name of the partnership and, if the partnership has previously filed a statement of partnership authority, the name it used in that statement and the date of its filing;

(2) The street address of the partnership's chief executive office;

(3) If the partnership does not have an office in this state, the name and street address of the partnership's agent for service of process;

(4) The mailing address to which the secretary of state may send mail to the partnership;

(5) A statement that the partnership elects to be a limited liability partnership; and

(6) A deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is cancelled pursuant to section 53-3-105(c), Idaho Code, or revoked pursuant to section 53-3-1003A, Idaho Code.

(f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c) of this section.

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

53-3-1001A. CONSOLIDATED STATEMENT OF PARTNERSHIP AUTHORITY AND QUALIFICATION. (a) A partnership may file a single statement which serves as both a statement of partnership authority and a statement of qualification as a limited liability partnership.

(b) The consolidated statement shall contain all of the information required for both statements which it replaces.

53-3-1001B. CHANGE OF REGISTERED AGENT. (a) A limited liability partnership may change its registered agent, or the address of its registered agent, by filing with the office of the secretary of state a statement of change of registered agent, or by specifying in its annual report the change of registered agent or new address of registered agent.

(b) A registered agent may resign as the registered agent for a limited liability partnership by filing with the secretary of state a statement of resignation of registered agent. The secretary of state shall send notice of the resignation to any partner of the limited liability partnership. The resignation shall be effective thirty (30) days after filing of the notice of resignation.

53-3-1002. NAME. The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP" or "LLP."

53-3-1003. ANNUAL REPORT. (a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the secretary of state which contains:

(1) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) The street address of the partnership's chief executive office and, if different, the mailing address of an office of the partnership to which mail may be sent; and

(3) The name and street address of the partnership's current agent for service of process.

(b) An annual report must be filed between January 1 and November 30 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

53-3-1003A. REVOCATION OF STATEMENT OF QUALIFICATION. (a) The secretary of state may revoke the statement of qualification of a partnership that fails to file an annual report when due or to maintain a registered agent for service of process in this state. To do so, the secretary of state shall provide the partnership at least sixty (60) days' written notice of intent to revoke the statement.The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed or that the registered agent has resigned or cannot be found, and the prospective effective date of the revocation. The revocation is not effective if the annual report or an appointment of registered

agent, as appropriate, is filed before the effective date of the revocation.

(b) A revocation under subsection (a) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(c) A partnership whose statement of qualification has been revoked may apply to the secretary of state for reinstatement within two (2) years after the effective date of the revocation. The application must:

(1) State the name of the partnership and the effective date of the revocation;

(2) State that the ground for revocation either did not exist or has been corrected; and

(3) Be accompanied by a current annual report or appointment of registered agent, as appropriate.

(d) A reinstatement under subsection (c) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

PART 11
FOREIGN LIMITED LIABILITY PARTNERSHIP

53-3-1101. LAW GOVERNING FOREIGN LIMITED LIABILITY PARTNERSHIP. (a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership.

53-3-1102. STATEMENT OF FOREIGN QUALIFICATION. (a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP" or "LLP";

(2) The street address of the partnership's chief executive office and, if different, the mailing address to which mail may be sent;

(3) The name and street address of the partnership's agent for service of process; and

(4) A deferred effective date, if any.

(b) The agent of a foreign limited liability partnership for

service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is cancelled pursuant to section 53-3-105(c), Idaho Code, or revoked pursuant to section 53-3-1003A, Idaho Code.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

53-3-1103. EFFECT OF FAILURE TO QUALIFY. (a) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, service of process with respect to a right of action arising out of the transaction of business in this state may be made by registered or certified mail, return receipt requested, addressed to any partner or to the registered agent, if any, in the jurisdiction under whose laws the partnership was organized.

53-3-1104. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS. (a) Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this part include:

(1) Maintaining, defending, or settling an action or proceeding;

(2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;

(8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) Conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of similar transac-

tions; and

(10) Transacting business in interstate commerce.

(b) For purposes of this part, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state.

53-3-1105. ACTION BY ATTORNEY GENERAL. The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this part.

PART 12
MISCELLANEOUS PROVISIONS

53-3-1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

53-3-1202. SHORT TITLE. This act may be cited as the "Uniform Partnership Act (1996)."

53-3-1203. SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

53-3-1204. APPLICABILITY. (a) Before July 1, 2001, this act governs only a partnership formed:

(1) After January 1, 2001, except a partnership that is continuing the business of a dissolved partnership under section 53-341, Idaho Code, of the superseded Uniform Partnership Law; and

(2) Before January 1, 2001, that elects, as provided by subsection (c) of this section, to be governed by this act.

(b) On and after July 1, 2001, this act governs all partnerships.

(c) Before July 1, 2001, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this act. The provisions of this act relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one (1) year before the partnership's election to be governed by this act only if the third party knows or has received a notification of the partnership's election to be governed by this act.

53-3-1205. SAVINGS CLAUSE. This act does not affect an action or proceeding commenced or right accrued before this act takes effect.

SECTION 3. Section 1 of this act shall be in full force and effect on and after July 1, 2001. Section 2 of this act shall be in full force and effect on and after January 1, 2001.

Approved March 18, 1998.

CHAPTER 66
(S.B. No. 1296)

AN ACT
RELATING TO LICENSE FEES TO PRACTICE LAW; AMENDING SECTION 3-409, IDAHO CODE, TO INCREASE LICENSE FEES OF THE IDAHO STATE BAR AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 3-409, Idaho Code, be, and the same is hereby amended to read as follows:

3-409. LICENSE FEES AND APPROPRIATIONS. Every person practicing, or holding himself out as practicing law within this state, or holding himself out to the public as a person qualified to practice or carry on the calling of a lawyer within this state, except state and United States judges of the courts of record within this state, shall, prior to so doing and no later than ~~January 10~~ February 1 of each year~~, commencing with the year 1990, and thereafter,~~ pay to the board of commissioners of the Idaho ~~S~~state ~~B~~bar as a license fee the ~~sum of sixty-five dollars ($65.00)~~ following amounts:

For the year 1999: F~~f~~or the calendar year of ~~his~~ admission to the practice of law in the state of Idaho if admitted prior to July 1: ~~of the calendar year and thirty-five~~ one hundred dollars ($~~35.~~100); For the calendar year of admission to the practice of law in the state of Idaho if admitted after July 1: ~~of the calendar year and one hundred twenty-five~~ sixty dollars ($~~125~~60.00); E~~e~~ach year for the next three (3) calendar years following the calendar year of ~~such~~ admission:~~, and~~ two hundred ~~fifty~~ five dollars ($~~250~~5); ~~for~~ e~~E~~ach year ~~thereafter, until~~ after the third full year of admission: two hundred seventy-five dollars ($275); Each year following the calendar year ~~following~~ of the lawyer's seventy-second birthday: ~~and for such calendar year and each year thereafter, the sum of forty-five~~ fifty dollars ($~~45~~0.00)~~.~~; Affiliate members ~~shall pay a fee of ninety-five~~ for each calendar year: one hundred five dollars ($~~91~~05~~.00~~). ~~per year.~~

For the year 2000 and each year thereafter: For the calendar year of admission to the practice of law in the state of Idaho if admitted prior to July 1: one hundred fifteen dollars ($115); For the calendar year of admission to the practice of law in the state of Idaho if admitted after July 1: sixty-five dollars ($65.00); Each year for the next three (3) calendar years following the calendar year of admission: two hundred thirty dollars ($230); Each year after the third full year of admission three hundred fifteen dollars ($315); Each year following the calendar year of the lawyer's seventy-second birthday:

fifty-five dollars ($55.00); Affiliate members for each calendar year one hundred twenty dollars ($120).

The moneys thus collected, together with other revenues shall be administered under the direction of the board of commissioners of the Idaho State Bar for the purpose of administering the Idaho State Bar, encouraging local bar associations, promoting legal education seminars, fostering relations between the public and the bar and for the purpose of establishing and maintaining a clients' security fund which shall be administered by the Idaho State Bar commissioners under rules approved by the Supreme Court, provided that the clients' security fund shall be funded by assessment of the members of the Idaho State Bar not to exceed ten dollars ($10.00) per member per year, independent of the license fee. All moneys received and expended by the commissioners of the Idaho State Bar shall be audited annually by a certified public accountant.

Approved March 18, 1998.

CHAPTER 67
(S.B. No. 1300)

AN ACT

RELATING TO CRIMINAL SENTENCING; AMENDING SECTION 19-2601, IDAHO CODE, TO PROVIDE THAT A COURT MAY SENTENCE A DEFENDANT TO MORE THAN ONE PERIOD OF RETAINED JURISDICTION IN A CASE.

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 juvenile corrections 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 one hundred eighty (180) days of a sentence to the custody of the state board of correction. The court shall retain jurisdiction over the prisoner for the first one hundred eighty (180) days or, if the prisoner is a juvenile, until the juvenile reaches twenty-one (21) years of age. The prisoner will remain committed to the board of cor-

rection if not affirmatively placed on probation by the court. Placement on probation shall be under such terms and conditions as the court deems necessary and expedient. The court in its discretion may sentence a defendant to more than one (1) period of retained jurisdiction after a defendant has been placed on probation in a case. In no case shall the board of correction or its agent, the department of correction, be required to hold a hearing of any kind with respect to a recommendation to the court for the grant or denial of probation. Probation is a matter left to the sound discretion of the court. Any recommendation made by the department to the court regarding the prisoner shall be in the nature of an addendum to the presentence report. The board of correction and its agency, the department of correction, and their employees shall not be held financially responsible for damages, injunctive or declaratory relief for any recommendation made to the district court under this section.

5. If the crime involved is a felony and if judgment is withheld as provided in subsection 3. of this section or if judgment and a sentence of custody to the state board of correction is suspended at the time of judgment in accordance with subsection 2. of this section or as provided by subsection 4. of this section and the court shall place the defendant upon probation, it shall be to the board of correction or any other person or persons the court, in its discretion, deems appropriate.

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 subsection 1. of this section, the court, if it grants probation, may place the defendant on probation.

7. The period of probation ordered by a court under this section under a conviction or plea of guilty for a misdemeanor, indictable or otherwise, may be for a period of not more than two (2) years; and under a conviction or plea of guilty for a felony the period of probation may be for a period of not more than the maximum period for which the defendant might have been imprisoned.

Approved March 18, 1998.

CHAPTER 68
(S.B. No. 1301)

AN ACT

RELATING TO JUDGMENTS; AMENDING SECTION 10-1110, IDAHO CODE, TO DELETE AN OBSOLETE REFERENCE TO A JUDGMENT BOOK.

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

SECTION 1. That Section 10-1110, Idaho Code, be, and the same is hereby amended to read as follows:

10-1110. FILING TRANSCRIPT OF JUDGMENTS -- LIEN ACQUIRED. A transcript or abstract of any judgment or decree of any court of this

state or any court of the United States the enforcement of which has not been stayed as provided by law, if rendered within this state, certified by the clerk having custody thereof, may be recorded with the recorder of any county of this state, who shall immediately record and docket the same as by law provided, and from the time of such recording, and not before, the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county, not exempt from execution, owned by him at the time or acquired afterwards at any time prior to the expiration of the lien; provided that where a transcript or abstract is recorded of any judgment or decree of divorce or separate maintenance making provision for installment or periodic payment of sums for maintenance of children or alimony or allowance for wife's support, such judgment or decree shall be a lien only in an amount for payments so provided, delinquent or not made when due. The lien resulting from recording of a judgment other than for support of a child continues five (5) years from the date of the judgment, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon an appeal as provided by law. A lien arising from the delinquency of a payment due under a recorded judgment for support of a child after July 1, 1995, continues twenty-three (23) years from the date of judgment unless the judgment be previously satisfied or unless the enforcement of the judgment be stayed upon an appeal as provided by law. Provided, that no lien for child support shall continue more than five (5) years after the child reaches the age of majority or five (5) years after the child's death, whichever shall first occur. If the recorded judgment is for the support of more than one (1) child, the lien shall continue until five (5) years after the youngest child reaches the age of majority or five (5) years after the death of the last remaining child, whichever shall first occur. The transcript or abstract above mentioned shall contain the title of the court and cause and number of action, names of judgment creditors and debtors, time of entry~~, where entered in judgment book~~ and amount of judgment.

Approved March 18, 1998.

CHAPTER 69
(S.B. No. 1302)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-505, IDAHO CODE, TO PROVIDE FOR THE ADJUDICATION OF OFFENSES PERTAINING TO THE USE OR BEING UNDER THE INFLUENCE OF CONTROLLED SUBSTANCES UNDER THE JUVENILE CORRECTIONS ACT.

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

SECTION 1. That Section 20-505, Idaho Code, be, and the same is hereby amended to read as follows:

20-505. JURISDICTION. Subject to the prior jurisdiction of the

United States, the court shall have exclusive, original jurisdiction over any juvenile and over any adult who was a juvenile at the time of any act, omission or status, in the county in which the juvenile resides, or in the county in which the act, omission or status allegedly took place, in the following cases:

(1) Where the act, omission or status is prohibited by federal, state, local or municipal law or ordinance by reason of minority only, regardless of where the same occurred;

(2) Where the act or omission is a violation of any federal, state, local or municipal law or ordinance which would be a crime if committed by an adult, regardless of where the same occurred, except traffic, watercraft, fish and game, failure to obey a misdemeanor citation and criminal contempt violations. A juvenile violator under the age of fourteen (14) years at the time of the violation may, at the discretion of the court, be treated under the provisions of this chapter;

(3) Concerning any juvenile where the juvenile comes under the purview of the interstate compact on juveniles as set forth in chapter 19, title 16, Idaho Code;

(4) This chapter shall not apply to juvenile violators of beer, wine or other alcohol and tobacco laws; except that a juvenile violator under the age of fourteen (14) years at the time of the violation may, at the discretion of the court, be treated under the provisions of this chapter;

(5) This chapter shall not apply to the violent juvenile offender, as defined in this chapter;

(6) This chapter shall not apply to juvenile violators of the provisions of section 18-1502B, Idaho Code, pertaining to the possession and usage of inhalants, or section 18-1502C, Idaho Code, pertaining to the possession of marijuana or paraphernalia, ~~or--section 37-2732C,--Idaho--Code,-pertaining-to-use-or-being-under-the-influence of-controlled-substances,~~ unless the court so orders the juvenile violator to come under the purview of this chapter;

(7) This chapter shall not apply to juvenile violators of the provisions of section 18-3302D, Idaho Code, pertaining to the carrying of a concealed weapon on school property.

Approved March 18, 1998.

CHAPTER 70
(S.B. No. 1303)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE; AMENDING SECTION 18-8004, IDAHO CODE, TO PROVIDE THAT IT SHALL BE UNLAWFUL FOR A PERSON WITH AN ALCOHOL CONCENTRATION OF 0.04 OR HIGHER BUT LESS THAN 0.08 TO DRIVE A COMMERCIAL VEHICLE.

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

SECTION 1. That Section 18-8004, Idaho Code, be, and the same is

hereby amended to read as follows:

18-8004. PERSONS UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR ANY OTHER INTOXICATING SUBSTANCES.

(1) (a) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.08, as defined in subsection (4) of this section, or more, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(b) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.04 ~~through 0.07~~ or higher but less than 0.08, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(c) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.08 or higher, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(d) It is unlawful for any person under the age of twenty-one (21) who has an alcohol concentration of at least 0.02 but less than 0.08, as defined in subsection (4) of this section, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public. Any person violating this subsection shall be subject to the penalties provided in section 18-8004A, Idaho Code.

(2) Any person having an alcohol concentration of less than 0.08, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, by a test requested by a police officer shall not be prosecuted for driving under the influence of alcohol, except as provided in subsection (3), subsection (1)(b) or subsection (1)(d) of this section. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for driving or being in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or any other intoxicating substances, on other competent evidence.

(3) If the results of the test requested by a police officer show a person's alcohol concentration of less than 0.08, as defined in subsection (4) of this section, such fact may be considered with other competent evidence of drug use other than alcohol in determining the guilt or innocence of the defendant.

(4) For purposes of this chapter, an evidentiary test for alcohol concentration shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten

(210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the alcohol concentration shall be performed by a laboratory operated by the Idaho department of law enforcement or by a laboratory approved by the Idaho department of law enforcement under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho department of law enforcement. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated or approved by the Idaho department of law enforcement or by any other method approved by the Idaho department of law enforcement shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(5) It is unlawful for any person who is an 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 alcohol and any drug to a degree which impairs the driver's ability to safely operate a motor vehicle, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to public use. The fact that any person charged with a violation of the provisions of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of a violation of the provisions of this subsection.

(6) "Actual physical control" as used in this section, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(7) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

Approved March 18, 1998.

CHAPTER 71
(S.B. No. 1304)

AN ACT

RELATING TO JURY COMMISSIONS; AMENDING SECTION 2-205, IDAHO CODE, TO PROVIDE THAT A JURY COMMISSIONER WHOSE TERM HAS EXPIRED SHALL SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

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

SECTION 1. That Section 2-205, Idaho Code, be, and the same is hereby amended to read as follows:

2-205. JURY COMMISSIONS ESTABLISHED -- COMPOSITION -- QUALIFICATIONS OF COMMISSIONERS -- EXPENSES AND COMPENSATION. A jury commission is established in each county to manage the jury selection process under the supervision and control of the court. The jury commission shall be composed of the clerk of the court and a jury commissioner appointed for a term of two (2) years by the administrative judge, who shall serve until a successor is appointed and qualifies. The jury commissioner must be a citizen of the United States and a resident in the county in which he serves. The jury commissioner may be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of his duties and may receive compensation at a per diem rate fixed by the administrative judge and payable from the county general fund, if he is not otherwise a county employee.

Approved March 18, 1998.

CHAPTER 72
(S.B. No. 1306)

AN ACT

RELATING TO PUBLIC DEFENDERS; AMENDING SECTION 19-860, IDAHO CODE, TO PROVIDE THAT THE ADMINISTRATIVE JUDGE OF THE COUNTY'S JUDICIAL DISTRICT OR HIS DESIGNEE SHALL APPOINT THE COMMITTEE OF LAWYERS WHO ARE TO DESIGNATE THE PANEL FROM WHICH THE PUBLIC DEFENDER OR JUVENILE PUBLIC DEFENDER SHALL BE CHOSEN.

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

SECTION 1. That Section 19-860, Idaho Code, be, and the same is hereby amended to read as follows:

19-860. PUBLIC DEFENDER -- TERM -- COMPENSATION -- APPOINTMENT -- QUALIFICATIONS -- COURT APPOINTED ATTORNEYS -- COMPENSATION. (a) If the board of county commissioners of a county elects to establish and maintain an office of public defender and/or juvenile public defender, the board shall:

(1) Prescribe the qualifications of such public defender, his term of office (which may not be less than two (2) years), and his rate of annual compensation, and, if so desired by the board, a rate of compensation for extraordinary services not recurring on a regular basis. So far as is possible, the compensation paid to such public defender shall not be less than the compensation paid to the county prosecutor for that portion of his practice devoted to criminal law.

(2) Provide for the establishment, maintenance and support of his office. The board of county commissioners shall appoint a public defender and/or juvenile public defender from a panel of not more than five (5) and not fewer than three (3) persons (if that many are available) designated by a committee of lawyers appointed by the ~~senior--district--judge--having--resident-chambers-within-the county,-or-if-there-be-no-resident-district--judge,--then--by--the~~

~~senior--district~~ administrative judge of the judicial district encompassing the county or his designee. To be a candidate, a person must be licensed to practice law in this state and must be competent to counsel and defend a person charged with a crime. During his incumbency, such public defender may engage in the practice of civil law and criminal law other than in the discharge of the duties of his office, unless he is prohibited from doing so by the board of county commissioners.

(b) If a court before whom a person appears upon a formal charge assigns an attorney other than a public defender to represent a needy person, the appropriate district court, upon application, shall prescribe a reasonable rate of compensation for his services and shall determine the direct expenses necessary to representation for which he should be reimbursed. The county shall pay the attorney the amounts so prescribed. The attorney shall be compensated for his services with regard to the complexity of the issues, the time involved, and other relevant considerations.

Approved March 18, 1998.

CHAPTER 73
(S.B. No. 1307)

AN ACT

RELATING TO ATTACHMENTS AND GARNISHMENTS; AMENDING SECTION 8-507C, IDAHO CODE, TO CLARIFY AND ENUMERATE THE EXEMPTIONS TO WHICH A DEBTOR MAY BE ENTITLED AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 8-507C, Idaho Code, be, and the same is hereby amended to read as follows:

8-507C. FORMS. The notice of exemptions, instructions to debtors and third parties, and the claim of exemption shall be in a form substantially similar to the form hereinafter provided. The forms shall be made available in English and Spanish language translations in the offices of each county sheriff. Notice, written in Spanish, of the availability of these documents in ~~s~~Spanish translation shall be set forth on the notice of exemptions.

IMPORTANT LEGAL NOTICE/NOTICIA LEGAL IMPORTANTE

MONEY/PERSONAL PROPERTY BELONGING TO YOU MAY HAVE BEEN TAKEN OR HELD IN ORDER TO SATISFY A COURT JUDGMENT. YOU MAY BE ABLE TO GET YOUR MONEY/PROPERTY BACK SO READ THIS NOTICE CAREFULLY.

SI SOLAMENTE HABLA ESPANOL PUEDE OBTENER UNA FORMA EN ESPANOL EN EL DEPARTAMENTO DEL SHERIFE.

The enclosed writ of execution and/or notice of garnishment has directed the sheriff to take custody by levying on your money and/or personal property in order to satisfy a court judgment.

The sheriff has levied on your money and/or personal property. You have FOURTEEN (14) DAYS after the date of mailing or personal service of these documents to file a claim of exemption with the sheriff. An exemption from levy entitles you to obtain the release of your money and personal property.

The following is a partial list of money and personal property that may be exempt from levy. EXEMPTIONS ARE PROVIDED BY IDAHO AND FEDERAL LAW AND CAN BE FOUND IN THE IDAHO CODE AND IN THE UNITED STATES CODE. MOST OF THE EXEMPTIONS PROVIDED BY THE STATE ARE CONTAINED IN CHAPTER 6, TITLE 11, IDAHO CODE. GOVERNMENTAL BENEFITS SUCH AS SOCIAL SECURITY, SSI, VETERANS, RAILROAD RETIREMENT, MILITARY, AND WELFARE ARE EXEMPT FROM LEVY IN MOST CASES UNDER FEDERAL LAW.

This list may not be complete and may not include all exemptions that apply in your case because of periodic changes in the law. Additionally, some of the exemptions may not apply in full or under all circumstances. There may be special requirements for child support. You or your attorney should read the exemption statutes which apply to you.

If you believe the money or personal property that are being levied upon are exempt, you should immediately file a claim of exemption. If you fail to make a timely claim of exemption, the sheriff will release money to the plaintiff, or the property may be sold at an execution sale, perhaps at a price substantially below its value, and you may have to bring further court action to recover the money and property.

The sheriff cannot give you legal advice. Therefore, if you have any questions concerning your rights in this action, you should consult an attorney as soon as possible. You may contact the nearest office of Idaho legal aid services, inc. to inquire if you are eligible for their assistance.

SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED

Type of Money and Property

1. Alimony, support, maintenance (money or property)
2. Appliances (household) ($500 per item, up to $4,000 gross)
3. Annuity contract payments
4. Bodily injury and wrongful death awards*
5. Books (professional) up to $1,000
6. Burial plots
7. Child support payments*
8. Disability or illness benefits*
9. Furnishings (household) ($500 per item, up to $4,000 gross)
10. Health aids
11. Homestead, house, mobile home, and related structures
12. Jewelry (up to $250)

13. Life insurance benefits payable to spouse or dependent*
14. Medical and/or hospital benefits
15. Military retirement and survivors benefits
16. Motor vehicle: car, truck, motorcycle with a value of up to $1,500 per person
17. Pension: stock bonus, profit sharing annuity, or similar plans
18. Personal property: ($500 per item, up to $4,000 gross) (furnishings, appliances, one firearm, pets, musical instruments, books, clothes, family portraits and heirlooms)
19. Public assistance: federal, state, or local including: Aid to Aged, Blind and Disabled (AABD); Aid to Dependent Children (AFDC); Aid to Permanently and Totally Disabled (APTD)
20. Public Employees Benefits including Federal Civil Service Retirement, Idaho Retirement and Disability
21. Railroad Retirement Benefits
22. Retirement, pension or profit sharing plan qualified by IRS
23. Social Security Disability and Retirement Benefits
24. SSI (Supplemental Security Insurance Benefits)
25. Tools of trade and implements up to $1,000
26. Unemployment benefits
27. Veterans benefits and insurance
28. Wages or salary:
    Consumer debts primarily for personal or household purposes: exemption is 40 times the federal minimum wage or 25% of disposable income, whichever is greater
    Nonconsumer debts: exemption is 30 times the federal minimum wage or 25% of disposable income, whichever is greater
29. Worker's compensation

* To the extent reasonably necessary for support of family and if not commingled with other funds.

INSTRUCTIONS TO DEFENDANTS AND THIRD PARTIES

In order to claim an exemption from execution and garnishment under Idaho and federal law, you, the defendant, judgment debtor, or a third party, holding or known to have an interest in the money and/or personal property, must:

1. DELIVER OR MAIL A CLAIM OF EXEMPTION TO THE SHERIFF WHO LEVIED UPON YOUR MONEY AND/OR PERSONAL PROPERTY AT (SHERIFF'S STREET ADDRESS) , WITHIN FOURTEEN (14) DAYS AFTER MAILING OR PERSONAL SERVICE OF THESE INSTRUCTIONS, NOTICE OF EXEMPTIONS AND FORM FOR FILING A CLAIM OF EXEMPTION. IF YOU MAIL A CLAIM OF EXEMPTION, IT MUST BE RECEIVED BY THE SHERIFF WITHIN THE FOURTEEN (14) DAY PERIOD.
2. The sheriff has to notify the plaintiff or judgment creditor within one (1) business day, excluding weekends and holidays, that you filed a claim of exemption. The judgment creditor has five (5) business days, excluding weekends and holidays, after the date notice was provided that a claim of exemption was filed with the sher-

iff, to file a motion with the court contesting the claim of exemption.

3. If the judgment creditor notifies the sheriff that he will not object to the claim of exemption or does not file a motion with the court contesting the claim of exemption the sheriff will immediately return the money and/or personal property or notify the bank or depository institution to release the money and/or personal property which has been levied upon.

4. IF THE JUDGMENT CREDITOR DOES FILE A MOTION WITH THE COURT CONTESTING THE CLAIM OF EXEMPTION, YOU, THE JUDGMENT DEBTOR OR ANY INTERESTED THIRD PARTY, WILL RECEIVE A COPY OF THE MOTION AND NOTICE OF HEARING. A HEARING WILL BE HELD WITHIN NOT LESS THAN FIVE (5) NOR MORE THAN TWELVE (12) DAYS AFTER THE FILING DATE OF THE MOTION. YOU SHOULD BE PREPARED TO EXPLAIN THE GROUNDS FOR CLAIMING THE EXEMPTION IN COURT ON THE DATE AND TIME SET FOR THE HEARING. YOU SHOULD BRING WHATEVER DOCUMENTS YOU HAVE TO SUPPORT YOUR CLAIM.

5. This is a notice, not legal advice. If you have any questions concerning your rights in this action, you should contact an attorney as soon as possible. If you are low income and cannot afford an attorney you may contact the nearest office of Idaho Legal Aid Services, Inc. to inquire if they can assist you.

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF .....

.....,	)	
Plaintiff(s),	)	CASE NO.
vs.	)	CLAIM OF EXEMPTION
.....,	)	
Defendant(s).	)	
.....	)	

~~I,----------,-state-the-following-is-true-and-correct:~~

~~1.~~ I claim an exemption from levy for the following described money and/or property:

a. ~~If--bank--or--depository-institution-is-garnished,-the-account contains-funds-which-are~~ Money, including money in a bank account, which was paid to me or my family as:

~~.....~~ ~~federal-or-state-benefits-from-.....~~
~~.....~~ ~~proceeds-from-.....~~
~~.....~~ ~~reasonably-necessary-for-the-support-of-myself-and~~
~~.....~~ ~~dependents-because.....~~
..... Public assistance of any kind
..... Social security or SSI
..... Worker's compensation
..... Unemployment benefits
..... Child support

..... Retirement, pension, or profit sharing benefits
..... Military or veteran's benefits
..... Life insurance or other insurance
..... Disability, illness, medical or hospital benefits
..... Alimony, support or maintenance
..... Annuity contract benefits
..... Bodily injury or wrongful death awards
..... Other money (describe).....
..... Wages (Do not check this box until you have first talked to your employer to see if he correctly calculated your exemption according to the formula under item 28 on the form entitle "SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED." Then check this box only if you believe your employer's calculation is incorrect.)

b. ~~If other money and/or property, describe:~~.....
.....
.....
.....
.....
.....

Property:

..... Professional books
..... Burial plots
..... Health aids
..... Homestead, house, mobile home and related structures
..... Jewelry
..... Car, truck or motorcycle
..... Tools and implements
..... Appliances, furnishings, firearms, pets, musical instruments, books, clothes, family portraits and heirlooms
..... Other property (describe)

.....
Defendant or
Representative

Approved March 18, 1998.

CHAPTER 74
(S.B. No. 1374)

AN ACT

RELATING TO THE IDAHO CREDIT CODE; AMENDING SECTION 28-46-302, IDAHO CODE, TO PROVIDE THAT A LICENSE TO MAKE REGULATED CONSUMER LOANS MAY BE ISSUED TO MORTGAGE LENDERS LICENSED UNDER THE RESIDENTIAL MORTGAGE PRACTICES ACT WITHOUT PAYMENT OF LICENSE FEES, INVESTIGATION OF FINANCIAL RESPONSIBILITY OR NOTICE TO EXISTING LICENSEES AND TO PROVIDE FOR THE APPLICATION OF ALL OTHER PROVISIONS OF THE IDAHO CREDIT CODE TO SUCH MORTGAGE LENDERS.

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

SECTION 1. That Section 28-46-302, Idaho Code, be, and the same is hereby amended to read as follows:

28-46-302. LICENSE TO MAKE REGULATED CONSUMER LOANS. (1) Upon receipt by the administrator of an application with the required fee to be fixed by the administrator, but not to exceed one hundred dollars ($100), the applicant shall notify all existing licensees in the community of the application by publishing notice once a week for three (3) consecutive weeks in a newspaper of general circulation in the community. Such licensees may file with the administrator any objections to the issuance of a license within thirty (30) days after the date of the last publication of such notice.

(2) No application for license shall be denied if the administrator finds that:

(a) The financial responsibility, character, and fitness of the applicant, and of the officers and directors thereof (if the applicant is a corporation) are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act; and

(b) The applicant has at least thirty thousand dollars ($30,000) available for the purpose of making loans.

(3) The administrator is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsections (2)(a) and (2)(b) of this section.

(4) The director may issue a license under this act to a mortgage lender licensed under chapter 31, title 26, Idaho Code, and who is engaged in the business described in subsection (1) or (2) of section 28-46-301, Idaho Code. All provisions of this act, except subsections (1), (2) and (3) of this section, and subsection (5) of section 28-46-305, Idaho Code, shall apply to persons seeking a license pursuant to this subsection.

(5) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if:

(a) The administrator has notified the applicant in writing that his application has been denied, or objections filed; or

(b) The administrator has not issued a license within sixty (60) days after the application for the license was filed.

If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the administrator for his reasonable and necessary expenses incurred as a result of the hearing. A request for a hearing may not be made more than fifteen (15) days after the administrator has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the administrator's finding supporting denial of the application or that objections have been filed and the substance thereof.

(~~5~~6) The administrator may issue additional licenses to the same licensee upon compliance with all the provisions of this act governing the issuance of a single license. A separate license shall be required for each place of business. Each license shall remain in full force and effect until surrendered, suspended or revoked.

(~~6~~7) No licensee shall change the location of any place of busi-

ness, or consolidate, or close any locations, without giving the administrator at least fifteen (15) days' prior written notice. No licensee shall change the location of any of his places of business to a location more than five (5) miles from the original location or outside the original municipality, if any.

(~~7~~8) A licensee shall not engage in the business of making regulated consumer loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that in the license.

Approved March 18, 1998.

CHAPTER 75
(S.B. No. 1381)

AN ACT

RELATING TO STATE PARKS; AMENDING CHAPTER 42, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4229B, IDAHO CODE, TO AUTHORIZE THE PARK AND RECREATION BOARD TO ENTER INTO A LEASE-PURCHASE OR OTHER FINANCING OBLIGATION FOR THE DESIGN AND CONSTRUCTION AND EQUIPPING OF FACILITIES FOR PUBLIC RECREATIONAL USE WITHIN HARRIMAN STATE PARK, TO PROVIDE THE PURPOSE OF THE FACILITIES, TO APPROPRIATE USER FEE REVENUES FROM THE PARK TRUST FUND FOR HARRIMAN STATE PARK TO PAY THE OBLIGATION, TO PROVIDE THAT THE OBLIGATION SHALL NOT BE A DEBT OR OBLIGATION OF THE STATE AND TO PROHIBIT USE OF THE TAXING POWER OF THE STATE TO PAY THE DEBT OR OBLIGATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 42, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-4229B, Idaho Code, and to read as follows:

67-4229B. HARRIMAN STATE PARK -- FINANCING IMPROVEMENTS. Notwithstanding any law to the contrary, the board is authorized to enter into a lease-purchase obligation or other financing obligation, in a principal amount not to exceed five hundred thousand dollars ($500,000), for the design, construction and equipping of facilities for public recreational use within Harriman state park, under terms, conditions and covenants as the board may approve by resolution. The purpose of the facilities is to provide educational and recreational opportunities for park users while generating revenue to assist with operation of the park. The park trust fund for Harriman state park, or so much of that fund as may be required in the judgment of the board, is continuously appropriated for the purpose stated in this section. Any obligation entered into shall be payable solely from user fees for the facilities within Harriman state park deposited into the park trust fund for Harriman state park and shall not be a debt or obligation of the state. The holder or holders of the debt or obligation

shall not have the right to compel any exercise of the taxing power of the state to pay the debt or obligation or the interest on the debt or obligation.

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, 1998.

CHAPTER 76
(S.B. No. 1309)

AN ACT

RELATING TO THE IDAHO STATEWIDE TRIAL COURT AUTOMATED RECORDS SYSTEM (ISTARS); AMENDING SECTION 31-3201A, IDAHO CODE, TO INCREASE CERTAIN CIVIL CASE FILING FEES BY FIVE DOLLARS TO BE DEPOSITED INTO THE ISTARS TECHNOLOGY FUND AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 1-1623, IDAHO CODE, TO PROVIDE THAT INTEREST EARNED ON IDLE MONEY IN THE ISTARS TECHNOLOGY FUND SHALL BE RETURNED TO THE ISTARS TECHNOLOGY FUND.

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

SECTION 1. That Section 31-3201A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201A. COURT FEES. The clerk of the district court in addition to the fees and charges imposed by chapter 20, title 1, Idaho Code, and in addition to the fee levied by chapter 2, title 73, Idaho Code, shall charge, demand and receive the following fees for services rendered by him in discharging the duties imposed upon him by law;

(a) A fee of $39.00 for filing a civil case of any type in the district court or in the magistrate's division of the district court including cases involving the administration of decedents' estates, whether testate or intestate, and conservatorships of the person or of the estate or both with the following exceptions:

The filing fee shall be $1~~2~~7.00 in each case where the amount of money or damages or the value of personal property claimed does not exceed $300. The filing fee shall be $1~~4~~9.00 in the following types of cases:

(1) Where the amount of money or damages or the value of personal property claimed exceeds $300 but does not exceed $1,000;

(2) Where a case is brought for forcible or unlawful entry or detainer whether brought for rent or possession or both and regardless of the amount;

(3) Where a case is brought under chapter 20, title 16, Idaho Code, for the termination of parent-child relationship;

(4) Where a case is brought under chapter 2, title 32, Idaho Code, for permission to marry;

(5) Where a case involving the administration of a decedent's

estate is brought under the Summary Administration of Small Estates Act;

(6) In cases where a court order is issued only for a certain specific reason other than the administering of an estate, including but not limited to proceedings brought under sections 14-114, 15-514, 15-1401, 15-1518 and/or 15-1709, Idaho Code, or for some specific reason;

(7) In cases brought to determine heirship without administration;

(8) In cases brought to determine inheritance or transfer tax;

(9) In proceedings brought for adoption;

(10) In proceedings brought for letters of guardianship of the person or of the estate or both.

No filing fee shall be charged in the following types of cases:

(1) In cases brought under chapter 3, title 66, Idaho Code, for commitment of mentally ill persons;

(2) In cases brought under the ~~Youth Rehabilitation~~ Juvenile Corrections Act;

(3) In cases brought under the Child Protective Act.

In all cases in which a filing fee of $39.00 is paid, $17.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; $5.00 of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; and $17.00 of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $1~~4~~9.00 is paid, $4.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; $5.00 of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; and $10.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account. In all cases in which a filing fee of $1~~2~~7.00 is paid, $3.00 of such filing fee shall be paid to the county treasurer for deposit in the district court fund of the county; $5.00 of such filing fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; and $9.00 of such filing fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(b) A fee of $17.50 shall be paid, but not in advance, by each person found guilty of any felony or misdemeanor, except when the court orders such fee waived because the person is indigent and unable to pay such fee. If the magistrate court facilities are provided by the county, $5.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $12.50 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state trea-

surer for deposit in the state general account. If the magistrate court facilities are provided by a city, $5.00 of such fee shall be paid to the city treasurer for deposit in the city general fund, $2.50 of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrates court facilities, and $10.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(c) A fee of $16.50 shall be paid, but not in advance, by each person found to have committed an infraction or any minor traffic, conservation or ordinance violation; provided that the judge or magistrate may in his or her discretion consolidate separate nonmoving traffic offenses into one (1) offense for purposes of assessing such fee. If the magistrate court facilities are provided by the county, $5.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $11.50 of such fee shall be paid to the county treasurer, who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account. If the magistrate court facilities are provided by a city, $5.00 of such fee shall be paid to the city treasurer for deposit in the city general fund, $2.50 of such fee shall be paid to the city treasurer for deposit in the city capital facilities fund for the construction, remodeling and support of magistrate court facilities, and $9.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(d) A fee of $19.00 shall be paid by any party, except the plaintiff, making an appearance in any civil action in the district court or in the magistrate's division of the district court. Of such fee, $4.00 shall be paid to the county treasurer for deposit in the district court fund of the county; $5.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit into the ISTARS technology fund; and $10.00 of such fee shall be paid to the county treasurer who shall within five (5) days after the end of the month pay such fees to the state treasurer for deposit in the state general account.

(e) A fee of $9.00 shall be paid by the person or persons required to make an account pursuant to either chapter 11 or chapter 18, title 15, Idaho Code, at the time such account is filed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(f) A fee of $19.00 shall be paid upon the filing of a petition of the executor or administrator or of any person interested in an estate for the distribution of such estate, $6.00 of such fee shall be paid to the county treasurer for deposit in the district court fund of the county; and $13.00 of such fee shall be paid to the county treasurer who shall, within five (5) days after the end of the month, pay such fees to the state treasurer for deposit in the state general account.

(g) A fee of $7.00 shall be paid by an intervenor upon making an

appearance in any civil action in the district court or in the magistrate's division of the district court. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(h) A fee of $8.00 shall be paid by a party filing a third party claim as defined in the Idaho Rules of Civil Procedure. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(i) A fee of $8.00 shall be paid by any party filing a cross-claim. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(j) A fee of $9.00 shall be paid by a party initiating a change of venue. Such fee shall be paid to the clerk of the court of the county to which venue is changed. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(k) A fee of $9.00 shall be paid by any party appearing after judgment or applying to reopen a case. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county. A fee of $32.00 shall be paid by a party applying to reopen a divorce action or modify a divorce decree, with all of the fee to be distributed in the same manner as the fee provided for in subsection (a) of this section is distributed.

(l) A fee of $9.00 shall be paid by a party taking an appeal from the magistrate's division of the district court to the district court. No additional fee shall be required if a new trial is granted. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(m) A fee of $9.00 shall be paid by the party taking an appeal from the district court to the supreme court for comparing and certifying the transcript on appeal, if such certificate is required. All of such fee shall be paid to the county treasurer for deposit in the district court fund of the county.

(n) Fees not covered by this section shall be set by rule or administrative order of the supreme court.

(o) All fees required to be paid by this section or by rule or administrative order of the supreme court shall be collected by the clerk of the district court or by a person appointed by the clerk of the district court for this purpose. If it appears that there is a necessity for such fees to be collected by persons other than the clerk of the district court or a person designated by the clerk for such purpose, the supreme court by rule or administrative order may provide for the designation of persons authorized to receive such fees. Persons so designated shall account for such fees in the same manner required of the clerk of the district court and shall pay such fees to the clerk of the district court of the county in which such fees are collected.

(p) That portion of the filing fees required to be remitted to the state treasurer for deposit in the state general account shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county treasurer. That portion of the filing fees required to be remitted to a city treasurer for deposit in the city's general fund shall be remitted within five (5) days after the end of the month in which such fees were remitted to the county trea-

surer.

(q) Of the fees derived from the filing of any divorce action required to be transmitted to the state treasurer for deposit in the general account, the county treasurer shall retain $5.00, which shall be separately identified and deposited in the district court fund of the county. Such moneys shall be used exclusively for the purpose of establishing a uniform system of qualifying and approving persons, agencies or organizations to conduct evaluations of persons convicted of domestic assault or battery as provided in section 18-918, Idaho Code, and the administration of section 18-918(5), Idaho Code, relating to the evaluation and counseling or other treatment of such persons for anger control and prevention, including the payment of the costs of evaluating and counseling or other treatment of an indigent defendant. No provision of chapter 52, title 39, Idaho Code, shall apply to the moneys provided for in this subsection.

(r) In consideration of the aforesaid fees the clerk of the district court shall be required to perform all lawful service that may be required of him by any party thereto; provided, that he shall not prepare and furnish any certified copy of any file or record in an action except printed transcript on appeal, without additional compensation as provided by law.

SECTION 2. That Section 1-1623, Idaho Code, be, and the same is hereby amended to read as follows:

1-1623. IDAHO STATEWIDE TRIAL COURT AUTOMATED RECORDS SYSTEM (ISTARS) TECHNOLOGY FUND. There is hereby created in the office of the state treasurer the ISTARS technology fund. Moneys deposited into the fund pursuant to sections 31-3201 and 31-3201A, Idaho Code, upon appropriation by the legislature, shall be used by the supreme court for the purpose of maintaining, replacing and enhancing the Idaho Statewide Trial Court Automated Records System (ISTARS) program. The ISTARS technology fund shall be separate and distinct from the state general fund, and expenditures from the ISTARS technology fund shall be solely dedicated to the purposes set forth in this section. Moneys deposited into the fund may be allowed to accumulate from year to year for designated maintenance, replacement, extension or enhancement of the ISTARS program. Interest earned on the investment of idle moneys in the ISTARS technology fund shall be returned to the ISTARS technology fund.

Approved March 18, 1998.

CHAPTER 77
(S.B. No. 1314)

AN ACT

RELATING TO DISCLOSURE OF INFORMATION; AMENDING SECTION 66-348, IDAHO CODE, TO PROVIDE ADDITIONAL CONDITIONS FOR DISCLOSURE OF INFORMATION CONCERNING PERSONS INVOLUNTARILY COMMITTED TO HOSPITALIZATION FOR THE MENTALLY ILL.

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

SECTION 1. That Section 66-348, Idaho Code, be, and the same is hereby amended to read as follows:

66-348. DISCLOSURE OF INFORMATION. ~~(a)~~ All certificates, applications, records, and reports made for the purpose of this act and directly or indirectly identifying a patient or former patient or an individual whose involuntary assessment, detention or commitment ~~has been~~ is being sought under this act shall be kept subject to disclosure according to chapter 3, title 9, Idaho Code; provided that such records may also be disclosed to any person:

(1) If the individual identified, his attorney in fact for mental health care, or his legal guardian, if any, shall consent; or

(2) If disclosure may be necessary to carry out any of the provisions of this act; or

(3) If a court directs upon its determination that disclosure is necessary and that failure to make disclosure would be contrary to the public interest.

Approved March 18, 1998.

CHAPTER 78
(S.B. No. 1315)

AN ACT

RELATING TO INVOLUNTARY COMMITMENT OF THE MENTALLY ILL; AMENDING SECTION 66-329, IDAHO CODE, TO REDUCE THE LENGTH OF TIME OF AN INVOLUNTARY COMMITMENT OF A MENTALLY ILL PERSON AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 66-329, Idaho Code, be, and the same is hereby amended to read as follows:

66-329. COMMITMENT TO DEPARTMENT DIRECTOR UPON COURT ORDER -- JUDICIAL PROCEDURE. (a) Proceedings for the involuntary care and treatment of mentally ill persons by the department of health and welfare may be commenced by the filing of a written application with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, or by a licensed physician, prosecuting attorney, or other public official of a municipality, county or of the state of Idaho or the director of any facility in which such patient may be.

(b) The application shall state the name and last known address of the proposed patient; the name and address of either the spouse, guardian, next of kin or friend of the proposed patient; whether the proposed patient can be cared for privately in the event commitment is not ordered; if the proposed patient is, at the time of the application, a voluntary patient; whether the proposed patient has applied

for release pursuant to section 66-320, Idaho Code; and a simple and precise statement of the facts showing that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled.

(c) Any such application shall be accompanied by a certificate of a designated examiner stating that he has personally examined the proposed patient within the last fourteen (14) days and is of the opinion that the proposed patient is (i) mentally ill; (ii) likely to injure himself or others or is gravely disabled; and (iii) lacks capacity to make informed decisions about treatment, or a written statement by the applicant that the proposed patient has refused to submit to examination by a designated examiner.

(d) Upon receipt of an application for commitment, the court shall, within forty-eight (48) hours appoint another designated examiner to make a personal examination of the proposed patient or if the proposed patient has not been examined, the court shall appoint two (2) designated examiners to make individual personal examinations of the proposed patient and may order the proposed patient to submit to an immediate examination. If neither designated examiner is a physician, the court shall order a physical examination of the proposed patient. At least one (1) designated examiner shall be a psychiatrist, licensed physician or licensed psychologist; no more than one (1) designated examiner may be a physician not practicing psychiatry, a holder of an earned master's level or higher degree in social work from an accredited program, a registered nurse with an earned master's level or higher degree in psychiatric nursing from an accredited program, or a holder of an earned master's level or higher degree in psychology from an accredited program. The designated examiners shall report to the court their findings within the following seventy-two (72) hours as to the mental condition of the proposed patient and his need for custody, care, or treatment by a facility. The reports shall be in the form of written certificates which shall be filed with the court. The court may terminate the proceedings and dismiss the application without taking any further action in the event the reports of the designated examiners are to the effect that the proposed patient is not mentally ill or, although mentally ill, is not likely to injure himself or others or is not gravely disabled. If the proceedings are terminated, the proposed patient shall be released immediately.

(e) If the designated examiner's certificate states a belief that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled, the judge of such court shall issue an order authorizing any health officer, peace officer, or director of a facility to take the proposed patient to a facility in the community in which the proposed patient is residing or to the nearest facility to await the hearing and for good cause may authorize treatment during such period subject to the provisions of section 66-346(a)(4), Idaho Code. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

(f) Upon receipt of such application and designated examiners' reports the court shall appoint a time and place for hearing not more than seven (7) days from the receipt of such designated examiners' reports and thereupon give written notice of such time and place of

such hearing together with a copy of the application, designated examiner's certificates, and notice of the proposed patient's right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney, to the applicant, to the proposed patient, to the proposed patient's spouse, guardian, next of kin or friend. With the consent of the proposed patient and his attorney, the hearing may be held immediately. Upon motion of the proposed patient and attorney and for good cause shown, the court may continue the hearing up to an additional fourteen (14) days during which time, for good cause shown, the court may authorize treatment.

(g) An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code, no later than the time the application is received by the court.

(h) The hearing shall be held at a facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the proposed patient's physical or mental health. Venue for the hearing shall be in the county of residence of the proposed patient, unless the patient waives the right to have venue fixed there.

(i) In all proceedings under this section, any existing provision of the law prohibiting the disclosure of confidential communications between the designated examiner and proposed patient shall not apply and any designated examiner who shall have examined the proposed patient shall be a competent witness to testify as to the proposed patient's condition.

(j) The proposed patient, the applicant, and any other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The proposed patient shall be required to be present at the hearing unless the court determines that the mental or physical state of the proposed patient is such that his presence at the hearing would be detrimental to the proposed patient's health or would unduly disrupt the proceedings. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall receive all relevant and material evidence consistent with the rules of evidence.

(k) If, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that the proposed patient:

(1) is mentally ill; and

(2) is, because of such condition, likely to injure himself or others, or is gravely disabled due to mental illness;

the court shall order the proposed patient committed to the custody of the department director for an indeterminate period of time not to exceed ~~three~~ one (~~3~~1) years. The department director, through his dispositioner, shall determine within twenty-four (24) hours the least restrictive available facility consistent with the needs of each patient committed under this section for observation, care, and treatment.

(l) Nothing in this chapter or in any rule ~~or regulation~~ adopted

pursuant thereto shall be construed to authorize the detention or involuntary admission to a hospital or other facility of an individual who:

(1) is epileptic, mentally deficient, mentally retarded, impaired by chronic alcoholism or drug abuse, or aged, unless in addition to such condition, such person is mentally ill;

(2) is a patient under treatment by spiritual means alone, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof and who asserts to any authority attempting to detain him that he is under such treatment and who gives the name of a practitioner so treating him to such authority; or

(3) can be properly cared for privately with the help of willing and able family or friends, and provided, that such persons may be detained or involuntarily admitted if such persons are mentally ill and present a substantial risk of injury to himself or others if allowed to remain at liberty.

(m) The order of commitment shall state whether the proposed patient lacks capacity to make informed decisions about treatment, the name and address of the patient's attorney and either the patient's spouse, guardian, adult next of kin, or friend.

(n) If the patient has no spouse or guardian and if the patient has property which may not be cared for pursuant to chapter 5, title 66, Idaho Code, or by the patient while confined at a facility, the court shall appoint a guardian ad litem for the purpose of preserving the patient's estate, pending further guardianship or conservatorship proceedings.

(o) The commitment shall continue until the commitment is terminated and shall be unaffected by the patient's conditional release or change in disposition.

Approved March 18, 1998.

CHAPTER 79
(S.B. No. 1330)

AN ACT

RELATING TO WATER RIGHTS; AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE A FEE FOR FILING A LATE CLAIM TO A WATER RIGHT; AND AMENDING SECTION 42-243, IDAHO CODE, TO EXTEND THE DATE FOR FILING LATE CLAIMS.

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 resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations, research, and providing public data as required of the

department in the performance of its statutory duties:

A. For filing an application for a permit to appropriate the public waters of this state:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $50.00

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $100

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... $100 plus $20.00 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 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 ..... $480 plus $10.00 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 ..... $1,280 plus $5.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 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 ..... $3,280 plus $1.00 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 of established rights; or for an extension of time within which to resume the use of water under a vested right $100

C. For filing application for amendment of permit $50.00

D. 1. For filing claim to use right under section 42-243, Idaho Code $100

2. For filing a late claim to use a water right under section 42-243, Idaho Code, where the date filed with the department of water resources or, the postmark if mailed to the department of water resources, is:

i. After June 30, 1998..... $250

ii. After June 30, 2005..... $500

iii. For every ten (10) years after June 30, 2005, an additional $500

E. For filing an assignment of permit $25.00

F. For readvertising application for permit, change, exchange, or extension to resume use $50.00

G. For certification, each document $1.00

H. For making photo copies of office records, maps and documents for public use .... A reasonable charge as determined by the department.

I. For filing request for extension of time within which to sub-

mit proof of beneficial use on a water right permit $50.00

J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use .... A reasonable charge as determined by the department.

K. For filing proof of beneficial use of water and requests for water right license examinations, a fee based upon the rate of diversion claimed in the proof of beneficial use:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less ..... $50.00 except no fee shall be charged for domestic use for which a permit is not required.

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet, but not exceeding 100 acre feet $100

3. For a quantity greater than 1.0 c.f.s., or for a storage volume greater than 100 acre feet ..... $100 plus $25.00 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 with a maximum fee not to exceed $600.

L. For filing a protest or request to intervene in a protested matter $25.00

M. For filing an application to alter a stream channel pursuant to chapter 38, title 42, Idaho Code:

1. Application for recreational dredge permits by residents of the state $10.00

2. Application for recreational dredge permits by nonresidents of the state $30.00

3. Other applications $20.00

N. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

SECTION 2. That Section 42-243, Idaho Code, be, and the same is hereby amended to read as follows:

42-243. FILING OF CLAIMS OF RIGHTS ESTABLISHED BY DIVERSION AND USE -- FORM AND CONTENT OF CLAIM. In order to allow for the recording of historic uses of the waters of this state, any person using or claiming rights to the use of water for uses other than domestic purposes, which have heretofore been established by diversion and application to a beneficial use shall file a claim of such right with the department of water resources not later than June 30, 1983, or if mailed, shall be postmarked not later than June 30, 1983. Such claim shall be in affidavit form on forms furnished by the department of water resources and shall set forth:

a. The name and post-office address of the claimant.

b. The quantity of water claimed to have been used.

c. The source of the water supply.

d. The location of the point or points of diversion.

e. The nature of the use and the period during each year when the water is used for such purposes.

f. The priority of the right claimed which shall be determined by the date when the water was first applied to a beneficial use provided there has been no period of abandonment or nonuse or forfeiture of the water right since that date.

g. If water is claimed for irrigation, the legal description of the lands irrigated.

h. Such other information as shall be required by the blank form furnished by the department.

Such claim may be accompanied by maps showing the place of use, affidavits of witnesses familiar with the uses claimed, measurements of the water diverted and used, and such other information as the claimant may wish to submit.

If the claim is filed with the department of water resources later than June 30, 1983, or if it is mailed to the department of water resources and the postmark is later than June 30, 1983, the claim shall be classified as follows:

a. If the only use identified on the claim is domestic purposes, then the claim will be considered to be filed in a timely manner.

b. If the use(s) identified on the claim includes other than domestic purposes, then the claim shall be considered to be a late claim, with a unique filing fee as set forth in section 42-221, Idaho Code. ~~Late--claims-shall-not-be-accepted-if-filed-with-the-department of-water-resources-later-than-June-30,--1988,--or--if--mailed--to--the department--of--water--resources--with--a-postmark-later-than-June-30, 1988.~~

This section shall not apply to any water rights which are based on the authority of a permit or license issued by the department of water resources or one of its predecessors or water rights which have previously been adjudicated by a court having jurisdiction of such matters.

Approved March 18, 1998.

CHAPTER 80
(S.B. No. 1333)

AN ACT

RELATING TO THE APPOINTMENT OF TRUSTEES AND ISSUANCE OF LETTERS OF TRUSTEESHIP; AMENDING PART 4, CHAPTER 7, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-7-403, IDAHO CODE, TO PROVIDE THAT, UPON APPLICATION, A TRUSTEE MAY BE APPOINTED AND LETTERS OF TRUSTEESHIP ISSUED AND TO DESCRIBE THE CONTENTS OF THE APPLICATION.

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

SECTION 1. That Part 4, Chapter 7, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 15-7-403, Idaho Code, and to read as follows:

15-7-403. APPOINTMENT OF TRUSTEE AND LETTERS OF TRUSTEESHIP. Upon application to the court in which the trust is registered in the state of Idaho, and upon hearing after notice to all interested parties, the court may appoint the trustee as such (or as successor trustee, if applicable). Upon filing of an acceptance of the duties of the office of trustee by the trustee, containing the oath of the trustee to the effect that the trustee will perform the duties of his office according to the law, letters of trusteeship shall be issued, evidencing the authority of the trustee. Such letters may be recorded in the office of the county recorder in any county in which property held by the trust is located and, from the time of filing of such letters for record, notice is imparted to all persons of the contents of such letters of trusteeship. The application to the court shall contain at least the following:

(1) A statement of the interest of the applicant in the matter, including the priority of the person whose appointment is sought and a statement of the names and addresses and priority for appointment of any other persons having a prior or equal right to the appointment under law or the terms of the trust;

(2) A description of the trust;

(3) A statement identifying and indicating the address of any existing trustee of the trust whose appointment has not been terminated;

(4) The name and address of the person or entity for whom appointment is sought;

(5) A statement identifying and indicating the address of all current and contingent beneficiaries of the trust, and the ages of any such beneficiaries that are minors;

(6) A statement that a copy of the trust is either in the possession of the court or accompanies the application, or that copies of portions of the trust accompany the application showing:

(a) The grantor and original trustee of the trust,

(b) Any language regarding the appointment of an original or successor trustee, including any limitations thereon,

(c) The signature page(s) of the trust,

(d) Any amendments to the trust which relate to the appointment of an original or successor trustee, including any limitations thereon;

(7) A statement that, after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the trust;

(8) If the application is for appointment of a successor trustee, a statement of the method of termination of the appointment of the prior trustee and the effective date thereof and that copies of any documents relating thereto are in the possession of the court or accompany the application.

Approved March 18, 1998.

CHAPTER 81
(S.B. No. 1358)

AN ACT

RELATING TO DECLARATIONS FOR MENTAL HEALTH TREATMENT; AMENDING TITLE 66, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 6, TITLE 66, IDAHO CODE, TO PROVIDE FOR DECLARATIONS FOR MENTAL HEALTH TREATMENT, TO DEFINE TERMS, TO SPECIFY CONTENTS OF DECLARATIONS FOR MENTAL HEALTH TREATMENT, TO PROVIDE FOR DESIGNATION OF AN AGENT, TO REQUIRE SIGNATURES AND WITNESSES, TO GOVERN THE OPERATION OF A DECLARATION, TO SPECIFY THE POWERS OF AN AGENT, TO PROVIDE FOR WITHDRAWAL OF AN AGENT, TO PROVIDE LIMITATIONS, TO ADDRESS ACTIONS CONTRARY TO A DECLARATION, TO GOVERN RELATION TO OTHER STATUTES, TO PROVIDE LIMITED IMMUNITY, TO PROVIDE PENALTIES, AND TO GOVERN THE FORM OF A DECLARATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Title 66, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 6, Title 66, Idaho Code, and to read as follows:

CHAPTER 6
DECLARATIONS FOR MENTAL HEALTH TREATMENT

66-601. DEFINITIONS. For the purposes of this chapter, the following definitions shall apply:

(1) "Agent" means an adult properly appointed to make mental health treatment decisions for a principal under a declaration for mental health treatment and also means an alternative agent.

(2) "Attending physician" means the licensed physician who has primary responsibility for the care and treatment of the declarant.

(3) "Facility" means:

(a) A designated treatment facility, as defined in section 66-317(g), Idaho Code;

(b) A nursing home; or

(c) An assisted living home.

(4) "Incapable" means that, by order of a court in a guardianship proceeding under section 66-322, Idaho Code, or in the opinion of two (2) physicians that include a psychiatrist, or in the opinion of a physician and a professional mental health clinician, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

(5) "Mental health treatment" means electroconvulsive treatment, treatment with psychotropic medication or short-term admission to a treatment facility for a period not to exceed seventeen (17) days.

(6) "Mental illness" means a substantial disorder of thought, mood, perception, orientation or memory, which grossly impairs judgment, behavior, or capacity to recognize and adapt to reality.

(7) "Professional mental health clinician" means an individual who holds an earned master's level or higher degree in social work

from an accredited program; a registered nurse with an earned master's degree or higher degree in nursing with a specialization in psychiatric or mental health nursing from an accredited program; an individual who holds an earned master's level or higher degree in psychology from an accredited program; or an individual who holds an earned master's level or higher degree in counseling, marriage and family therapy or other closely related degree. Additionally, professionals in each category must have at least two (2) years experience in a clinical mental health setting.

66-602. DECLARATIONS FOR MENTAL HEALTH TREATMENT. (1) A competent adult may make a declaration of preferences or instructions regarding mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment. The declaration shall name an attorney-in-fact (agent) and an alternative agent whose authority continues in effect as long as the declaration appointing the agent is in effect or until the agent has withdrawn. If a declaration for mental health treatment has been invoked and is in effect, the declaration remains effective until the principal is no longer incapable.

(2) A declaration for mental health treatment continues in effect until revoked. A declaration may be revoked in whole or in part at any time by the principal if the principal is not incapable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record.

66-603. DESIGNATION OF AGENT. (1) A declaration may designate a competent adult to act as agent to make decisions about mental health treatment. An alternative agent may also be designated to act as agent if the original designee is unable or unwilling to act at any time.

(2) The following may not serve as agent:

(a) The attending physician, mental health service provider, or an employee of the physician or provider, who is not related to the principal by blood, marriage or adoption;

(b) An owner, operator or employee of a health care facility in which the principal is a patient or resident who is not related to the principal by blood, marriage or adoption.

(3) The designation of an agent under this section supersedes a previous designation of an agent regarding mental health treatment unless otherwise specifically provided in the declaration.

66-604. SIGNATURE -- WITNESSES. (1) A declaration is effective only if it is signed by the principal and two (2) competent adult witnesses. The witnesses must attest that the principal is personally known to them, signed the declaration in their presence, appears to be of sound mind, and is not under duress, fraud or undue influence.

(2) The following may not serve as a witness to the signing of a declaration:

(a) The attending physician or mental health service provider or a relative of the physician or provider;

(b) An owner, operator, or relative of an owner or operator of a

health care facility in which the principal is a patient or resident; or

(c) A person related to the principal by blood, marriage or adoption.

66-605. OPERATION OF DECLARATION. (1) A declaration becomes operative when it is delivered to the principal's physician or mental health treatment provider and remains valid until revoked. The physician or provider shall act in accordance with an operative declaration when the principal has been found to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal.

(2) Upon being presented with a declaration, a physician or other provider shall make the declaration a part of the principal's medical record if a physician-patient relationship has previously been established. If no physician-patient relationship has previously been established, nothing in this statute, or rules adopted pursuant thereto, may be read to require the establishment of physician-patient relationship in contradiction to the existing requirements of reasonable medical practice. When acting under authority of a declaration, a physician or provider shall comply with it to the fullest extent possible consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider may withdraw from providing treatment consistent with the exercise of independent medical judgment by promptly notifying the principal and the agent and documenting the notification in the principal's medical record.

66-606. POWERS OF AGENT. (1) An agent who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions must be consistent with desires the principal has expressed in the declaration.

(2) Except to the extent the right is limited by the declaration or any federal law, an agent has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(3) In exercising authority under the declaration, the agent has a duty to act consistently with the desires of the principal as expressed in the declaration. If the principal's desires are not expressed in the declaration and not otherwise known by the agent, the agent has a duty to act in what the agent in good faith believes to be the best interest of the principal.

(4) An agent is not subject to criminal prosecution, civil liability or professional disciplinary action for an action taken in good faith under a declaration for mental health treatment. The agent is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

66-607. WITHDRAWAL. An agent may withdraw by giving notice to the principal. If a principal is incapable, the agent may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the principal's medical record, and may continue treatment in accordance with the declaration to the extent such treatment is consistent with reasonable medical practice. A person who has withdrawn under the provision of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. A person who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable.

66-608. LIMITATIONS. A person may not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a health care facility.

66-609. ACTIONS CONTRARY TO DECLARATION. The physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(1) If the principal is committed to a treatment facility under section 66-329, Idaho Code; or

(2) In cases of emergency endangering life or health.

66-610. RELATION TO OTHER STATUTES. A declaration does not limit any authority provided in this chapter either to take a person into custody or to admit, retain or treat a person in a health care facility.

66-611. LIMITED IMMUNITY. A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration is not subject to criminal prosecution, civil liability or professional disciplinary action resulting from a subsequent finding of a declaration's invalidity.

66-612. PENALTY. It is a misdemeanor for a person to knowingly alter, forge, conceal or destroy a declaration, or the reinstatement or revocation of a declaration. In this section, "knowingly" has the meaning given in section 18-101 5., Idaho Code.

66-613. FORM OF DECLARATION. A declaration for mental health treatment shall contain the following language, or language that is substantially similar.

NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT. This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

(1) This document allows you to make decisions in advance about three (3) types of mental health treatment: psychotropic medication, electroconvulsive therapy, and

short-term (up to seventeen (17) days) admission to a treatment facility. The instructions that you include in this declaration will be followed only if a court, two (2) physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

(2) You may also appoint a person as your agent to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the agent, to act in a manner consistent with what the person in good faith believes to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your agent at any time.

(3) This document will continue in effect until revoked. You have the right to revoke this document in whole or in part at any time you have not been determined to be incapable. YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT, TWO (2) PHYSICIANS THAT INCLUDE A PSYCHIATRIST, OR A PHYSICIAN AND A PROFESSIONAL MENTAL HEALTH CLINICIAN. A revocation is effective when it is communicated to your attending physician or other provider.

(4) If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration will not be valid unless it is signed by two (2) qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

SECTION 2. This act shall be in full force and effect on and after July 1, 1999.

Approved March 18, 1998.

CHAPTER 82
(S.B. No. 1369)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; APPROPRIATING MONEYS FROM THE SPECIAL ADMINISTRATION FUND FOR DEPOSIT IN THE WORKFORCE DEVELOPMENT TRAINING FUND FOR FISCAL YEAR 1999.

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

SECTION 1. There is hereby appropriated from the Special Administration Fund established in Section 72-1347A, Idaho Code, the amount of $900,000 to be deposited in the Workforce Development Training Fund

established in Section 72-1347B, Idaho Code, for the period July 1, 1998, to June 30, 1999.

Approved March 18, 1998.

CHAPTER 83
(S.B. No. 1370)

AN ACT

RELATING TO AGRICULTURAL LABOR; AMENDING SECTION 72-1304, IDAHO CODE, TO REVISE THE DEFINITION OF AGRICULTURAL LABOR TO CONFORM TO FEDERAL AMENDMENTS TO THE FAIR LABOR STANDARDS ACT; AND DECLARING AN EMERGENCY.

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, aquacultural or horticultural commodities, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, fish, poultry, and fur-bearing 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 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 not owned or operated for profit and used exclusively for supplying and storing water, ~~for farming purposes~~ <u>at least ninety percent (90%) of which was ultimately delivered for agricultural purposes during the preceding calendar year.</u>

(4) In handling, planting, drying, packing, packaging, eviscerating, 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, aquacultural or horticultural commodities, but only if such operator in both the current and preceding calendar year produced more than one-half (1/2) of the commodities with respect to which such service is performed.

(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 in both the current and preceding calendar year produced more than one-

half (1/2) of the commodities with respect to which such service is performed. The term "in the employ of a group of farm operators" shall include any group of farmers, organized or unorganized, who as a group produced more than one-half (1/2) of the crop for which the services are being performed.

(6) The provisions in subsection (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, aquacultural 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, fish, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, hatcheries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural, aquacultural 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. 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, 1998.

CHAPTER 84
(S.B. No. 1372)

AN ACT

RELATING TO LOCAL LAND USE PLANNING; AMENDING CHAPTER 65, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6509B, IDAHO CODE, TO PROVIDE THAT A CITY OR COUNTY SHALL NOT ADOPT OR ENFORCE ZONING OR OTHER LAND USE REGULATIONS WHICH DISALLOW PLANS AND SPECIFICATIONS FOR A MANUFACTURED HOUSING COMMUNITY SOLELY BECAUSE THE HOUSING WITHIN THE COMMUNITY WILL BE MANUFACTURED HOUSING AND TO PROVIDE A DEFINITION.

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

SECTION 1. That Chapter 65, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-6509B, Idaho Code, and to read as follows:

67-6509B. MANUFACTURED HOUSING COMMUNITY -- EQUAL TREATMENT REQUIRED. A city or a county shall not adopt or enforce zoning, community development or subdivision regulations or ordinances which disallow the plans and specifications of a manufactured housing community

solely because the housing within the community will be manufactured housing. Applications for development of manufactured home communities shall be treated the same as those for site-built homes. For purposes of this section, "manufactured housing community" means any site, lot or tract of land under common ownership upon which ten (10) or more manufactured homes may be sited. The developed community may feature either fee simple land sales or land leased or rented by the homeowner.

Approved March 18, 1998.

CHAPTER 85
(S.B. No. 1378)

AN ACT

RELATING TO EASTERN IDAHO TECHNICAL COLLEGE; AMENDING SECTION 33-2208, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO CLARIFY USE OF ACADEMIC INSTRUCTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 33-2210, IDAHO CODE, TO CLARIFY THAT INSTRUCTIONAL PROGRAMS HAVE BEEN APPROVED BY THE STATE BOARD FOR VOCATIONAL EDUCATION AND TO PROVIDE FOR THE GRANTING OF AN ASSOCIATE DEGREE OF APPLIED SCIENCE; AND AMENDING SECTION 33-2211, IDAHO CODE, TO PROVIDE FOR THE GRANTING OF AN ASSOCIATE DEGREE OF APPLIED SCIENCE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-2208, Idaho Code, be, and the same is hereby amended to read as follows:

33-2208. EASTERN IDAHO TECHNICAL COLLEGE CREATED. There is hereby established in Bonneville County, Idaho a ~~post-secondary--vocational school~~ postsecondary technical college to be designated and known as the Eastern Idaho Technical College, consisting of such vocational and technical training programs, including academic courses necessarily included in such programs as the state board for vocational education may, from time to time authorize.

SECTION 2. That Section 33-2210, Idaho Code, be, and the same is hereby amended to read as follows:

33-2210. PROGRAMS AND COURSES OFFERED -- CERTIFICATES ~~OF COMPLETION~~ AND DEGREES. The Eastern Idaho Technical College shall offer and give instruction in vocational and technical programs or courses as ~~are usually included in post-secondary vocational schools~~ approved by the state board for vocational education. Such courses or programs may be given or conducted on or off campus, or in night school, summer school, or by extension courses. The state board for vocational education shall grant certificates ~~of completion~~ or associate of applied science degrees for successful completion of courses or programs prescribed by the college.

SECTION 3. That Section 33-2211, Idaho Code, be, and the same is hereby amended to read as follows:

33-2211. POWERS OF STATE BOARD FOR VOCATIONAL EDUCATION. The state board for vocational education shall have the power:

1. To adopt rules ~~and regulations~~ for its own government and the government of the Eastern Idaho Technical College;

2. To employ professional and nonprofessional persons and to prescribe their qualifications;

3. To acquire and hold, and to dispose of, real and personal property, and to construct, repair, remodel and remove buildings;

4. To contract for the acquisition, purchase or repair of buildings, in the manner prescribed for trustees of school districts;

5. To dispose of real and personal property in the manner prescribed for trustees of school districts;

6. To convey and transfer real property of the college upon which no buildings used for instruction are situated, to nonprofit corporations, school districts, community college housing commissions, counties or municipalities, with or without consideration; to rent real or personal property for the use of the college, its students or faculty, for such terms as may be determined by the state board for vocational education; and to lease real or personal property of the college not actually in use for instructional purposes on such terms as may be determined by the state board for vocational education;

7. To acquire, hold, and dispose of, water rights;

8. 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;

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

10. To employ a superintendent of the college and, with his advice, to appoint such assistants, instructors, specialists and other employees as are required for the operation of the college; to fix salaries and prescribe duties; and to remove the superintendent or any other employee for cause;

11. With the advice of the superintendent, to prescribe the courses and programs of study, the requirements for admission, the time and standards for completion of such courses and programs, and to grant certificates ~~of--completion~~ <u>or associate of applied science degrees</u> for those students entitled thereto;

12. 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 so to do, to let contracts for such construction, remodeling or repair and to supervise the work thereof;

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

Approved March 18, 1998.

CHAPTER 86
(S.B. No. 1532)

AN ACT
APPROPRIATING MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL YEAR 1999; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND TRANSFERRING MONEYS TO THE GENERAL FUND.

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

SECTION 1. There is hereby appropriated to the Public Utilities Commission the following amount, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. ADMINISTRATION:				
FROM:				
General Fund	$ 263,900			$ 263,900
Public Utilities Commission Fund	650,900	$ 213,200	$ 73,800	937,900
TOTAL	$ 914,800	$ 213,200	$ 73,800	$1,201,800
II. UTILITIES REGULATION:				
FROM:				
Public Utilities Commission Fund	$1,618,100	$ 827,600	$ 35,600	$2,481,300
III. REGULATED CARRIERS:				
FROM:				
Public Utilities Commission Fund	$ 408,700	$ 222,600	$ 9,900	$ 641,200
GRAND TOTAL	$2,941,600	$1,263,400	$119,300	$4,324,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Public Utilities Commission is authorized no more than fifty-six (56) full-time equivalent positions at any point during the period July 1, 1998 through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. Notwithstanding any other provisions of law, there is hereby appropriated from the Public Utilities Commission Fund and transferred to the General Fund an amount equal to the General Fund expenditures of the Public Utilities Commission for the period July 1, 1998, through June 30, 1999.

Approved March 18, 1998.

CHAPTER 87
(S.B. No. 1417)

AN ACT

RELATING TO LOG SCALING; AMENDING SECTION 38-1201, IDAHO CODE, TO DELETE REFERENCE TO THE METHOD OF SCALING FOREST PRODUCTS FOR COMMERCIAL PURPOSES; AMENDING SECTION 38-1202, IDAHO CODE, TO REVISE DEFINITIONS; AND AMENDING SECTION 38-1220, IDAHO CODE, TO PROVIDE THAT THE METHOD OF SCALING SHALL BE IN ACCORDANCE WITH THE RULES OF THE BOARD OF SCALING PRACTICES AND TO PROVIDE FOR THE PURPOSE OF PAYMENT FOR LOGGING OR HAULING LOGGED FOREST PRODUCTS ONLY, FOREST PRODUCTS SHALL BE MEASURED BY GROSS WEIGHT, OR BY GROSS VOLUME CONVERTED TO GROSS DECIMAL "C" OR GROSS CUBIC VOLUME.

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

SECTION 1. That Section 38-1201, Idaho Code, be, and the same is hereby amended to read as follows:

38-1201. LOG SCALING PRACTITIONERS -- LICENSE REQUIREMENT. -- ~~METHOD.~~ Every person practicing or offering to practice log scaling as herein defined, shall submit evidence of his qualifications and be licensed as hereinafter provided; and it shall be unlawful for any person to practice or offer to practice log scaling where the scaled quantities derived from such scaling shall be used for commercial purposes in this state, unless such person has been duly licensed under the provisions of this act, or is an apprentice under the supervision of a licensed scaler.

~~The method of scaling the various forest products -- for -- commercial purposes -- shall -- be -- in -- accordance -- with -- the -- provisions -- of section 38-1202(c), Idaho Code, provided that the basis for determining -- board foot -- volumes -- shall be in accordance with the provisions of this act, and provided further that such method must be agreed upon -- in -- writing by all parties concerned.~~

SECTION 2. That Section 38-1202, Idaho Code, be, and the same is hereby amended to read as follows:

38-1202. DEFINITIONS. As used in this act, unless the context or subject matter requires otherwise:

(a) Scaler and Professional Scaler. ~~The -- terms -- "scaler" -- and "professional -- scaler" -- mean -- a~~ A person who is qualified by reason of his knowledge of the principles of scaling acquired by professional education and/or practical experience, to engage in the practice of scaling forest products.

(b) Scaling. The ~~term "scaling" means the~~ quantitative measurement of logs or other forest products by means of a log rule. The term "scaling" shall include any professional scaling service rendered in connection with the measurement of forest products, or supervision of scaling when such service is rendered requiring the application of scaling principles and data.

(c) ~~Forest Products Measurement. For the purpose of -- payment -- for~~

~~logging--or-hauling-logged-forest-products-only,-forest-products-shall be-measured-by-gross-weight,-or-by-gross--volume--converted--to--gross decimal--"C"-or-gross-cubic-volume.-Measurement-may-be-determined-by-a sampling-process.~~

~~(d)~~ Board. The ~~term-"board"-means--the~~ state board of scaling practices.

SECTION 3. That Section 38-1220, Idaho Code, be, and the same is hereby amended to read as follows:

38-1220. ~~AGREEMENTS-AS-TO~~ SCALING METHODS USED. ~~All--parties--to any--log-scaling-agreement,-except-logging-and-hauling-agreements,-may elect-to-scale-as-between-themselves-on-the-basis-of--the--mensuration criteria-from-the-National-Forest-Log-Scaling-Handbook,-whether-or-not such--logs--are-produced-from-federal-land-or-measured-by-employees-of an-agency-of-the-United-States-government.~~ (a) The method of scaling the various forest products for commercial purposes shall be in accordance with the board's administrative rules.

(b) For the purpose of payment for logging or hauling logged forest products only, forest products shall be measured by gross weight, or by gross volume converted to gross decimal "C" or gross cubic volume.

(c) Forest products scaled or otherwise measured by or for any agency of the United States government shall not be affected by this act. The licensing and bonding provisions of this act do not apply to any person measuring logs for any agency of the United States government, unless such agency so elects.

(d) Measurement may be determined by a sampling process.

Approved March 18, 1998.

CHAPTER 88
(S.B. No. 1396)

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-118, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD SHALL DETERMINE HOW AND UNDER WHAT RULES CURRICULAR MATERIALS SHALL BE ADOPTED; AMENDING SECTION 33-118A, IDAHO CODE, TO PROVIDE FOR MEMBERSHIP AND OPERATION OF CURRICULAR MATERIALS ADOPTION COMMITTEES AND TO DEFINE "CURRICULAR MATERIALS"; AMENDING SECTION 33-310B, IDAHO CODE, TO PROVIDE A TEN THOUSAND DOLLAR REIMBURSEMENT LIMIT FOR FEASIBILITY STUDIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-512A, IDAHO CODE, TO PROVIDE FOR THE APPOINTMENT AND OPERATION OF DISTRICT CURRICULAR MATERIALS ADOPTION COMMITTEES BY LOCAL BOARDS OF TRUSTEES; AMENDING SECTION 33-601, IDAHO CODE, TO EXCEPT THE PURCHASE OF CURRICULAR MATERIALS FROM CERTAIN CONTRACT REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-1204, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD OF EDUCATION SHALL MAKE RULES REGARDING CERTIFICATES; AMENDING SECTION 33-1212, IDAHO CODE, TO PROVIDE THAT A REQUEST BY A LOCAL SCHOOL BOARD FOR WAIVER FROM

BOARD RULES ON COUNSELOR/COUNSELING REQUIREMENTS MUST BE APPROVED BY THE STATE DEPARTMENT OF EDUCATION; REPEALING SECTIONS 33-1301, 33-1302 AND 33-1303, IDAHO CODE; AND AMENDING SECTION 33-2009, IDAHO CODE, TO REQUIRE THAT INSTRUCTORS OF JUVENILE OFFENDERS IN DETENTION FACILITIES SHALL BE CERTIFIED AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-118, Idaho Code, be, and the same is hereby amended to read as follows:

33-118. COURSES OF STUDY -- ~~TEXTBOOKS~~ CURRICULAR MATERIALS. The state board shall prescribe the minimum courses to be taught in all public elementary and secondary schools, and shall cause to be prepared and issued, such syllabi, study guides and other instructional aids as the board shall from time to time deem necessary. The board shall also determine how and under what ~~regulations textbooks~~ rules curricular materials shall be adopted for the public schools.

SECTION 2. That Section 33-118A, Idaho Code, be, and the same is hereby amended to read as follows:

33-118A. ~~TEXTBOOKS--AND--INSTRUCTIONAL~~ CURRICULAR MATERIALS -- ADOPTION PROCEDURES. All ~~textbook~~ curricular materials adoption committees appointed by the state board of education shall contain at least two (2) persons who are not public educators or school trustees. All meetings of ~~textbook~~ curricular materials adoption committees shall be open to the public. Any member of the public may attend such meetings and file written or make oral objections to any ~~textbook~~ curricular materials under consideration. A complete and cataloged library of all ~~textbooks~~ curricular materials adopted and used in Idaho public schools is to be maintained at the state department of education in Boise at all times and open to the public.

"Curricular materials" is defined as textbook and instructional media including software, audio/visual media and internet resources.

SECTION 3. That Section 33-310B, Idaho Code, be, and the same is hereby amended to read as follows:

33-310B. FEASIBILITY STUDY AND PLAN FOR CONSOLIDATION. All school districts operating one (1) or more high schools may conduct a feasibility study and prepare a plan for school consolidation, which may also include school district consolidation. The cost of such feasibility studies shall be reimbursed at an amount not to exceed ~~five~~ ten thousand dollars ($~~5~~10,000) per study, in accordance with rules ~~and regulations~~ promulgated by the state board of education. The state board of education shall review and act upon all plans for school consolidation.

SECTION 4. That Section 33-512A, Idaho Code, be, and the same is hereby amended to read as follows:

33-512A. DISTRICT ~~TEXTBOOK~~ CURRICULAR MATERIALS ADOPTION COMMITTEES. The board of trustees of each school district may appoint a ~~textbook~~ curricular materials adoption committee to advise the board on selection of ~~textbooks~~ curricular materials, as defined in section 33-118A, Idaho Code, for use within the schools of the district. Such a committee shall contain a membership at least one-fourth (1/4) of which is persons who are not public educators or school trustees. All meetings of the committee shall be open to the public and any member of the public may attend such a meeting and file written or make oral objections to any ~~textbook~~ curricular materials under consideration. Each school district shall have on hand and available to the public the titles, authors and publishers of all ~~textbooks~~ curricular materials being used in the district. The public has the right to inspect the instructional materials, except students' tests, used in the ~~district's schools~~.

SECTION 5. That Section 33-601, Idaho Code, be, and the same is hereby amended to read as follows:

33-601. REAL AND PERSONAL PROPERTY -- ACQUISITION, USE OR DISPOSAL OF SAME. The board of trustees of each school district shall have the following powers and duties:

1. To rent to or from others, school buildings or other property used, or to be used, for school purposes.

2. To contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment, or other personal property necessary for the operation of the school district.

Except for the purchase of curricular materials as defined in section 33-118A, Idaho Code, n~~N~~o such contract shall be executed which entails the expenditure of fifteen thousand dollars ($15,000) or more without notice first being given by publishing twice in the manner required by subsections g. and h. of section 33-402, Idaho Code, unless in cooperation with the division of purchasing or cooperative agency established pursuant to chapter 23, title 67, and/or sections 33-315-- through 33-318, ~~inclusive,~~ Idaho Code. The board of trustees may let the contract to the lowest responsible bidder, or reject any bid, or reject all bids and publish notice for bids, as before. If, thereafter, no satisfactory bid is received, the board may proceed under its own direction, subject to the approval of the state board of education.

3. To designate and purchase any real property necessary for school purposes or in the operation of the district, the provisions of subsection 2. of this section notwithstanding, or remove any building, or dispose of any real property. The board of trustees shall determine the size of the site necessary for school purposes. The site shall be located within the incorporated limits of any city within the district; provided, however, that if the board finds that it is not in the best interests of the electors and the students of the district to locate the site within the incorporated limits of a city, the board, by duly adopted resolution setting forth the reasons for its finding, may designate a site located elsewhere within the district. In elementary school districts, except upon removal for highway purposes, a

site may be designated or changed only after approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

4. (a) To convey, except as provided by (b) of this subsection, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district in any property, real or personal. In elementary school districts, except such conveyance as is authorized by subsection 6. of this section, any of the transactions authorized in this subsection shall be subject to the approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

Prior to such sale or conveyance, the board shall have the property appraised by three (3) disinterested residents of the district, which appraisal shall be entered in the records of the board of trustees. The property may be sold at public auction or by sealed bids, as the board of trustees shall determine, to the highest bidder. Such property may be sold for cash or for such terms and conditions as the board of trustees shall determine for a period not exceeding ten (10) years, with the annual rate of interest on all deferred payments not less than seven percent (7%) per annum. The title to all property sold on contract shall be retained in the name of the school district until full payment has been made by the purchaser, and title to all property sold under a note and mortgage or deed of trust shall be transferred to the purchaser at the point of sale under the terms and conditions of the mortgage or deed of trust as the board of trustees shall determine. Notice of the time and the conditions of such sale shall be published twice, and proof thereof made, in accordance with subsections g. and h. of section 33-402, Idaho Code, except that when the appraised value of the property is less than five hundred dollars ($500), one (1) single notice by publication shall be sufficient and the property shall be sold by sealed bids.

The board of trustees may accept the highest bid, may reject any bid, or reject all bids. If the real property was donated to the school district the board may, within a period of one (1) year from the time of the appraisal, sell the property without additional advertising or bidding. Otherwise, the board of trustees must have new appraisals made and again publish notice for bids, as before. If, thereafter, no satisfactory bid is made and received, the board may proceed under its own direction to sell and convey the property. In no case shall any real property of the school district be sold for less than its appraisal.

The board of trustees may sell personal property, with an estimated value of less than five hundred dollars ($500), without appraisal, by sealed bid or at public auction, provided that there has been not less than one (1) published advertisement prior to the sale of said property.

(b) Real and personal property may be exchanged hereunder for other property if the consideration received by said school district shall be deemed adequate by the board of trustees, provided, however, that aside from the provisions of this paragraph hereof, any school district may by a vote of one-half (1/2) plus one (1) of the members of the full board of trustees, by resolution duly adopted, authorize the transfer or conveyance of any real or per-

sonal property owned by such school district to the government of the United States, any city, county, the state of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any other school district, any library district, any community college district, or any recreation district, with or without any consideration accruing to the school district, when in the judgment of the board of trustees it is for the interest of such school district that said transfer or conveyance be made.

5. To enter into contracts with any city located within the boundaries of the school district for the joint purchase, construction, development, maintenance and equipping of playgrounds, ball parks, swimming pools, and other recreational facilities upon property owned either by the school district or the city.

6. To convey rights-of-way and easements for highway, public utility, and other purposes over, upon or across any school property and, when necessary to the use of such property for any such purpose, to authorize the removal of school buildings to such new location, or locations, as shall be determined by the board of trustees, and such removal shall be made at no cost or expense to the school district.

7. To authorize the use of any school building of the district as a community center, or for any public purpose, and to establish a policy of charges, if any, to be made for such use.

8. To exercise the right of eminent domain under the provisions of chapter 7, title 7, Idaho Code, for any of the uses and purposes provided in section 7-701, Idaho Code.

9. If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or it is necessary to do emergency work to safeguard life, health or property, the board of trustees may pass a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the board may expend any sum required in the emergency without compliance with this section.

SECTION 6. That Section 33-1204, Idaho Code, be, and the same is hereby amended to read as follows:

33-1204. VALIDITY, DURATION, RENEWAL AND LAPSE OF CERTIFICATES. The state board of education shall by rule provide for the validity, duration, renewal and lapse of certificates.

~~1.--The--validity--of-provisional-certificates-shall-be-limited-to not-more-than-three-(3)-years;-they-shall-be--endorsed--for--only--the grade,--grades--or--subjects--the-holders-may-teach;-and-their-renewal shall-be-premised-upon-the-completion-of-not-less-than--eighteen--(18) semester--hours--or--twenty-seven--(27)--quarter-hours-of-professional training-applicable-toward-the-issuance-of-a-standard-certificate--and undertaken-since-the-first-issuance,-or-the-latest-renewal-as-the-case may-be,-of-said-certificate;~~

~~2.--No--certificate-shall-lapse-because-of-nonuse-while-the-holder thereof-is-serving-in-the-armed-forces-of-the-United-States-in-time-of war,-or-has-been-called-into-service-of-the-armed-forces-at-any--time. Upon--filing-a-request-therefor-by-the-holder-of-such-certificate,-not~~

~~later-than-one-(1)-year-after-the-termination-of--such--military--service,--the-validity-of-such-certificate-shall-be-extended-for-a-period equal-to-the-time-spent-in-such-military-service.--The--provisions--of this--paragraph--shall-not-apply-to-any-person-who-voluntarily-enlists at-the-end-of-the-period-in-which-he-was-called-into-military-service.~~

~~3.~~ If the holder of a certificate who has undergone a criminal history check pursuant to district policy as provided in subsection 15. of section 33-512, Idaho Code, is found to have been convicted of any felony crime enumerated in section 33-1208, Idaho Code, the certificate shall be revoked or suspended as provided in this chapter.

SECTION 7. That Section 33-1212, Idaho Code, be, and the same is hereby amended to read as follows:

33-1212. ELEMENTARY SCHOOL COUNSELORS. In recognition of the diverse and complicated demands upon students, their families and the public school system, the legislature finds that the counseling offered at the elementary school level should be flexible and responsive. For purposes of elementary counselor services, a counselor shall be defined as an individual who meets the requirements of an approved program of graduate study in school guidance and counseling from a college or university approved by the Idaho state board of education and who meets the requirements of rules adopted by the board, or an individual licensed as provided by chapter 32, title 54, Idaho Code, as a certified social worker and who meets the requirements of the state board of education.

The state board of education shall adopt rules to implement the provisions of this section, and shall specifically provide that certified social workers meet the requirement for elementary school counselors. A local school district may request a waiver from the state board of education of the counselor/counseling requirements, provided that data is submitted to and annually approved by the state ~~elementary-approval-committee~~ department of education to substantiate that the intent of the board's rules in these areas is being met by an alternative program model.

SECTION 8. That Sections 33-1301, 33-1302 and 33-1303, Idaho Code, be, and the same are hereby repealed.

SECTION 9. That Section 33-2009, Idaho Code, be, and the same is hereby amended to read as follows:

33-2009. EDUCATION OF CHILDREN HOUSED IN JUVENILE DETENTION FACILITIES. Every public school district in this state within which is located a detention facility housing juvenile offenders pursuant to court order shall provide, subject to rules ~~and-regulations~~ of the state board of education, instruction in accredited courses, by a ~~qualified~~ certified instructor, for the juvenile offenders under twenty-one (21) years of age who are housed in the detention facility for juvenile offenders, and shall upon satisfactory completion of required public school courses or correspondence course from a state institution of higher learning in Idaho, issue credits or a diploma evidencing such achievement. Every student served by a public school

district pursuant to this section shall be counted as an exceptional child by the district for purposes of state reimbursement.

Approved March 18, 1998.

CHAPTER 89
(S.B. No. 1413)

AN ACT

RELATING TO NURSERIES AND FLORISTS; AMENDING CHAPTER 23, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-2301, IDAHO CODE, TO PROVIDE A STATEMENT OF PURPOSE; AMENDING SECTION 22-2301, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO ADD AND REVISE DEFINITIONS; AMENDING SECTION 22-2302, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE PROPER NOMENCLATURE AND TO PROVIDE FOR ANNUAL PUBLICATION AND DISTRIBUTION OF A LIST OF LICENSED NURSERIES, FLORISTS AND AGENTS; AMENDING SECTION 22-2303, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE PROPER NOMENCLATURE, TO DELETE OBSOLETE LANGUAGE AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 22-2304, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE PROPER NOMENCLATURE, TO PROVIDE FOR ONE LICENSE, AND TO INCREASE LICENSE FEES; AMENDING SECTION 22-2305, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE PROPER NOMENCLATURE, TO INCREASE TEMPORARY LICENSE FEES, AND TO PROVIDE FOR OPERATION FROM A TEMPORARY LOCATION BY A LICENSED NURSERY OR FLORIST WITH AN ESTABLISHED PLACE OF BUSINESS; AMENDING SECTION 22-2306, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE PROPER NOMENCLATURE AND TO IMPOSE A LATE FEE FOR ANY LICENSE NOT RENEWED BY FEBRUARY 1 OF EACH YEAR; AMENDING SECTIONS 22-2307, 22-2308 AND 22-2309, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO PROVIDE PROPER NOMENCLATURE; AMENDING CHAPTER 23, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-2311, IDAHO CODE, TO REQUIRE A PERSON ADVERTISING NURSERY OR FLORIST STOCK FOR SALE TO DISCLOSE THE PERSON'S COMPANY NAME OR LICENSE NUMBER; AMENDING CHAPTER 23, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-2312, IDAHO CODE, TO PROHIBIT THE WHOLESALE SALE OF NURSERY OR FLORIST STOCK FOR RESALE TO UNLICENSED PERSONS; AMENDING SECTION 22-2310, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 22-2311, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE PROPER NOMENCLATURE AND TO DELETE REDUNDANT LANGUAGE; AMENDING SECTIONS 22-2312, 22-2313, 22-2314, 22-2315, 22-2316 AND 22-2317, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO PROVIDE PROPER NOMENCLATURE; AMENDING CHAPTER 23, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-2321, IDAHO CODE, TO PROVIDE NURSERY STOCK STANDARDS; AMENDING CHAPTER 23, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-2322, IDAHO CODE, TO PROVIDE FOR LICENSE RECIPROCITY BETWEEN STATES; AMENDING SECTION 22-2318, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO ESTABLISH A RESEARCH FUND FROM A PORTION OF THE LICENSE FEE; AMENDING SECTION 22-2319, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR CIVIL PENALTIES; AND AMENDING SEC-

TION 22-2320, IDAHO CODE, TO REDESIGNATE THE SECTION.

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

SECTION 1. That Chapter 23, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-2301, Idaho Code, and to read as follows:

22-2301. STATEMENT OF PURPOSE. The legislature and the Idaho nursery and florist industry find and declare that the propagation and raising of nursery and florist stock is an agricultural pursuit that should be regulated and assisted by the department of agriculture to provide a high quality and pest free product to the citizens of Idaho and Idaho's external trading partners. A nursery and floral services program shall be maintained within the department for the purpose of carrying out and enforcing the provisions of this chapter.

SECTION 2. That Section 22-2301, Idaho Code, be, and the same is hereby amended to read as follows:

22-230~~1~~2. DEFINITION OF TERMS. For the purpose of this chapter:

(1) The singular and plural forms of any word or term in this chapter shall be interchangeable and equivalent within the meaning of this chapter.

(2) "Agent" means any person only soliciting orders in this state for the purchase or sale of nursery or florist stock for any principal who is not licensed under this chapter.

(3) "Dealer":

(a) M~~m~~eans any person who deals in, sells, handles, consigns, or accepts on consignment, imports, stores, displays or advertises nursery or florist stock which he has not grown.

(b) The term does not include persons whose business is located out-of-state and who import and sell such nursery or florist stock not grown in Idaho into this state and who only solicit such nursery or florist stock sales through salesmen or representatives or by mail or advertisement. Such a person to be exempt as a dealer must not own, lease, control, or maintain buildings, warehouses or any location or place in Idaho in which or through which such nursery or florist stock is stored, sold, offered for sale, or held for sale or delivered therefrom. The nursery or florist stock must be shipped direct from the out-of-state location or place of business to the grower, wholesaler, retailer, or ultimate consumer or user in Idaho.

(4) "Department" means the Idaho department of agriculture.

(5) "Director" means the director of the Idaho department of agriculture.

(6) "Florist~~'s~~ stock" shall include all cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom.

(7) "Grower" means any person who grows nursery stock.

(8) "Landscape ~~designer~~ contractor" shall be construed as applying to any person or persons engaged in landscaping property for which he, she, or they will furnish the plants, trees, or shrubs either from his, her, or their own nurseries or by purchase or on contract from other nurseries.

(9) "Not regularly engaged in the business" shall be construed to mean sales of nursery and/or florist~~'s~~ stock incident to farming and gardening operations by persons who do not display such nursery and/or florist~~'s~~ stock for sale by use of signboards, placards, newspapers, radio, or other circulation medium.

(10) "Nursery and/or ~~flower~~ floral shop" shall be construed to mean any grounds, buildings, greenhouses, or premises either privately or publicly owned on or in which nursery stock ~~and/~~or florist~~'s~~ stock is propagated or grown for sale, either at the present or at some future time; or any grounds, buildings, greenhouses, vehicles, or premises on or in which nursery ~~and/~~or florist~~'s~~ stock is being stored, packed, or offered for sale.

(11) "Nursery stock" includes all botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. The term does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation.

(12) "Nurseryman ~~and/~~or florist" shall be construed to mean the person who owns, leases, manages, or is in charge of a nursery or flower shop or grows nursery ~~and/~~or florist~~'s~~ stock on shares or on contract.

(13) "Person" includes, but is not limited to, ~~each branch, store, or place of business in which or at which the business of the dealer or grower is conducted and each member of a cooperative association~~ any individual, partnership, corporation, company, firm, society, association, organization, government agency, or any other entity.

(14) "Pest" means any biotic agent (any living agent capable of reproducing itself) or any of the following that is known to cause damage or harm to the production of agricultural crops or the environment:

(a) Any infectious, transmissible or contagious disease of any plant; or any disorder of any plant which manifests symptoms or behavior which, after investigation, is found and determined by a duly constituted federal, state or local pest prevention agency, to be characteristic of an infectious, transmissible or contagious disease.

(b) Any form of animal life.

(c) Any form of plant life, including noxious weeds as defined and listed in chapter 4, title 22, Idaho Code, and chapter 24, title 22, Idaho Code, and rules promulgated thereunder.

(~~14~~5) "Sell" or "sale" means to offer, expose, or hold for sale,

have for the purpose of sale, or to solicit orders for sale or to deliver, distribute, exchange, furnish, or supply.

(16) "Wholesale" means a sale in quantity to one who intends to resell; selling to retailers or contractors rather than consumers.

SECTION 3. That Section 22-2302, Idaho Code, be, and the same is hereby amended to read as follows:

22-230~~2~~3. DUTIES OF THE DEPARTMENT. The department is authorized to:

(1) Inspect the nursery or florist stock of growers, dealers, and other persons and places of business provided for under sections 22-2301 through 22-2325, Idaho Code.

(2) Issue certificates and permits and check the license and licensing of persons affected by the provisions of sections 22-230~~1~~2 and 22-231~~2~~5, Idaho Code.

(3) Investigate violations of the provisions of sections 22-2301 through 22-23~~12~~25, Idaho Code.

(4) ~~Disseminate--information--among-growers-relative-to-treatment of-nursery-stock-for-both-prevention-and--elimination--of--attacks--by plant-pests-and-diseases~~ Publish annually a list of all licensed nurseries, florists and agents. The annual list shall be distributed to the agricultural regulatory authority of each state and upon request to any licensed nurseries and florists within the state.

(5) Issue ~~regulations~~ rules prescribing approved procedures and services as needed for the protection of the industry and~~/or~~ to assure access to domestic and foreign markets.

SECTION 4. That Section 22-2303, Idaho Code, be, and the same is hereby amended to read as follows:

22-230~~3~~4. STATE NURSERY AND FLORIST ADVISORY COMMITTEE. (1) In order to maintain close contact between the department and the nursery and florist industry, there is hereby created a state nursery and florist advisory committee which shall consist of six (6) members appointed by the director of the department of agriculture from a list provided by the Idaho nursery association. Said list will name at least two (2) persons as eligible for each vacancy on the committee.

~~(2)--The-members-first-appointed-shall-determine-by-lot-the-length of--their--terms:--two-(2)-to-serve-for-one-(1)-year;-two-(2)-to-serve for-two-(2)-years;-and-two-(2)-to-serve-for-three-(3)-years;-each-term beginning-on-July-1;-1984.-Thereafter;-t~~The term of each member shall be for three (3) years beginning on July 1 of the year of appointment. A member shall continue to serve until a successor is appointed and qualified. Vacancies in office shall be filled by appointment for the unexpired term.

(~~3~~2) No member of the committee shall receive any salary or other compensation, but each member of the committee shall be reimbursed for each day spent in actual attendance in meetings of the committee at the same rate as is allowed state employees for travel expenses.

(~~4~~3) The functions of the committee shall be to advise and counsel with the department in the administration of the provisions of ~~sections-22-2301-through-22-2318;-Idaho-Code~~ this chapter.

(~~5~~4) The committee shall meet at the call of the chairman or the director of the Idaho department of agriculture. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the committee.

(~~6~~5) At the first meeting after July 1 in each year, the committee shall select a chairman. The dean of the school of agriculture at the University of Idaho and the director of the Idaho department of agriculture, or their representatives, shall be ex-officio members without the right to vote.

SECTION 5. That Section 22-2304, Idaho Code, be, and the same is hereby amended to read as follows:

22-230~~4~~5. LICENSE REQUIRED -- SCHEDULE OF FEES. (1) It shall be unlawful for any person to engage in, conduct, or carry on the business of propagating, growing, selling, dealing in, or importing into this state, for sale or distribution, any nursery ~~and/~~or florist~~'s~~ stock, or to engage in landscape designing, or to act as agent, salesman, or solicitor for any nurseryman, florist, landscape ~~designer~~ contractor, or dealer in nursery ~~and/~~or florist~~'s~~ stock without first obtaining a license to do so from the Idaho department of agriculture, and it shall be unlawful for any person to falsely represent that he is the agent, salesman, solicitor, or representative of any nurseryman, florist, landscape ~~designer~~ contractor, or dealer in nursery ~~and/~~or florist~~'s~~ stock.

(2) The provisions of this chapter shall not apply to the sale of plants, shrubs, scions, or florist~~'s~~ stock by anyone not regularly engaged in that business when said sales are only incident to the seller's farming or gardening operations and the total amount of gross annual sales by such seller does not exceed fifty dollars ($50.00).

(3) Every nurseryman ~~and/~~or florist, landscape ~~designer~~ contractor, dealer, or importer of nursery ~~and/~~or florist~~'s~~ stock, or collector of native plants for sale shall make application for a license therefor to the Idaho department of agriculture upon a form to be prescribed and furnished by said department, pay to said department the license fee as provided in subsection (~~5~~4) of this section. No license shall be issued until the applicant therefor shall have paid the fee hereinafter provided.

(4) ~~Class "A" n~~Nurseries required to be licensed shall consist of ~~those~~ nurserymen, florists, dealers, landscape ~~designers~~ contractors, and importers of nursery ~~and/~~or florist~~'s~~ stock, and collectors of native plants for sale, ~~doing a gross business of over one thousand dollars ($1,000) per annum, who~~ and they shall pay a license fee of ~~fifty~~ seventy-five dollars ($~~1~~75~~0~~.00) for their principal place of business. ~~Class "A" n~~Nurseries with more than one (1) retail outlet shall identify the number and location of such additional outlets on the license application and pay an additional ~~fifty~~ seventy-five dollars ($~~1~~75~~0~~.00) for each such additional outlet. The license number shall be prominently displayed in each outlet. Should the holder of a ~~Class "A"~~ nursery license add one (1) or more outlets during the license year, the department must be notified and the ~~fifty~~ seventy-five dollar ($~~1~~75~~0~~.00) surcharge for each such outlet paid immediately.

(5) ~~Class--"B"--nurseries--shall-consist-of-those-persons-doing-a gross-business-of-one-thousand-dollars-($1,000)-or-less-and-shall--pay a-fee-of-fifteen-dollars-($15.00)-per-annum.~~

~~(6)~~ Dealers shall keep accurate records of their sales and transactions involving nursery ~~and/~~or florist~~'s~~ stock and shall produce the same at any time when so required by the Idaho department of agriculture. At any hearing in which the amount of license fee to be paid by any person is involved or any questions as to such person's claim for exemption from the provisions of this chapter, such person shall have the burden of proof to establish his claim.

(~~7~~6) A license fee for an agent as defined in section 22-230~~1~~2, Idaho Code, is twenty-five dollars ($25.00) per annum for each principal that the agent represents. Agents soliciting sales only from persons licensed under this chapter shall be exempt from licensing fees.

(~~8~~7) The fees for nursery or florist stock inspection and special services performed for persons not required to be licensed shall be as provided in rules promulgated by the director.

SECTION 6. That Section 22-2305, Idaho Code, be, and the same is hereby amended to read as follows:

22-2305~~6~~. TEMPORARY NURSERY OR FLORIST SALE LICENSE OR LOCATION -- APPLICATION FEE -- CONDITION. (1) Upon payment of a fee of twenty-five dollars ($25.00), a temporary nursery or florist sale license may be issued by the department for holding of a nursery stock sale conducted by or for the benefit of a duly registered nonprofit organization where such sale does not exceed seven (7) consecutive days in any calendar year.

(2) Application for a temporary nursery or florist license shall be made on a form furnished by the department, and shall be accompanied by the license fee as required for each sale.

(3) The department may prescribe the conditions of such temporary nursery and florist sale license, which conditions shall be stated in the license. Any such license may be revoked or suspended by the department for violation of any of the conditions stated therein.

(4) A licensed nursery or florist with a previously established place of business may conduct business from a temporary location, provided the location is not utilized for more than six (6) weeks in any calendar year.

SECTION 7. That Section 22-2306, Idaho Code, be, and the same is hereby amended to read as follows:

22-2306~~7~~. RENEWAL OF LICENSE. (1) The fees for the renewal of the annual license required by this chapter shall be paid with the application for license renewal before January 1 of each year. Any license not renewed by February 1 of each year shall be assessed an additional twenty-five dollar ($25.00) fee along with the required license fee specified in section 22-2305, Idaho Code.

(2) Failure to pay the fees when due forfeits the right to operate as a grower, dealer, or agent.

(3) Any person who has been previously licensed to grow or sell nursery or florist stock and whose right to grow or sell has been for-

feited shall not be issued a renewal license except upon written application to the department accompanied by a sum of money equal to the regular license fee as provided in section 22-230~~4~~5, Idaho Code.

SECTION 8. That Section 22-2307, Idaho Code, be, and the same is hereby amended to read as follows:

22-230~~7~~8. AGENT'S LICENSE. (1) No agent's license shall be issued or valid unless the agent's principal has given the department written authorization to issue the license.

(2) An agent's license shall be automatically suspended during any period when he is not acting as an agent or the principal has withdrawn or cancelled the authorization.

(3) If his license has not expired, an agent may revive his license by giving notice to the department that he is again acting as an agent. If the agent represents a principal other than the one who gave the written authorization to issue the license, subsection (1) of this section applies.

SECTION 9. That Section 22-2308, Idaho Code, be, and the same is hereby amended to read as follows:

22-230~~8~~9. LICENSE NOT TRANSFERABLE -- MOVING PLACE OF BUSINESS. (1) A license is personal to the applicant and may not be transferred. A new license is necessary if the business entity of the licensee is changed or if the membership of a partnership is changed, irrespective of whether or not the business name is changed.

(2) The license issued to a grower or dealer applies to the particular premises named in the license. However, if prior approval is obtained from the department, the place of business may be moved to other premises or locations without the necessity of relicensing.

SECTION 10. That Section 22-2309, Idaho Code, be, and the same is hereby amended to read as follows:

22-231~~0~~9. SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE. The department may suspend, revoke, or refuse to issue or renew the license of any person when it is satisfied that:

(1) The applicant or licensee has been guilty of fraud, deception, or misrepresentation in the procurement of a license; ~~and~~/or

(2) The licensee was guilty of violating any of the provisions of this chapter.

SECTION 11. That Chapter 23, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-2311, Idaho Code, and to read as follows:

22-2311. ADVERTISEMENT OF NURSERY OR FLORIST STOCK FOR SALE. No person may advertise in any media, any plant material covered under this chapter as being for sale without disclosing the person's company name or license number.

SECTION 12. That Chapter 23, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-2312, Idaho Code, and to read as follows:

22-2312. WHOLESALE SALES. No licensed nursery or florist may make wholesale sales of plant material for resale to an unlicensed nursery, florist, or landscape contractor.

SECTION 13. That Section 22-2310, Idaho Code, be, and the same is hereby amended to read as follows:

22-23~~10~~3. ISSUANCE OF SHIPPING PERMIT NUMBERS. (1) The department may issue a shipping permit number to any licensee who requests or requires one.

(2) When authorized or required by the department, the shipping permit number shall accompany all shipments and deliveries of nursery or florist stock. Authorization for such use of a shipping permit number shall be renewed at least annually, subject to ~~regulations~~ rules promulgated by the director. Use of a shipping permit number without proper authorization shall constitute a violation of this chapter.

SECTION 14. That Section 22-2311, Idaho Code, be, and the same is hereby amended to read as follows:

22-231~~1~~4. INSPECTION OF LICENSED AND UNLICENSED NURSERIES -- ADDITIONAL INSPECTIONS AND SPECIAL SERVICES -- FEES. (1) The department shall inspect each licensed nursery and florist as often as the department considers necessary to determine and control pests~~, disease, and noxious weed conditions~~.

(2) The department may make additional inspections and perform special services as needed in addition to those in paragraph (a) of this subsection including, but not limited to:

(a) Inspections for and issuance of phytosanitary certificates and other certificates required for entrance of nursery or florist stock into other states and foreign countries;

(b) Services performed to verify compliance with import regulations of other states and foreign countries; and

(c) Observing application of pesticides, including fumigants, on nursery or florist stock for phytosanitary purposes.

(3) The director shall maintain a schedule of fees for such additional inspections as may be required or requested.

SECTION 15. That Section 22-2312, Idaho Code, be, and the same is hereby amended to read as follows:

22-231~~2~~5. SUBSTITUTION OR TRANSPORTATION OF UNINSPECTED NURSERY OR FLORIST STOCK PROHIBITED. No person shall:

(1) Substitute other nursery or florist stock for nursery or florist stock covered by an inspection certificate; ~~and~~/or

(2) Transport or accept for transportation within the state of Idaho nursery or florist stock that does not carry the official inspection tag authorized by the department.

SECTION 16. That Section 22-2313, Idaho Code, be, and the same is hereby amended to read as follows:

22-2313~~3~~6. MISREPRESENTATION OF NURSERY STOCK BY GROWER, DEALER, OR AGENT PROHIBITED -- TAGS OR LABELS REQUIRED ON FRUIT TREES -- NURSERY OR FLORIST STOCK AS HORTICULTURAL PRODUCT. (1) No grower, dealer, or agent shall:

(a) Sell nursery or florist stock representing it to be a name, age, or variety different from what the nursery or florist stock actually is; ~~and/~~or

(b) Represent that any nursery or florist stock is a new variety when, in fact, it is a standard variety and has been given a new name; ~~and/~~or

(c) Sell or present cormels as corms or bulblets as bulbs.

(2) In addition the grower, dealer, or agent shall attach to every bundle of fruit-bearing trees sold or shipped within this state a tag or label specifying the name of the variety of trees contained therein. If the bundle shall contain trees of different varieties, such label or tag shall be attached to each tree or group of trees of the same variety.

SECTION 17. That Section 22-2314, Idaho Code, be, and the same is hereby amended to read as follows:

22-2314~~7~~. KNOWINGLY SELLING, ADVERTISING, OR DISPLAYING DAMAGED, MISREPRESENTED, OR MISLABELED NURSERY OR FLORIST STOCK PROHIBITED. (1) No person shall knowingly offer to sell, advertise, or display nursery or florist stock:

(a) That is dead, in a dying condition, seriously broken, desiccated, frozen or damaged by freezing, or materially damaged in any way;

(b) By any methods which have the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, name, age, variety, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth, or time required before flowering or fruiting, price, origin, or place where grown, or in any other material respect;

(c) That fails to meet the grade with which it is labeled;

(d) By making other false or fraudulent representations in connection with the sale of nursery or florist stock.

SECTION 18. That Section 22-2315, Idaho Code, be, and the same is hereby amended to read as follows:

22-2315~~8~~. KNOWINGLY SELLING, MOVING, OR STORING INFECTED OR INFESTED NURSERY OR FLORIST STOCK PROHIBITED -- SEIZURE. (1) No person shall knowingly offer to sell nursery or florist stock that is infected or infested.

(2) Unless the nursery or florist stock is held for separation or treatment under the supervision of an officer, employee, or inspector of the department, no person shall advertise, display, transport, move, store, or warehouse nursery or florist stock that is infected or

infested.

(3) Any infected or infested nursery or florist stock may be seized.

(a) As used in this section, "infected" means any appearance of a disease symptom or causal agent that may, in the opinion of the department, be a menace to other nursery or florist stock or any products or properties.

(b) As used in this section, "infested" means when the mature or immature form of any plant pest, including noxious weeds as defined by the department, is found in such numbers as, in the opinion of the department, to be a menace to other nursery or florist stock or any product or properties.

SECTION 19. That Section 22-2316, Idaho Code, be, and the same is hereby amended to read as follows:

22-2316~~1~~9. STOP SALE ORDER -- CONDEMNATION. (1) The department may issue and enforce a written or printed "stop-sale" order to any dealer, agent, grower, or other person who is the owner or custodian of any nursery ~~and/~~or florist~~'s~~ stock when the department finds such nursery ~~and/~~or florist~~'s~~ stock is being offered for sale in violation of any of the provisions of this chapter.

(2) The "stop-sale" order shall be in effect until the provisions of this chapter have been complied with and said nursery ~~and/~~or florist~~'s~~ stock is released by order, in writing, of the department. If the nursery or florist stock under "stop-sale" order is determined after a reasonable period to be in such condition that neither treatment nor passage of time will enable it to meet the requirements of this chapter for sale, the department may order such nursery or florist stock destroyed.

SECTION 20. That Section 22-2317, Idaho Code, be, and the same is hereby amended to read as follows:

22-23~~17~~20. IMPORTED NURSERY OR FLORIST STOCK TO BEAR CERTIFICATE OF ORIGIN -- CONTENTS. Nursery or florist stock imported into Idaho must be accompanied by a certificate from the place of origin, signed by an authorized agent or representative of the agency supervising and responsible for carrying out the nursery and florist stock laws of such originating state or country. The certificate shall contain additional information as may be required by the department to carry out and enforce the provisions of ~~sections 22-2301 through 22-2318, Idaho Code~~ this chapter.

SECTION 21. That Chapter 23, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-2321, Idaho Code, and to read as follows:

22-2321. NURSERY STOCK STANDARDS. Nursery stock standard for grade, quality and size shall be those as published by the American nursery and landscape association. The department shall not actively enforce these standards except in the case of a complaint or dispute.

SECTION 22. That Chapter 23, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-2322, Idaho Code, and to read as follows:

22-2322. RECIPROCITY. The department will honor the nursery and florist license of a company doing business in, but not physically located in or having an agent in the state, provided that the license is issued by the appropriate regulatory authority in the state of origin, and that authority accepts the licenses issued by the Idaho department of agriculture for Idaho companies doing business in the same manner within that state.

SECTION 23. That Section 22-2318, Idaho Code, be, and the same is hereby amended to read as follows:

22-23~~18~~23. DISPOSITION AND USE OF MONEY RECEIVED. Fees ~~so~~ collected shall be paid into the state treasury and credited to the agriculture inspection account created by section 22-104, Idaho Code, and such fees shall be used only to carry out the provisions of this chapter. Additionally, twenty-five dollars ($25.00) from each license fee collected under this chapter shall be credited to a special nursery research account. The state nursery and florist advisory committee shall approve the distribution of research funds to further research into nursery and floral production and pest control.

SECTION 24. That Section 22-2319, Idaho Code, be, and the same is hereby amended to read as follows:

22-23~~19~~24. VIOLATION. (1) Any person who shall violate or fail to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than five hundred dollars ($500) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other administrative action of the department. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected pursuant to this section shall be remitted to the agricultural inspection account.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes

that the public interest will be best served by suitable warnings or other administrative action.

SECTION 25. That Section 22-2320, Idaho Code, be, and the same is hereby amended to read as follows:

22-232~~0~~5. SEVERABILITY. 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.

Approved March 18, 1998.

CHAPTER 90
(S.B. No. 1377)

AN ACT

RELATING TO TREATMENT OF PERSONS WITH MENTAL ILLNESS; AMENDING SECTION 66-317, IDAHO CODE, TO DEFINE OUTPATIENT COMMITMENT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-338, IDAHO CODE, TO FURTHER DESCRIBE TERMS FOR CONDITIONAL RELEASE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-339, IDAHO CODE, TO SPECIFY CONDITIONS FOR REHOSPITALIZATION OF PATIENTS CONDITIONALLY RELEASED; AMENDING CHAPTER 3, TITLE 66, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 66-339A, IDAHO CODE, TO DESCRIBE THE CONDITIONS FOR OUTPATIENT COMMITMENT; AMENDING CHAPTER 3, TITLE 66, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 66-339B, IDAHO CODE, TO GOVERN THE CONDUCT OF A HEARING FOR OUTPATIENT COMMITMENT; AMENDING CHAPTER 3, TITLE 66, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 66-339C, IDAHO CODE, TO SPECIFY PROCEDURE WHEN THERE IS NONCOMPLIANCE WITH A COURT ORDER FOR OUTPATIENT COMMITMENT; AMENDING SECTION 18-211, IDAHO CODE, TO CORRECT CITATIONS; AMENDING SECTION 18-3302, IDAHO CODE, TO CORRECT CITATIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 66-317, Idaho Code, be, and the same is hereby amended to read as follows:

66-317. DEFINITIONS. As used in this chapter, terms shall have the following meanings:

(a) "Department director" ~~shall~~ means the director of the state department of health and welfare.

(b) "Voluntary patient" ~~shall~~ means an individual admitted to a facility for evaluation pursuant to section~~s 16-1814, or~~ 18-211~~,~~ or 20-520, Idaho Code, or admitted to a facility for treatment pursuant to section 66-318, Idaho Code.

(c) "Involuntary patient" ~~shall~~ means an individual committed pursuant to sections 18-212, 18-214, 66-329 or 66-1201, Idaho Code, or

committed pursuant to section 16-1610 or ~~16-1814~~ 20-520, Idaho Code, and admitted to a facility for the treatment of minors.

(d) "Licensed physician" ~~shall~~ means an individual licensed under the laws of this state to practice medicine or a medical officer of the government of the United States while in this state in the performance of his official duties.

(e) "Designated examiner" ~~shall~~ means any person designated by the department director as specially qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions. Such persons shall be psychiatrists, licensed psychologists, licensed physicians, a holder of an earned masters level or higher degree in social work from an accredited program, a registered nurse with an earned masters level or higher degree in psychiatric nursing from an accredited program, or a holder of an earned masters level or higher degree in psychology from an accredited program.

(f) "Dispositioner" ~~shall~~ means a designated examiner employed by or under contract with the department of health and welfare and designated by the department director to determine the appropriate location for care and treatment of involuntary patients.

(g) "Facility" ~~shall~~ means any public or private hospital, sanatorium, institution, mental health center or other organization designated in accordance with ~~regulations~~ rules adopted by the board of health and welfare as equipped to initially hold, evaluate, rehabilitate or to provide care or treatment, or both, for the mentally ill.

(h) ~~"Emancipated minor" shall mean an individual between fourteen (14) and eighteen (18) years of age who has been married or whose circumstances indicate that the parent-child relationship has been renounced.~~

~~(i)~~ "Lacks capacity to make informed decisions about treatment" ~~shall~~ means the inability, by reason of mental illness, to achieve a rudimentary understanding after conscientious efforts at explanation of the purpose, nature, and possible significant risks and benefits of treatment.

(~~j~~i) "Inpatient treatment facility" ~~shall~~ means a facility in which an individual receives medical and mental treatment for not less than a continuous twenty-four (24) hour period.

(~~k~~j) "Supervised residential facility" ~~shall~~ means a facility, other than the individual's home, in which the individual lives and in which there lives, or are otherwise on duty during the times that the individual's presence is expected, persons who are employed to supervise, direct, treat or monitor the individual.

(~~l~~k) "Likely to injure himself or others" ~~shall~~ means either:

(1) A substantial risk that physical harm will be inflicted by the proposed patient upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or

(2) A substantial risk that physical harm will be inflicted by the proposed patient upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm.

(~~m~~l) "Mentally ill" ~~shall~~ means a person, who as a result of a substantial disorder of thought, mood, perception, orientation, or

memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality, requires care and treatment at a facility.

(~~m~~m) "Gravely disabled" ~~shall~~ means a person who, as the result of mental illness, is in danger of serious physical harm due to the person's inability to provide for his essential needs.

(n) "Outpatient commitment" means a court order directing a person to comply with specified mental health treatment requirements, not involving the continuous supervision of a person in an inpatient setting, that are reasonably designed to alleviate or to reduce a person's illness or disability, or to maintain or prevent deterioration of the person's mental or emotional functioning. The specified requirements may include, but need not be limited to, taking prescribed medication, reporting to a facility to permit monitoring of the person's condition, or participating in individual or group therapy or in educational or vocational programs. Outpatient commitment may be up to one (1) year.

SECTION 2. That Section 66-338, Idaho Code, be, and the same is hereby amended to read as follows:

66-338. CONDITIONAL RELEASE. Except for patients confined pursuant to section~~s 16-1814,~~ 16-1835, 18-211, 18-212, ~~or~~ 18-214, or 20-520, Idaho Code, upon determining that a patient may be released without imminent risk or harm due to mental illness, the department director or his designated representative may release a patient from an inpatient treatment facility on the condition that the patient receive outpatient treatment ~~or on such other reasonable conditions as may be~~ pursuant to a written treatment plan as specified by the department director or his designee or as amended pursuant to this chapter. For purposes of this chapter, "conditional release" shall refer to the situation in which a patient is discharged from an inpatient treatment facility and dispositioned to an outpatient facility, but shall not include absences, such as escape or other absences wherein the patient is expected to return to the inpatient facility upon a certain date or occurrence of an event.

SECTION 3. That Section 66-339, Idaho Code, be, and the same is hereby amended to read as follows:

66-339. REHOSPITALIZATION OF PATIENTS CONDITIONALLY RELEASED FROM INPATIENT TREATMENT FACILITIES -- PROCEDURE. (a) Proceedings for the rehospitalization of a patient conditionally released from an inpatient treatment facility may be commenced by the filing of a written application with a court of competent jurisdiction by a prosecuting attorney, judge, designated examiner or other person interested in the patient's welfare.

(b) The application shall state the patient's name and last known address; the name and address of either the patient's spouse, guardian, next of kin or friend, if any; and a simple and precise statement of the facts showing that either the patient has violated a condition of the release or is in need of outpatient commitment, or is again in need of placement in an inpatient treatment facility.

(c) Upon receipt of an application, the court shall issue notice

of the time and place of hearing not more than five (5) days, excluding Saturdays, Sundays and holidays, from the filing of the application, ensure that the notice and copy of the application are served on the patient, ensure that the patient is represented by counsel and is advised of his or her right to challenge the allegations of the application, ensure that the patient is examined by two (2) designated examiners; and enter such supplemental orders as may be necessary to protect the patient pending the hearing.

(d) The court shall authorize an outpatient commitment as set out in section 66-339A, Idaho Code, or authorize a dispositioner to enter a change in disposition to an inpatient treatment facility if, at the hearing, conducted substantially as a hearing under section 66-329, Idaho Code, the court finds by clear and convincing evidence that the patient:

(1) ~~Is mentally ill~~ Has a mental illness;

(2) Either (i) has violated a condition of the release or (ii) is again in need of placement in an inpatient treatment facility; and

(3) Either (i) is likely to injure himself or others; (ii) is gravely disabled; or (iii) that the course of the patient's particular mental disorder is such that the patient is likely to injure himself or others or become gravely disabled in the foreseeable future if the patient is not placed in an inpatient treatment facility.

(e) Within twenty-four (24) hours of the court's authorization, a dispositioner shall determine the least restrictive available inpatient treatment facility consistent with the needs of the patient to be rehospitalized. Within seventy-two (72) hours of the court's authorization, the sheriff of the county in which the patient is present shall transport the patient to the facility designated by the dispositioner. The department of health and welfare shall assume responsibility for the usual and customary treatment costs, as defined in section 66-327(b), Idaho Code, after the patient is dispositioned~~,~~ and transported to ~~and admitted by~~ a state facility.

SECTION 4. 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 66-339A, Idaho Code, and to read as follows:

66-339A. OUTPATIENT COMMITMENT. A person may be committed to outpatient treatment for a period of up to one (1) year if, after a court hearing conducted substantially similar to the one outlined in section 66-329, Idaho Code, the court determines, on the basis of clear and convincing evidence that:

(1) The person is diagnosed as having a mental illness; and

(2) The person, without the requested treatment:

(a) Is likely to cause harm to himself or to suffer substantial mental or emotional deterioration, or become gravely disabled, or

(b) Is likely to cause harm to others; and

(3) The person lacks capacity to make an informed decision concerning his need for treatment; and

(4) The person has previously been hospitalized for treatment of mental illness and has by history substantially failed to comply on

one (1) or more occasions with the prescribed course of treatment outside the hospital; and

(5) A treatment plan has been prepared which includes specific conditions with which the patient is expected to comply, together with a detailed plan for reviewing the patient's medical status and for monitoring his or her compliance with the required conditions of treatment; and

(6) There is a reasonable prospect that the patient's disorder will respond to the treatment proposed in the treatment plan without having to be involuntarily committed to an inpatient facility if the patient complies with the treatment requirements specified in the court's order; and

(7) The physician or treatment facility which is to be responsible for the patient's treatment under the commitment order has agreed to accept the patient.

SECTION 5. 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 66-339B, Idaho Code, and to read as follows:

66-339B. OUTPATIENT COMMITMENT HEARING. (1) Proceedings for the involuntary care and treatment of a person with a mental illness in an outpatient setting by the department may be commenced by the filing of a written application with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, or by a licensed physician, prosecuting attorney, or other public official of a municipality, county or of the state of Idaho, regional mental health authority (RMHA) treating professional, or the director of any facility in which such patient may be.

(2) The application shall state: (i) the name and last known address of the proposed patient; (ii) the name and address of either the spouse, guardian, next of kin or friend of the proposed patient; (iii) that more restrictive treatment would be necessary or required if the illness progressed as prior history indicated; (iv) if the proposed patient is, at the time of the application, a voluntary patient; (v) a simple and precise statement showing that the proposed patient has previously been diagnosed with a mental illness, that the proposed patient has previously refused to accept treatment outlined in a treatment plan, and is now refusing such treatment; (vi) the observations indicating the current progression of the illness, that the expected progression would more than likely result in a condition where the proposed patient is likely to injure himself or others or suffer substantial mental or emotional deterioration, or likely to become gravely disabled; and (vii) whether or not there is a less restrictive alternative.

(3) Any such petition shall be accompanied by the report of a designated examiner stating that he has personally examined the proposed patient within the last fourteen (14) days and is of the opinion that the proposed patient (i) has a history of mental illness; (ii) that as a result of the progression of this illness the proposed patient without treatment is likely to injure himself or others or suffer substantial mental or emotional deterioration, or become

gravely disabled; (iii) that the proposed patient has a treatment plan that can be satisfied by outpatient services; (iv) that the proposed patient has failed to comply on one (1) or more occasions with a prescribed course of treatment; and (v) that the proposed patient now refuses or lacks the capacity to make informed decisions about the necessity for continued treatment, or (vi) a written statement by the applicant that the proposed patient has refused to submit to examination by a designated examiner. The designated examiner shall report his findings as to the mental condition of the proposed patient and the appropriateness of the patient receiving treatment in an outpatient commitment setting or in an inpatient facility to the court within the forty-eight (48) hours. The report shall be in the form of a written certificate which shall be filed with the court.

(a) If the designated examiner's certificate states a belief that the proposed patient meets the above established criteria for outpatient commitment the judge of such court shall issue an order authorizing any regional mental health authority, health officer, peace officer, or director of a facility to take the proposed patient to an outpatient facility in the community in which the proposed patient is residing or to the nearest place of treatment as designated by the RMHA. In addition, the court shall authorize treatment as described in the treatment plan. The conditions of the treatment plan shall be specified, and a copy of that treatment plan shall be provided to the patient as soon as practicable after the hearing. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

(b) If the designated examiner's certificate states a belief that the proposed patient does not meet the above established criteria for outpatient commitment, the court may terminate the proceedings and dismiss the application without taking any further action.

(4) An opportunity to be represented by counsel shall be afforded to every patient proposed for an outpatient commitment, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code, no later than the time the petition is received by the court. Notice of the petition shall be given to the RMHA by the clerk of the court by mailing to an address the RMHA shall provide. In addition to the right to counsel, the proposed patient shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The proposed patient shall be required to be present at the hearing unless the court determines that the mental or physical state of the proposed patient is such that his presence at the hearing would be detrimental to the proposed patient's health or would unduly disrupt the proceedings.

(5) The hearing shall be held at a facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the proposed patient's physical or mental health. Venue for the hearing shall be in the county of residence of the proposed patient, unless the patient waives the right to have venue fixed there. The court on its own motion may find that venue in the county where the proposed patient is found is proper, if it is in the best interest of the proposed patient. A record of the proceedings shall be

made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with the rules of evidence.

(6) In all proceedings under this section, any existing provision of the law prohibiting the disclosure of confidential communications between the designated examiner and proposed patient shall not apply and any designated examiner who shall have examined the proposed patient shall be a competent witness to testify as to the proposed patient's condition.

(7) If, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that the proposed patient:

(a) Has a mental illness; and

(b) Has a prescribed course of treatment for this mental illness; and

(c) Has failed to comply with a prescribed course of treatment on one (1) or more occasions outside an inpatient facility; and

(d) Because of a deterioration resulting from the failure to comply with the prescribed course of treatment is likely to suffer substantial mental or emotional deterioration or be likely to injure himself or others, or become gravely disabled due to mental illness;

the court shall order the proposed patient committed to the department only for the purposes of outpatient commitment for an indeterminate period of time not to exceed one (1) year.

The conditions of the treatment plan shall be specified, and a copy of that treatment plan shall be provided to the patient as soon as practicable after the hearing. The RMHA, through its dispositioner, shall determine within twenty-four (24) hours the least restrictive available outpatient facility consistent with the needs of the patient and the treatment plan.

The order of outpatient commitment shall state: (i) whether the proposed patient lacks capacity to make informed decisions about treatment; and (ii) the name and address of the patient's attorney; and (iii) either the patient's spouse, guardian, adult next of kin, or friend; and (iv) whether or not the patient may be involuntarily medicated with medication described in the treatment plan.

(8) If at any time during the one (1) year (or any subsequent) outpatient commitment a patient substantially fails or refuses to comply with the treatment plan, as it may be amended from time to time by the treating facility or physician, the physician or place of treatment to whose care the patient was dispositioned shall proceed in accordance with section 66-339C, Idaho Code.

(9) Notwithstanding other provisions of these statutes, and subject to the provisions of federal law, staff of a facility in which patients are being treated may communicate with outpatient clinicians without patient consent in order to develop outpatient treatment plans.

(10) Nothing in this chapter or in any rule adopted pursuant thereto shall be construed to authorize the detention or involuntary outpatient commitment of an individual who:

(a) Is epileptic, mentally deficient, mentally retarded, impaired by chronic alcoholism or drug abuse, or aged, unless in addition to such condition, such person is mentally ill; or

(b) Is a patient under treatment by spiritual means alone, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof and who asserts to any authority attempting to detain him that he is under such treatment and who gives the name of a practitioner so treating him to such authority.

(11) The commitment shall continue for an indeterminate time not to exceed one (1) year. It may be terminated sooner by the RMHA, the treating physician, or the court. It may be renewed upon application under this section by the RMHA, the treating physician, relative, spouse, guardian, or prosecuting attorney, upon the failure of the patient to continue with a treatment plan. It may be terminated sooner by the RMHA, the treating physician, or upon application of the patient if the patient is no longer mentally ill, or is no longer in need of following a treatment plan.

SECTION 6. 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 66-339C, Idaho Code, and to read as follows:

66-339C. NONCOMPLIANCE WITH COURT ORDER. (1) If a patient fails to comply with the requirements specified in the outpatient commitment order, and the RMHA, the physician or staff of the treatment facility believes that there is a significant risk of deterioration in the patient's conditions, the director of the facility, physician, or RMHA shall notify law enforcement.

(2) The outpatient commitment order constitutes a continuing authorization for law enforcement, upon request of the director of the outpatient facility, the physician, or the RMHA, to transport the patient to the designated outpatient treatment facility or the physician's office for the purpose of making reasonable efforts to obtain the person's compliance with the requirements of the outpatient commitment order. However, the patient may not be detained at the facility or the physician's office for more than one (1) hour, and may not be physically coerced to take prescribed medications unless the court has entered on the outpatient commitment order an authorization for the nonconsensual delivery of prescribed medication. If a patient has been involuntarily medicated, a report of such action shall be made within twenty-four (24) hours to the court, the patient's guardian, or next of kin by the treatment provider.

(3) If a patient fails to comply with the requirement of the court order, and the RMHA, the physician or staff of the treatment facility believes that there is a significant risk of deterioration, the RMHA, the director of the facility or the physician shall notify the original petitioner for outpatient commitment and the prosecuting attorney of the county where the patient is found and shall recommend an appropriate disposition.

Within seventy-two (72) hours of receiving the notice transmitted pursuant to this section that a patient has failed to comply with the requirements of the outpatient commitment order, the original petitioner for outpatient commitment, the RMHA and the prosecuting attorney of the county where the patient is found or resides may petition

the court for a supplemental hearing, or may proceed under any other section of this chapter. If a petition for supplemental hearing is filed, the court shall hold a supplemental hearing in accordance with the procedures specified in section 66-329, Idaho Code, within forty-eight (48) hours. After hearing evidence concerning the patient's current condition and compliance with the court order, the court shall make whichever of the following dispositions it deems appropriate:

(a) Upon finding that hospitalization is necessary to prevent the patient from harming himself or others or to prevent substantial deterioration of the patient's mental or emotional conditions, the court shall order a commitment proceeding under section 66-329, Idaho Code, and may temporarily commit the patient to an inpatient facility pending hearing on a petition or application for commitment to an inpatient facility.

(b) Upon finding that the patient does not meet the criteria for inpatient commitment and continues to meet the criteria for outpatient commitment set forth in section 66-329B, Idaho Code, and that additional outpatient treatment appears warranted, the court shall renew or modify the order to outpatient commitment.

(c) Upon finding that neither condition in subparagraphs (a) nor (b) are met, the court shall rescind the commitment order.

(d) Nothing provided in this section shall limit the authority of any law enforcement officer to detain a patient pursuant to the emergency authority conferred by section 66-326, Idaho Code.

SECTION 7. That Section 18-211, Idaho Code, be, and the same is hereby amended to read as follows:

18-211. EXAMINATION OF DEFENDANT -- APPOINTMENT OF PSYCHIATRISTS AND LICENSED PSYCHOLOGISTS -- HOSPITALIZATION -- REPORT. (1) Whenever there is reason to doubt the defendant's fitness to proceed as set forth in section 18-210, Idaho Code, the court shall appoint at least one (1) qualified psychiatrist or licensed psychologist or shall request the director of the department of health and welfare to designate at least one (1) qualified psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant to assist counsel with defense or understand the proceedings. The costs of examination shall be paid by the defendant if he is financially able. The determination of ability to pay shall be made in accordance with chapter 8, title 19, Idaho Code.

(2) Within three (3) days, excluding Saturdays, Sundays and legal holidays, of the appointment or designation, the examiner shall determine the best location for the examination. If practical, the examination shall be conducted locally on an outpatient basis.

(3) If the examiner determines that confinement is necessary for purposes of the examination, the court may order the defendant to be confined to a jail, a hospital, or other suitable facility for that purpose for a period not exceeding thirty (30) days.The order of confinement shall require the county sheriff to transport the defendant to and from the facility and shall notify the facility of any known medical, behavioral, or security requirements of the defendant. The court, upon request, may make available to the examiner any court records relating to the defendant.

(4) In such examination any method may be employed which is accepted by the examiner's profession for the examination of those alleged not to be competent to assist counsel in their defense.

(5) Upon completion of the examination a report shall be submitted to the court and shall include the following:

(a) a description of the nature of the examination;

(b) a diagnosis or evaluation of the mental condition of the defendant;

(c) an opinion as to the defendant's capacity to understand the proceedings against him and to assist in his own defense.

(6) If the examination cannot 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.

(7) 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.

(8) When the defendant wishes to be examined by an expert of his own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of examination.

(9) In addition to the psychiatrist or licensed psychologist, the court may appoint additional experts to examine the defendant. In the event a defendant is suspected of being developmentally disabled, the examination shall proceed with those experts set out in subsection (6) of section 66-402, Idaho Code.

(10) If the defendant lacks capacity to make informed decisions about treatment, as defined in section 66-317~~(i)~~, Idaho Code, the court may authorize consent to be given pursuant to section 66-322, Idaho Code. If the defendant lacks capacity to make informed decisions as defined in subsection (8) of section 66-402, Idaho Code, the court may authorize consent to be given pursuant to sections 66-404 and 66-405, Idaho Code.

(11) If the defendant was confined solely for the purpose of examination, he shall be released from the facility within three (3) days, excluding Saturdays, Sundays and legal holidays following notification of completion of the examination.

SECTION 8. That Section 18-3302, Idaho Code, be, and the same is hereby amended to read as follows:

18-3302. ISSUANCE OF LICENSES TO CARRY CONCEALED WEAPONS. (1) The sheriff of a county shall, within ninety (90) days after the filing of an application by any person who is not disqualified from possessing or receiving a firearm under state or federal law, issue a license to the person to carry a weapon concealed on his person within this state for four (4) years from the date of issue. The citizen's constitutional right to bear arms shall not be denied to him, unless he:

(a) Is ineligible to own, possess or receive a firearm under the provisions of state or federal law; or

(b) Is formally charged with a crime punishable by imprisonment for a term exceeding one (1) year; or

(c) Has been adjudicated guilty in any court of a crime punish-

able by imprisonment for a term exceeding one (1) year; or
(d) Is a fugitive from justice; or
(e) Is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. 802; or
(f) Is currently suffering or has been adjudicated as follows, based on substantial evidence:
(i) Lacking mental capacity as defined in section 18-210, Idaho Code; or
(ii) Mentally ill as defined in section 66-317~~(m)~~, Idaho Code; or
(iii) Gravely disabled as defined in section 66-317~~(n)~~, Idaho Code; or
(iv) An incapacitated person as defined in section 15-5-101(a), Idaho Code; or
(g) Is or has been discharged from the armed forces under dishonorable conditions; or
(h) Is or has been adjudicated guilty of or received a withheld judgment or suspended sentence for one (1) or more crimes of violence constituting a misdemeanor, unless three (3) years has elapsed since disposition or pardon has occurred prior to the date on which the application is submitted; or
(i) Has had entry of a withheld judgment for a criminal offense which would disqualify him from obtaining a concealed weapon license; or
(j) Is an alien illegally in the United States; or
(k) Is a person who having been a citizen of the United States, has renounced his or her citizenship; or
(l) Is under twenty-one (21) years of age; or
(m) Is free on bond or personal recognizance pending trial, appeal or sentencing for a crime which would disqualify him from obtaining a concealed weapon license; or
(n) Is subject to a protection order issued under chapter 63, title 39, Idaho Code, that restrains the person from harassing, stalking or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.

The license application shall be in triplicate, in a form to be prescribed by the director of the department of law enforcement, and shall ask the name, address, description and signature of the licensee, date of birth, social security number, military status, and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. The application shall indicate that provision of the social security number is optional. The license application shall contain a warning substantially as follows:

CAUTION: Federal law and state law on the possession of weapons and firearms differ. If you are prohibited by federal law from possessing a weapon or a firearm, you may be prosecuted in federal court. A state permit is not a defense to a federal prosecution.

The sheriff shall require any person who is applying for

original issuance of a license to submit his fingerprints in addition to the other information required in this subsection. Within five (5) days after the filing of an application, the sheriff shall forward the application and fingerprints to the department of law enforcement for a records check of state and national files. The department of law enforcement shall conduct a national fingerprint-based records check and return the results to the sheriff within seventy-five (75) days. The sheriff shall not issue a license before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria listed in paragraphs (a) through (n) of subsection (1) of this section.

The license will be in a form substantially similar to that of the Idaho driver's license. It will bear the signature, name, address, date of birth, picture of the licensee, expiration date and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. Upon issuing a license under the provisions of this section, the sheriff will notify the department of law enforcement on a form or in a manner prescribed by the department. Information relating to an applicant or licensee received or maintained pursuant to this section by the sheriff or department of law enforcement is confidential and exempt from disclosure under section 9-338, Idaho Code.

(2) The fee for original issuance of a four (4) year license shall be twenty dollars ($20.00) paid to the sheriff for the purpose of enforcing the provisions of this chapter. The sheriff may collect any additional fees necessary to cover the cost of processing fingerprints lawfully required by any state or federal agency or department, and the cost of materials for the license lawfully required by any state agency or department, which costs shall be paid to the state.

(3) The fee for renewal of the license shall be twelve dollars ($12.00). The sheriff may collect any additional fees necessary to cover the processing costs lawfully required by any state or federal agency or department, and the cost of materials for the license lawfully required by any state agency or department, which costs shall be paid to the state. If a licensee applying for renewal has not previously been required to submit fingerprints, the sheriff shall require the licensee to do so and may collect any additional fees necessary to cover the cost of processing fingerprints lawfully required by any state or federal agency or department.

(4) A licensee may renew a license if the licensee applies for renewal at any time before or within ninety (90) days after the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete an application. The sheriff shall submit the application to the department of law enforcement for a records check of state and national databases. The department of law enforcement shall conduct the records check and return the results to the sheriff within thirty (30) days. The sheriff shall not issue a renewal before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria listed in subsection (1), paragraphs (a) through (n) of this

section. A renewal license shall be valid for a period of four (4) years. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license shall pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee. The fee shall be paid to the sheriff for the purpose of enforcing the provisions of this chapter.

(5) Notwithstanding the requirements of this section, the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section.

(6) A city, county or other political subdivision of this state shall not modify the requirements of this section, nor may a political subdivision ask the applicant to voluntarily submit any information not required in this section. A civil action may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section. The civil action may be brought in the county in which the application was made or in Ada county at the discretion of the petitioner. Any person who prevails against a public agency in any action in the courts for a violation of subsections (1) through (5) of this section, shall be awarded costs, including reasonable attorney's fees incurred in connection with the legal action.

(7) Except in the person's place of abode or fixed place of business, a person shall not carry a concealed weapon without a license to carry a concealed weapon. For the purposes of this section, a concealed weapon means any dirk, dirk knife, bowie knife, dagger, pistol, revolver, or any other deadly or dangerous weapon. The provisions of this section shall not apply to any lawfully possessed shotgun or rifle.

(8) A county sheriff, deputy sheriff, or county employee who issues a license to carry a concealed weapon under this section shall not incur any civil or criminal liability as the result of the performance of his duties under this section.

(9) While in any motor vehicle, inside the limits or confines of any city or inside any mining, lumbering, logging or railroad camp a person shall not carry a concealed weapon on or about his person without a license to carry a concealed weapon. This shall not apply to any pistol or revolver located in plain view whether it is loaded or unloaded. A firearm may be concealed legally in a motor vehicle so long as the weapon is disassembled or unloaded.

(10) In implementing the provisions of this section, the sheriff shall make applications readily available at the office of the sheriff or at other public offices in his jurisdiction.

(11) The sheriff of a county may issue a license to carry a concealed weapon to those individuals between the ages of eighteen (18) and twenty-one (21) years who in the judgment of the sheriff warrants the issuance of the license to carry a concealed weapon. Such issuance shall be subject to limitations which the issuing authority deems appropriate. Licenses issued to individuals between the ages of eighteen (18) and twenty-one (21) shall be easily distinguishable from regular licenses.

(12) The requirement to secure a license to carry a concealed weapon under this section shall not apply to the following persons:

(a) Officials of a county, city, state of Idaho, the United

States, peace officers, guards of any jail, court appointed attendants or any officer of any express company on duty;

(b) Employees of the adjutant general and military division of the state where military membership is a condition of employment when on duty;

(c) Criminal investigators of the attorney general's office, criminal investigators of a prosecuting attorney's office, prosecutors and their deputies;

(d) Any person outside the limits of or confines of any city, or outside any mining, lumbering, logging or railroad camp, located outside any city, while engaged in lawful hunting, fishing, trapping or other lawful outdoor activity;

(e) Any publicly elected Idaho official;

(f) Retired peace officers with at least ten (10) years of service with the state or a political subdivision as a peace officer and who have been certified by the peace officer standards and training council;

(g) Any person who has a valid permit from a state or local law enforcement agency or court authorizing him to carry a concealed weapon. A permit issued in another state will only be considered valid if the permit is in the licensee's physical possession.

(13) When issuing a license pursuant to this section, the sheriff may require the applicant to demonstrate familiarity with a firearm by any of the following, provided the applicant may select which one:

(a) Completion of any hunter education or hunter safety course approved by the department of fish and game or a similar agency of another state; or

(b) Completion of any national rifle association firearms safety or training course, or any national rifle association hunter education course; or

(c) Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, community college, college, university, or private or public institution or organization or firearms training school, utilizing instructors certified by the national rifle association or the department of law enforcement; or

(d) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement agency; or

(e) Presents evidence or equivalent experience with a firearm through participation in organized shooting competition or military service; or

(f) Is licensed or has been licensed to carry a firearm in this state or a county or municipality, unless the license has been revoked for cause; or

(g) Completion of any firearms training or training or safety course or class conducted by a state certified or national rifle association certified firearms instructor.

(14) A person carrying a concealed weapon in violation of the provisions of this section shall be guilty of a misdemeanor.

(15) The sheriff of the county where the license was issued or the sheriff of the county where the person resides shall have the power to

revoke a license subsequent to a hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, for any of the following reasons:

(a) Fraud or intentional misrepresentation in the obtaining of a license; or

(b) Misuse of a license, including lending or giving a license to another person, or duplicating a license, or using a license with the intent to unlawfully cause harm to a person or property; or

(c) The doing of an act or existence of a condition which would have been grounds for the denial of the license by the sheriff; or

(d) The violation of any of the terms of this section; or

(e) The applicant is adjudicated guilty of or receives a withheld judgment for a crime which would have disqualified him from initially receiving a license.

(16) A person twenty-one (21) years of age or older issued a license to carry a concealed weapon or a license renewal on or after July 1, 1995, is exempt from any requirement to undergo a records check at the time of purchase or transfer of a firearm from a federally licensed firearms dealer. However, a temporary emergency license issued under subsection (5) of this section shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(17) The provisions of this section are hereby declared to be severable and if any provision of this section 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 section.

SECTION 9. This act shall be in full force and effect on and after July 1, 1999.

Approved March 18, 1998.

CHAPTER 91
(S.B. No. 1305)

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-504, IDAHO CODE, TO PROVIDE THAT WHEN A MAGISTRATE FINDS THAT A COMPLAINT SUBSCRIBED TO UNDER OATH ALLEGES FACTS CONSTITUTING A PUBLIC OFFENSE THE COMPLAINT WILL BE REFERRED TO THE APPROPRIATE PROSECUTING ATTORNEY; AND AMENDING SECTION 19-506, IDAHO CODE, TO PROVIDE THAT A MAGISTRATE MAY ISSUE A WARRANT FOR THE ARREST OF THE DEFENDANT ONLY AFTER A DETERMINATION THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT AN OFFENSE HAS BEEN COMMITTED AND THAT THE DEFENDANT COMMITTED THE OFFENSE.

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

SECTION 1. That Section 19-504, Idaho Code, be, and the same is

hereby amended to read as follows:

19-504. ~~EXAMINATION OF~~ PERSON LODGING COMPLAINT. When a complaint which has been subscribed to under oath by the party or parties lodging the same is laid before a magistrate ~~of~~ alleging facts constituting the commission of a public offense, triable within the county, ~~he must--examine,--under-oath,-the-person-lodging-such-complaint,-and-the written-complaint,-so-lodged,-shall-be-subscribed-under--oath--by--the party--or--parties--lodging-the-same~~ and the magistrate finds that the complaint alleges a public offense under the Idaho Code or county or city ordinance, the magistrate shall order the clerk of the court to file the complaint and refer the complaint to the appropriate county or city prosecuting attorney for further action.

SECTION 2. That Section 19-506, Idaho Code, be, and the same is hereby amended to read as follows:

19-506. WHEN WARRANT MAY ISSUE. ~~If the~~ A magistrate ~~is--satisfied therefrom--that--the-offense-complained-of-has-been-committed,-and~~ may issue a warrant for the arrest of the defendant only after making a determination that there is ~~reasonable--ground~~ probable cause to believe that an offense has been committed and that the defendant ~~has~~ committed it~~,-he-must-issue-a-warrant-of-arrest~~.

Approved March 18, 1998.

CHAPTER 92
(H.B. No. 517)

AN ACT

RELATING TO PUBLIC CHARTER SCHOOLS; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 52, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE INTENT, TO PROVIDE AUTHORIZATION TO CREATE PUBLIC CHARTER SCHOOLS AND TO SPECIFY LIMITATIONS, TO REQUIRE CHARTER SCHOOLS TO BE ORGANIZED AS NONPROFIT CORPORATIONS, TO PROVIDE LIMITS OF LIABILITY AND TO REQUIRE INSURANCE COVERAGE, TO PROVIDE PETITIONS TO ESTABLISH A CHARTER SCHOOL, TO PROVIDE REQUIREMENTS AND PROHIBITIONS UPON APPROVAL OF A CHARTER SCHOOL, TO PROVIDE AN APPEAL PROCEDURE, TO PROVIDE STATE FINANCIAL SUPPORT, TO PROVIDE TIME LIMITS FOR A CHARTER, TO PROVIDE FOR REVOCATION AND TO PROVIDE FOR APPEAL OF A REVOCATION OR NONRENEWAL OF A CHARTER, TO PROVIDE APPLICATION OF SCHOOL LAW, ACCOUNTABILITY AND EXEMPTION FROM STATE RULES, TO PROVIDE TECHNICAL ASSISTANCE IN PREPARING A CHARTER PETITION, TO PROVIDE FOR DISTRIBUTION OF INFORMATION AND TO PROVIDE FOR REVIEW OF THE EDUCATIONAL EFFECTIVENESS OF CHARTER SCHOOLS.

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

SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and des-

ignated as Chapter 52, Title 33, Idaho Code, and to read as follows:

CHAPTER 52
PUBLIC CHARTER SCHOOLS

33-5201. SHORT TITLE. This chapter shall be known and may be cited as the "Public Charter Schools Act of 1998."

33-5202. LEGISLATIVE INTENT. It is the intent of the legislature to provide opportunities for teachers, parents, students and community members to establish and maintain public charter schools which operate independently within the existing public school system as a method to accomplish all of the following:

(1) Improve student learning;

(2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students;

(3) Include the use of different and innovative teaching methods;

(4) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;

(5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system;

(6) Hold the schools established under this chapter accountable for meeting measurable student educational standards.

33-5203. AUTHORIZATION -- LIMITATIONS. (1) The creation of public charter schools is hereby authorized. Charter schools shall be part of the state's program of public education.

(2) It is the intent of the legislature that the number of charter schools which may be approved in each of the first five (5) years after the effective date of this act be limited in number and geographic distribution in accordance with the following:

(a) Not more than sixty (60) schools may be approved in the first five (5) years after the effective date of this act, and

(b) Not more than twelve (12) schools may be approved in any one (1) year, and

(c) Not more than two (2) charters per year may be granted within an educational classification region as established by the state board of education, and

(d) Not more than one (1) charter may be granted for any one (1) school district in a year, and

(e) No whole school district may be converted to a charter district or any configuration which includes all schools as charter schools.

The legislature further finds that, notwithstanding the limitations of this subsection (2), if fewer than twelve (12) charters are approved by October 1 of a year, the unused allotments shall be assigned to a statewide pool for use by other requesting districts. Distributions from the pool shall be made by random drawing.

(3) A charter school may be formed by creating a new school or converting an existing public school to charter status. No charter shall be granted under this chapter which authorizes the conversion of

any private or parochial school to a charter school. No charter shall be granted to or operated by a for-profit entity.

33-5204. NONPROFIT CORPORATION -- LIABILITY -- INSURANCE. (1) A charter school shall be organized and managed under the Idaho nonprofit corporation act. The board of directors of a charter school shall be deemed public agents authorized by a public school district or the state board of education to control the charter school. A charter school shall be considered a public school for all purposes.

(2) A charter school may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and borrow money for such purposes, to the same extent and on the same conditions as a public school district, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of public school districts and other public schools. The approving authority of a charter school shall have no liability for the acts, omissions, debts or other obligations of a charter school, except as may be provided in an agreement or contract with such charter school.

(3) Charter schools shall secure insurance for liability and property loss.

33-5205. PETITION TO ESTABLISH CHARTER SCHOOL. (1) Any person may request the board of trustees of a school district to establish a charter school, or to convert an existing school within the school district to charter status. A petition to convert an existing school shall be submitted to the board of trustees of the district for review after the petition has been signed by not less than sixty percent (60%) of the teachers currently employed by the school district at the school to be converted, and by one (1) or more parents or guardians of not less than sixty percent (60%) of the students currently attending the school to be converted. A petition to establish a new charter school shall be submitted to the board of trustees of the district for review after the petition has been signed by not less than thirty (30) qualified electors of the district.

(2) Not later than thirty (30) days after receiving a petition signed in accordance with the specifications in subsection (1) of this section, the board of trustees shall hold a meeting open to the public for the purpose of discussing the provisions of the charter, at which time the board shall consider the merits of the petition and the level of employee and parental support for the petition. Following review of the petition and the public hearing, the board of trustees shall either grant or deny the charter within sixty (60) days of receipt of the petition, provided however, that the date may be extended by an additional sixty (60) days if the petition fails to meet the signature requirements or fails to contain all of the information required in this section, or if both parties agree to the extension.

(3) A board of trustees may grant a charter for operation of a school under the provisions of this chapter if it determines that the petition contains the number of signatures required, a statement of each of the conditions described in subsection (4) of this section, and descriptions of all of the following:

(a) The educational program of the charter school, designed among other things, to identify what it means to be an "educated person"

in the twenty-first century, and how learning best occurs. The goals identified in the program shall include how all educational thoroughness standards as defined in section 33-1612, Idaho Code, shall be fulfilled.

(b) The measurable student educational standards identified for use by the charter school. "Student educational standards" for the purpose of this chapter means the extent to which all students of the charter school demonstrate they have attained the skills and knowledge specified as goals in the school's educational program.

(c) The method by which student progress in meeting those student educational standards is to be measured.

(d) A provision by which students of the charter school will be tested with the same standardized tests as other Idaho public school students.

(e) The governance structure of the charter school including, but not limited to, the person or entity who shall be legally accountable for the operation of the school, and the process to be followed by the charter school to ensure parental involvement.

(f) The qualifications to be met by individuals employed by the charter school. Instructional staff shall be certified teachers, or may apply for a waiver or any of the limited certification options as provided by rule of the state board of education.

(g) The procedures that the charter school will follow to ensure the health and safety of students and staff.

(h) Admission procedures, including provision for overenrollment which specifies admission will be determined by lottery or other random method.

(i) The manner in which an annual audit of the financial and programmatic operations of the charter school is to be conducted.

(j) The procedures by which students can be suspended, expelled and reenrolled.

(k) A provision which ensures all staff members of the charter school will be covered by the public employee retirement system, federal social security, unemployment insurance and worker's compensation insurance.

(l) The public school attendance alternative for students residing within the school district who choose not to attend the charter school.

(m) A description of the transfer rights of any employee choosing to work in a charter school and the rights of such employees to return to any noncharter school in the school district after employment at a charter school.

(n) A provision which ensures that the staff of the charter school shall be considered a separate unit for purposes of collective bargaining.

(o) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(p) The manner by which special education services will be provided to students with disabilities who are eligible pursuant to the federal individuals with disabilities education act.

(4) The petitioner shall provide information regarding the proposed operation and potential effects of the school including, but not

limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided and the potential civil liability effects upon the school and upon the district.

33-5206. REQUIREMENTS AND PROHIBITIONS UPON APPROVAL OF A CHARTER SCHOOL. (1) In addition to any other requirements imposed in this chapter, a charter school shall be nonsectarian in its programs, affiliations, admission policies, employment practices, and all other operations, shall not charge tuition, levy taxes or issue bonds, and shall not discriminate against any student on any basis prohibited by the federal or state constitutions or any federal, state or local law. Admission to a charter school shall not be determined according to the place of residence of the student, or of the student's parent or guardian within the district, except that a charter school established under the provisions of this chapter shall adopt and maintain a policy giving admission preference to students who reside within the attendance area of that school.

(2) No board of trustees shall require any employee of the school district to be involuntarily assigned to work in a charter school.

(3) Certified teachers in a charter school shall be considered public school teachers. Educational experience shall accrue for service in a charter school and such experience shall be counted by any school district to which the teacher returns after employment in a charter school.

(4) No board of trustees shall require any student enrolled in the school district to attend a charter school.

(5) Upon approval of the petition by the board of trustees, the petitioner shall provide written notice of that approval, including a copy of the petition, to the state board of education. For the purpose of implementing the provisions of section 33-5203(2), Idaho Code, the state board of education shall assign a number to each petition it receives. Petitions shall be numbered based on the chronological order in which notice of the approved petition is received by the state board of education.

(6) Each charter school shall annually submit a report to the local board of trustees which approved its charter. In the case of a new charter school whose charter was granted by the state board of education pursuant to section 33-5207, Idaho Code, the annual report shall be submitted to the state board of education. The report shall contain the audit of the fiscal and programmatic operations as required in section 33-5205(3)(i), Idaho Code, as well as a report on student progress based on the charter school's student educational standards identified in section 33-5205(3)(b), Idaho Code.

33-5207. CHARTER APPEAL PROCEDURE. (1) If a local school board of trustees grants a charter for the conversion of an existing school within the school district over the objection of thirty (30) or more persons or employees of the district, or denies a petition for the establishment of a new charter school for any reason including, but not limited to, failure by the petitioner to follow procedures or for failure to provide required information, then such decisions may be appealed to the state superintendent of public instruction, at the

request of persons opposing the conversion of an existing school, or at the request of the petitioner whose request for a new charter was denied.

(2) The state superintendent of public instruction shall select a hearing officer to review the action of the local board of trustees. The hearing officer shall, within thirty (30) days of the request, review the charter petition and convene a public hearing regarding the charter request. Within ten (10) days of the public hearing, the hearing officer shall submit a written recommendation to the local board of trustees and to the persons requesting the review.

(3) Within thirty (30) days following receipt of the hearing officer's written recommendation, the local board of trustees shall hold a public hearing. Within ten (10) days of this hearing, the local board of trustees shall either affirm or reverse its initial decision. The board's decision shall be in writing and contain findings which explain the reasons for its decision.

(4) If, upon reconsideration of a decision to approve the conversion of an existing school to a charter school, the local school board:

(a) Affirms its initial decision to authorize such conversion, the charter shall be granted and there shall be no further appeal.

(b) Reverses its initial decision and denies the conversion, that decision is final and there shall be no further appeal.

(5) If, upon reconsideration of a decision to deny establishment of a new charter school, the local school board:

(a) Reverses its initial decision and approves the new charter school, the charter shall be granted and there shall be no further appeal.

(b) Affirms its initial decision denying the new charter school, the petitioners for the establishment of the new charter school may appeal to the state board of education. The state board of education shall hold a public hearing at its next regular meeting and shall approve the charter for the establishment of a new charter school if it determines that the local board of trustees failed to appropriately consider the charter request, or if the local board acted in an arbitrary manner in denying the request.

(6) A charter school for which a charter is granted by the state board of education shall qualify fully as a charter school for all funding and other purposes of this chapter. The state board of education shall assume the role of the chartering entity. Employees of a charter school authorized by the state board of education shall not be considered employees of the local school district.

(7) The finding of the state board of education shall be subject to review pursuant to chapter 52, title 67, Idaho Code. Nothing in this section shall prevent a petitioner from bringing a new petition at a later time.

(8) There shall be no appeal of a decision by a local school board of trustees which denies the conversion of an existing school within that district to a charter school, or which grants a petition for the establishment of a new charter school.

33-5208. CHARTER SCHOOL FINANCIAL SUPPORT. From the state educational support program the state department of education shall make

the following apportionment to each charter school for each fiscal year based on attendance figures submitted in a manner and time as required by the department of education:

(1) Per student support. Computation of support units for each charter school shall be calculated according to the schedules in section 33-1002 6., Idaho Code. Funding from the state educational support program shall be equal to the total distribution factor, plus the salary-based apportionment provided in chapter 10, title 33, Idaho Code.

(2) Special education. For each student enrolled in the charter school who is entitled to special education services, the state and federal funds from the exceptional child education program for that student that would have been apportioned for that student to the school district in which the charter school is located.

(3) Alternative school support. Charter schools may qualify under the provisions of sections 33-1002 and 33-1002C, Idaho Code, provided the charter school meets the necessary statutory requirements.

(4) Transportation support. Support shall be paid to the charter school as provided in chapter 15, title 33, Idaho Code, and section 33-1006, Idaho Code. Each charter school shall furnish the department with an enrollment count as of the first Friday in November, of charter school students living more than one and one-half (1 1/2) miles from the school.

(5) Payment schedule. The state department of education is authorized to make a one-time advance payment of twenty-five percent (25%) of a charter school's estimated annual apportionment for its first year of operation to assist the school with initial start-up costs.

(a) For a state charter school to receive the advance payment, the school shall submit its anticipated fall membership for each grade level to the state department of education by June 1.

(b) Using the figures provided by the school, the state department of education shall determine an estimated annual apportionment from which the amount of the advance payment shall be calculated. Advance payment shall be made to the school on or after July 1 but no later than July 31.

(c) All subsequent payments, taking into account the one-time advance payment made for the first year of operation, shall be made to the charter school in the same manner as other public schools in accordance with the provisions of section 33-1009, Idaho Code.

A charter school shall comply with all applicable fiscal requirements of law, except that the following provisions shall not be applicable to charter schools: section 33-1003B, Idaho Code, relating to guaranteed minimum support; that portion of section 33-1004, Idaho Code, relating to reduction of the instructional staff allowance when there is a discrepancy between the number allowed and the number actually employed; and section 33-1004E, Idaho Code, for calculation of district staff indices.

(6) Nothing in this chapter shall be construed to prohibit any private person or organization from providing funding or other financial assistance to the establishment or operation of a charter school.

(7) Nothing in this chapter shall prevent a charter school from applying for federal grant moneys.

33-5209. TIME LIMITS -- REVOCATION -- APPEAL. (1) A charter granted pursuant to this chapter shall be valid for a period not to exceed five (5) years. A charter may be granted one (1) or more subsequent renewals by the original granting authority. Each renewal shall be valid for a period not to exceed five (5) years. A material revision of the provisions of the charter petition may be made only with the approval of the authority which granted the charter.

(2) A charter may be revoked by the original granting authority if the authority finds that the charter school has done any of the following:

(a) Committed a material violation of any condition, standard or procedure set forth in the charter petition;

(b) Failed to substantially meet any of the student educational standards identified in the charter petition;

(c) Failed to meet generally accepted accounting standards of fiscal management;

(d) Failed to submit required reports to the authority which authorized the charter; or

(e) Violated any provision of law.

(3) A decision to revoke or not to renew a charter may be appealed directly to the state board of education. The state board shall essentially follow the procedure as provided in section 33-5207, Idaho Code.

33-5210. APPLICATION OF SCHOOL LAW -- ACCOUNTABILITY -- EXEMPTION FROM STATE RULES. (1) All public charter schools are under the general supervision of the state board of education.

(2) The local board of trustees and the state board of education are responsible to ensure that each charter school program approved by it meets the terms of the charter, and operates in accordance with the state educational standards of thoroughness as defined in section 33-1612, Idaho Code.

(3) Each charter school is otherwise exempt from rules governing school districts which have been promulgated by the state board of education or by the superintendent of public instruction, with the exception of state rules relating to waiver of teacher certification as necessitated by the provisions of section 33-5205(3)(f), Idaho Code.

33-5211. ASSISTANCE WITH PETITIONS -- INFORMATION. (1) The state department of education shall provide technical assistance to persons or groups preparing or revising charter petitions.

(2) Upon request, the state department of education shall distribute the following information concerning the charter school whose petition has been approved:

(a) The charter school's petition;

(b) The annual audit performed at each charter school pursuant to the charter school petition;

(c) By not later than July 1, 2004, the written report by the state board of education to the legislature reviewing the educational effectiveness of charter schools.

33-5212. REVIEW. The state board of education shall review the

educational effectiveness of charter schools under the provisions of this chapter and shall report to the legislature not later than July 1, 2004, with recommendations which may include modification, expansion or termination of the provisions of this chapter.

Approved March 19, 1998.

CHAPTER 93
(H.B. No. 675)

AN ACT

RELATING TO THE SALARY OF JUSTICES, JUDGES AND MAGISTRATES; AMENDING SECTION 1-2222, IDAHO CODE, TO REVISE THE SALARY STRUCTURE FOR ATTORNEY MAGISTRATES AND TO INCREASE THE BASE ANNUAL SALARY OF NONATTORNEY MAGISTRATES; AND AMENDING SECTION 59-502, IDAHO CODE, TO INCREASE THE SALARY OF JUSTICES AND JUDGES.

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

SECTION 1. That Section 1-2222, Idaho Code, be, and the same is hereby amended to read as follows:

1-2222. SALARY SCHEDULE -- ATTORNEY AND NONATTORNEY MAGISTRATES. The salaries of magistrates of the district court shall be as follows:

(1) Beginning on July 1, 1998, t~~T~~he annual salary of each magistrate who is an attorney shall be ~~ninety percent (90%) of~~ seven thousand eight hundred eight dollars ($7,808) less than the annual salary of a district judge. Beginning on July 1, 1999, the annual salary of each magistrate who is an attorney shall be seven thousand one hundred six dollars ($7,106) less than the salary of a district judge. Beginning on July 1, 2000, the annual salary of each magistrate who is an attorney shall be six thousand four hundred four dollars ($6,404) less than the salary of a district judge. Beginning on July 1, 2001, the annual salary of each magistrate who is an attorney shall be five thousand seven hundred two dollars ($5,702) less than the salary of a district judge. Beginning July 1, 2002, the annual salary of each magistrate who is an attorney shall be five thousand dollars ($5,000) less than the salary of a district judge.

(2) Beginning July 1, 1998, t~~T~~he following schedule is adopted as the base annual salary schedule for all nonattorney magistrates:

STATE OF IDAHO
BASE ANNUAL SALARY SCHEDULE FOR NONATTORNEY MAGISTRATES

Pay Class	Annual Case Dispositions	Annual Salary
Nonattorney Magistrate Judge I	more than 4,500 cases	$~~38,962~~46,222
Nonattorney Magistrate Judge II	3,000 to 4,500 cases	~~34,788~~41,663
Nonattorney Magistrate Judge III	1,750 to 3,000 cases	~~30,613~~37,105
Nonattorney Magistrate Judge IV	under 1,750 cases	~~25,047~~31,027

~~Commencing-on-July-1,-1997,-the-amount-of-the-base-annual--salary--for all--nonattorney--magistrates--shall-be-increased-by-four-percent-(4%) before-increasing-the-base-annual-salary-by-an-additional-sum-of-three thousand-five-hundred-dollars-($3,500),--which--sum--shall--thereafter remain-as-a-permanent-part-of-the-annual-salary-base.~~

(3) The administrative director of the courts shall certify annually the case dispositions of each nonattorney magistrate judge and designate the salary classification for each nonattorney magistrate prior to the beginning of each fiscal year. Any increases or decreases in salary as a result of the provisions of this section shall become effective to coincide with the start of the fiscal year.

(4) Each nonattorney magistrate shall, separate and apart from the salary schedule established by subsection (1) of this section, receive an additional seven hundred fifty dollar ($750) longevity increment added to his base salary for each complete five (5) year period of service as a magistrate. No additional longevity increment shall be awarded after the twentieth year of service. For purposes of this subsection, magistrates who entered state service on January 11, 1971, shall receive credit for years of service as a police court judge, city court judge, justice of the peace, or probate judge.

(5) Each nonattorney magistrate shall, separate and apart from the salary schedule established by subsection (2) of this section, and separate and apart from the longevity increment established by subsection (4) of this section, receive an additional jurisdiction credit of thirty percent (30%) of his base salary upon being granted full statutory jurisdiction by the supreme court.

(6) Regardless of any other provision of this section, beginning July 1, 1997, no nonattorney magistrate shall receive an annual salary of more than fifty-five thousand two hundred seventy-six dollars ($55,276), and beginning July 1, 1998, there shall be no maximum salary limitation on nonattorney magistrate salaries.

(7) All nonattorney magistrates are full-time state officers, are required to be available on a twenty-four (24) hour basis to perform duties incident to their office such as the issuance of search and arrest warrants, and are required to hold such office hours as may be necessary to conduct court business or as required by the supreme court.

SECTION 2. That Section 59-502, Idaho Code, be, and the same is hereby amended to read as follows:

59-502. SALARIES OF JUDGES. Commencing on July 1, 198598, ~~and until-June-30,-1986,~~ the salary of the justices of the supreme court shall be ~~fifty-four-thousand-seven-hundred-and-seventy~~ ninety thousand seven hundred ninety-one dollars (~~$54,770~~90,791) per annum, and the salary of the judges of the district courts shall be ~~fifty-one--thousand-seven-hundred-and-twenty~~ eighty-five thousand ninety-five dollars (~~$51,720~~85,095) per annum. ~~Commencing-on-July-1,-1986,-the-salary-of justices-of-the-supreme-court-shall-be-fifty-nine-thousand-seven--hundred--fifty--dollars--($59,750)-per-annum,-and-the-salary-of-judges-of the-district-court-shall-be-fifty-six-thousand-dollars--($56,000)--per annum;--provided,-however,-that-commencing-on-July-1,-1988,-the-salary of-justices-of-the-supreme-court-and-the-salary-of-judges-of-the--dis-~~

~~trict--courts--shall-be-increased-by-five-percent-(5%),-and-again-commencing-on-July-1,-1989,-the-salary-of-justices-of-the--supreme--court and--the-salary-of-judges-of-the-district-courts-shall-be-increased-by five-percent-(5%),-and-again-commencing-on-July-1,-1990,-the-salary-of justices-of-the-supreme-court-and-the-salary-of-judges-of-the-district courts-shall-be-increased-by-eight-percent-(8%),-and-again--commencing on--July--1,-1991,-the-salary-of-justices-of-the-supreme-court-and-the salary-of-judges-of-the-district-courts-shall--be--increased--by--five percent-(5%),-and-again-commencing-on-July-1,-1993,-the-salary-of-justices--of--the--supreme-court-and-the-salary-of-judges-of-the-district courts-shall-be-increased-by-six-percent-(6%),-and-again-commencing-on July-1,-1996,-the-salary-of-justices-of-the-supreme-court-and-the-salary-of-judges-of-the-district-courts-shall-be-increased-by--five--percent--(5%),--and--again-commencing-on-July-1,-1997,-the-salary-of-justices-of-the-supreme-court-and-the-salary-of-judges--of--the--district courts--shall--be--increased--by-four-percent-(4%).~~ Salaries of magistrates shall be as prescribed by chapter 22, title 1, Idaho Code. Salaries shall be paid on regular pay periods not less frequently than monthly as determined by order of the supreme court as due out of the state treasury, but no justice of the supreme court or judge of the district court or magistrate shall be paid his salary, or any part thereof, unless he shall first take and subscribe an oath that there is not in his hands any matter in controversy not decided by him, which has been finally submitted for his consideration and determination thirty (30) days prior to his taking and subscribing said oath.

Approved March 19, 1998.

CHAPTER 94
(H.B. No. 674)

AN ACT

RELATING TO DISTRICT JUDGES; AMENDING SECTION 1-805, IDAHO CODE, TO PROVIDE THAT THE FOURTH JUDICIAL DISTRICT SHALL HAVE ONE MORE DISTRICT JUDGE WITH RESIDENT CHAMBERS IN ADA COUNTY; AND PROVIDING AN EFFECTIVE DATE.

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

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

1-805. FOURTH DISTRICT -- NUMBER OF JUDGES -- RESIDENT CHAMBERS. (1) The fourth judicial district shall consist of the counties of Valley, Boise, Ada and Elmore.

(2) The fourth judicial district shall have ~~eight~~ nine(89) district judges.

(3) Resident chambers of the district judges of the fourth judicial district shall be established as follows:

(a) ~~Seven~~ Eight (~~7~~8) resident chambers shall be established in Ada County;

(b) One (1) resident chambers shall be established in Ada or Elmore County.

SECTION 2. This act shall be in full force and effect on and after January 1, 1999.

Approved March 19, 1998.

CHAPTER 95
(H.B. No. 475)

AN ACT

RELATING TO TAXATION OF REAL PROPERTY; AMENDING SECTION 63-602W, IDAHO CODE, TO PROVIDE WHEN RESIDENTIAL IMPROVEMENTS SHALL BE SUBJECT TO THE OCCUPANCY TAX AND TO PROVIDE THAT THE STATUTE RELATING TO CHANGE OF STATUS SHALL NOT APPLY, TO PROVIDE APPLICATION, TO DEFINE A TERM, TO PROVIDE APPLICATION TO THE NONRESIDENTIAL PORTION OF AN IMPROVEMENT TO REAL PROPERTY AND TO PROVIDE APPLICATION TO MULTIPLE RESIDENTIAL UNITS; AMENDING SECTION 63-301A, IDAHO CODE, TO PROVIDE FOR AN ADDITION TO THE NEW CONSTRUCTION ROLL; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-602W, Idaho Code, be, and the same is hereby amended to read as follows:

63-602W. BUSINESS INVENTORY EXEMPT FROM TAXATION -- BUSINESS INVENTORY THAT IS A COMPONENT OF REAL PROPERTY THAT IS A SINGLE FAMILY DWELLING. The following property is exempt from property taxation: business inventory. For the purpose of this section, "business inventory" means all items of tangible personal property or other property described as:

(1) All livestock, fur-bearing animals, fish, fowl and bees.

(2) All nursery stock, stock-in-trade, merchandise, products, finished or partly finished goods, raw materials, and all forest products subject to the provisions of chapter 17, title 63, Idaho Code, supplies, containers and other personal property which is held for sale or consumption in the ordinary course of the taxpayer's manufacturing, farming, wholesale jobbing, or merchandising business.

(3) ~~All partial and newly constructed single family homes -- for a period -- not -- to -- exceed one (1) year from the date of completion, provided that it is identified by filing a declaration of completion with the county assessor within forty five (45) days of completion or prior to January 1 of the following year, whichever comes -- first. -- The -- date for -- completion -- shall -- be -- evidenced -- by -- a valid final electrical or plumbing inspection certificate, certificate -- or -- other -- documentation authorized -- by -- the county assessor signifying the home is complete or until the home becomes occupied. Once property is occupied as -- defined in section 63-317, Idaho Code, it shall be subject to the tax provided by -- section 63-317, Idaho Code. The state tax commission shall promul-~~

~~gate-rules-to-standardize-the-application-form-and-definition-for--the exemption-provided-by-this-subsection.~~ Residential improvements never occupied. Once residential improvements are occupied as defined in section 63-317, Idaho Code, they shall be subject to the tax provided by section 63-317, Idaho Code. The provisions of section 63-602Y, Idaho Code, shall not apply to the exemption provided by this subsection. The exemption provided by this subsection applies only to improvements to real property, and only until first occupied. For purposes of this section, the term "residential improvements" means only:

(a) Single family residences; or

(b) Residential townhouses; or

(c) Residential condominium units.

The nonresidential portion of an improvement to real property that is used or is to be used for residential and nonresidential purposes does not qualify for the exemption provided by this section. If an improvement contains multiple residential units, each such unit shall lose the exemption provided in this section when it becomes occupied.

SECTION 2. That Section 63-301A, Idaho Code, be, and the same is hereby amended to read as follows:

63-301A. NEW CONSTRUCTION ROLL. (1) The county assessor shall prepare a new construction roll, which shall be in addition to the property roll, which new construction roll shall show:

(a) The name of the taxpayer;

(b) The description of the new construction, suitably detailed to meet the requirements of the individual county;

(c) A description of the land and its change in use, suitably detailed to meet the needs of the individual county;

(d) The amount of taxable market value added to the property on the current year's property roll that is directly the result of new construction or a change in use of the land or both.

(2) As soon as possible, but in any event by no later than the first Monday in June, the new construction roll shall be certified to the county auditor and a listing showing the amount of value on the new construction roll in each taxing district or unit be forwarded to the state tax commission.

(3) The value shown on the new construction roll may include the value increase from:

(a) Construction of any new structure that previously did not exist; or

(b) Additions or alterations to existing nonresidential structures; or

(c) Installation of new or used manufactured housing that did not previously exist within the county; or

(d) Change of land use classification; or

(e) Property newly taxable as a result of loss of the exemption provided by section 63-602W, Idaho Code.

(4) The amount of taxable market value of new construction shall be the change in net taxable market value that is attributable directly to new construction or a change in use of the land or loss of the exemption provided by section 63-602W(3), Idaho Code. It shall not

include any change in value of existing property that is due to external market forces such as general or localized inflation.

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, and retroactively to January 1, 1998.

Approved March 19, 1998.

CHAPTER 96
(H.B. No. 483)

AN ACT

RELATING TO PUNISHMENT FOR FIRST-DEGREE MURDER; AMENDING SECTION 18-4004, IDAHO CODE, TO PROVIDE THAT A SENTENCE OF DEATH SHALL NOT BE IMPOSED FOR FIRST-DEGREE MURDER UNLESS THE PROSECUTING ATTORNEY FILED WRITTEN NOTICE OF INTENT TO SEEK THE DEATH PENALTY AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 40, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-4004A, IDAHO CODE, TO PROVIDE FOR A NOTICE OF INTENT TO SEEK THE DEATH PENALTY, TO PROVIDE THE FILING REQUIREMENTS FOR THE NOTICE AND TO PROVIDE FOR WITHDRAWAL OF THE NOTICE; AND AMENDING SECTION 19-2515, IDAHO CODE, TO PROVIDE THAT A SENTENCE OF DEATH SHALL NOT BE IMPOSED FOR A CAPITAL OFFENSE UNLESS A NOTICE OF INTENT TO SEEK THE DEATH PENALTY WAS FILED AND SERVED AS PROVIDED IN SECTION 18-4004A, IDAHO CODE.

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

SECTION 1. That Section 18-4004, Idaho Code, be, and the same is hereby amended to read as follows:

18-4004. PUNISHMENT FOR MURDER. Subject to the provisions of section 19-2515, Idaho Code, every person guilty of murder of the first degree shall be punished by death or by imprisonment for life, provided that a sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty as required under the provisions of section 18-4004A, Idaho Code, and provided further that whenever the court shall impose a sentence of life imprisonment, the court shall set forth in its judgment and sentence a minimum period of confinement of not less than ten (10) years during which period of confinement the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct, except for meritorious service. Every person guilty of murder of the second degree is punishable by imprisonment not less than ten (10) years and the imprisonment may extend to life.

SECTION 2. That Chapter 40, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-4004A, Idaho Code, and to read as

follows:

18-4004A. NOTICE OF INTENT TO SEEK DEATH PENALTY. A sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty with the court and served the notice upon the defendant or his attorney of record no later than thirty (30) days after entry of a plea. A notice of intent to seek the death penalty may be withdrawn at any time prior to the imposition of sentence.

SECTION 3. That Section 19-2515, Idaho Code, be, and the same is hereby amended to read as follows:

19-2515. INQUIRY INTO MITIGATING OR AGGRAVATING CIRCUMSTANCES -- SENTENCE IN CAPITAL CASES -- STATUTORY AGGRAVATING CIRCUMSTANCES -- JUDICIAL FINDINGS. (a) After a plea or verdict of guilty the court shall convene a hearing to receive evidence and argument in aggravation and mitigation of the punishment.

(b) Where a person is sentenced to serve a term in the penitentiary, after conviction of a crime which falls within the provisions of section 20-223, Idaho Code, except in cases where the court retains jurisdiction, the comments and arguments of the counsel for the state and the defendant relative to the sentencing and the comments of the judge relative to the sentencing shall be recorded. If the comments are recorded electronically, they need not be transcribed. Otherwise, they shall be transcribed by the court reporter.

(c) Where a person is convicted of an offense which may be punishable by death, a sentence of death shall not be imposed unless a notice of intent to seek the death penalty was filed and served as provided in section 18-4004A, Idaho Code, and the court finds at least one (1) statutory aggravating circumstance. Where the court finds a statutory aggravating circumstance the court shall sentence the defendant to death unless the court finds that mitigating circumstances which may be presented are sufficiently compelling that the death penalty would be unjust.

(d) One convicted of murder in the first degree shall be liable to imposition of the penalty of death if such person killed, intended a killing, or acted with reckless indifference to human life, irrespective of whether such person directly committed the acts that caused death.

(e) In all cases in which the death penalty may be imposed, the court shall, after conviction, order a presentence investigation to be conducted according to such procedures as are prescribed by law and shall thereafter convene a sentencing hearing for the purpose of hearing all relevant evidence and arguments of counsel in aggravation and mitigation of the offense. At such hearing, the state and the defendant shall be entitled to present all relevant evidence in aggravation and mitigation. Should any party present aggravating or mitigating evidence which has not previously been disclosed to the opposing party or parties, the court shall, upon request, adjourn the hearing until the party desiring to do so has had a reasonable opportunity to respond to such evidence. Evidence admitted at trial shall be considered and need not be repeated at the sentencing hearing. Evidence

offered at trial but not admitted may be repeated or amplified if necessary to complete the record.

(f) Upon the conclusion of the evidence and arguments in mitigation and aggravation the court shall make written findings setting forth any statutory aggravating circumstance found. Further, the court shall set forth in writing any mitigating factors considered and, if the court finds that mitigating circumstances are sufficiently compelling that the death penalty would be unjust, the court shall detail in writing its reasons for so finding.

(g) Upon making the prescribed findings, the court shall impose sentence within the limits fixed by law.

(h) The following are statutory aggravating circumstances, at least one (1) of which must be found to exist beyond a reasonable doubt before a sentence of death can be imposed:

(1) The defendant was previously convicted of another murder.

(2) At the time the murder was committed the defendant also committed another murder.

(3) The defendant knowingly created a great risk of death to many persons.

(4) The murder was committed for remuneration or the promise of remuneration or the defendant employed another to commit the murder for remuneration or the promise of remuneration.

(5) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(6) By the murder, or circumstances surrounding its commission, the defendant exhibited utter disregard for human life.

(7) The murder was committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, kidnapping or mayhem and the defendant killed, intended a killing, or acted with reckless indifference to human life.

(8) The defendant, by prior conduct or conduct in the commission of the murder at hand, has exhibited a propensity to commit murder which will probably constitute a continuing threat to society.

(9) The murder was committed against a former or present peace officer, executive officer, officer of the court, judicial officer or prosecuting attorney because of the exercise of official duty.

(10) The murder was committed against a witness or potential witness in a criminal or civil legal proceeding because of such proceeding.

Approved March 19, 1998.

CHAPTER 97
(H.B. No. 493)

AN ACT

RELATING TO HORSE RACING; AMENDING SECTION 54-2502, IDAHO CODE, TO ALPHABETIZE AND NUMBER DEFINITIONS AND TO DELETE THE REQUIREMENT THAT A RACING JURISDICTION BE A MEMBER OF THE ASSOCIATION OF RACING COMMISSIONERS INTERNATIONAL.

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

SECTION 1. That Section 54-2502, Idaho Code, be, and the same is hereby amended to read as follows:

54-2502. DEFINITIONS. Unless the context otherwise requires, words and phrases as used herein shall mean:

(1) "Commission" means the Idaho state racing commission, hereinafter created.

(2) "Gross daily receipts" means the total of all sums deposited in all pools for each race day.

(3) "Horsemen's group" means an organization composed of licensed owners, breeders, and/or trainers duly registered with the secretary of state and recognized by the Idaho racing commission as the majority of the horsemen at the track.

(4) "Host facility" means the racetrack at which the race is run, or the facility which is designated as the host facility if the race is run in a jurisdiction which is not participating in the interstate combined wagering pool.

(5) "Host jurisdiction" means the jurisdiction in which the host facility is located.

(6) "Interstate common wagering pool" means a pari-mutuel pool established in one (1) jurisdiction which is combined with comparable pari-mutuel pools from one (1) or more racing jurisdictions. Such pool is established for the purpose of establishing pay-off prices in the various jurisdictions.

(7) "Persons" means and includes individuals, firms, corporations and associations.

(8) "Pool" means the total sum of all moneys wagered in each race for each type of bet. Types of bets include win, place, show, quinella, daily double, exacta, trifecta, etc., and such other types as are approved by the commission from time to time.

(9) "Race meet" means and includes any exhibition of thoroughbred, purebred, and/or registered horse racing, mule racing or dog racing, where the pari-mutuel system of wagering is used. Singular includes the plural and plural includes the singular; and words importing one gender shall be regarded as including all other genders.

(10) "Racing jurisdiction" or "jurisdiction" means a governmental jurisdiction responsible for the regulation of pari-mutuel racing in that jurisdiction ~~and which is a member of the association of racing commissioners international.~~

~~"Gross daily receipts" means the total of all sums deposited in all pools for each race day.~~

~~"Pool" means the total sum of all moneys wagered in each race for each type of bet. Types of bets include win, place, show, quinella, daily double, exacta, trifecta, etc., and such other types as are approved by the commission from time to time.~~

~~"Horsemen's group" means an organization composed of licensed owners, breeders, and/or trainers duly registered with the secretary of state and recognized by the Idaho racing commission as the majority of the horsemen at the track.~~

Approved March 19, 1998.

CHAPTER 98
(H.B. No. 513)

AN ACT

RELATING TO THE IDAHO NATIONAL GUARD; AMENDING SECTION 46-609, IDAHO CODE, TO PROVIDE THAT COMMISSIONED OFFICERS AND ENLISTED PERSONNEL OF THE IDAHO NATIONAL GUARD MAY BE ORDERED TO SPECIAL DUTY WITH OR WITHOUT THEIR CONSENT, AND TO PROVIDE FOR PAY AND ALLOWANCES IN SUCH CIRCUMSTANCES.

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

SECTION 1. That Section 46-609, Idaho Code, be, and the same is hereby amended to read as follows:

46-609. OFFICERS AND ENLISTED PERSONNEL ON SPECIAL DUTY -- COMPENSATION AND ALLOWANCES. Commissioned officers and enlisted personnel of the national guard may be ordered upon special duty at the direction of the governor as commander-in-chief, ~~and~~ with or without their consent, and if with their consent, notwithstanding the provisions of sections 46-605 and 46-607, Idaho Code, such duty may be without any pay or allowances, but if without consent, they shall receive the ~~base pay--of--their-respective-grades~~ same pay and allowances as prescribed in section 46-605, Idaho Code, during the time they may continue upon duty under such order~~:-provided,-that-in-addition-to-such-base-pay, while-on-such-duty,-officers-and-enlisted-personnel-shall-receive--the same-rental-allowances,-subsistence-allowance,-and-longevity-pay-as-is paid--to--officers--and--enlisted-personnel-of-like-grade-in-the-armed forces-of-the-United-States~~.

Approved March 19, 1998.

CHAPTER 99
(H.B. No. 515)

AN ACT

RELATING TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE ACT; AMENDING SECTION 39-7104, IDAHO CODE, TO PROVIDE THAT THE MILITARY DIVISION MAY PROMULGATE RULES AND PROCEDURES TO GOVERN REIMBURSEMENT OF CLAIMS.

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

SECTION 1. That Section 39-7104, Idaho Code, be, and the same is hereby amended to read as follows:

39-7104. MILITARY DIVISION -- POWERS AND DUTIES. (1) The military division shall implement the provisions of this chapter and direct the activities of its staff and, in so doing, the military division may:

(a) Create a bureau of hazardous materials and, in accordance with the laws of the state, hire, fix the compensation, and prescribe the powers and duties of such other individuals, including consultants, emergency teams and committees, as may be necessary to carry out the provisions of this chapter.

(b) Create and implement state emergency response teams that have appropriately trained personnel and necessary equipment to respond to hazardous substance incidents. The military division shall enter into a written agreement with each entity or person providing equipment or services to a designated emergency response team. The teams shall be available and may respond to hazardous substance incidents at the direction of the military division or its designee or local incident commander.

(c) Contract with persons to meet state emergency response needs for the teams and response authorities.

(d) Advise, consult and cooperate with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments and other persons concerned with emergency response and matters relating to and arising out of hazardous substance incidents.

(e) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with state emergency response teams, local emergency response authorities and other interested persons.

(f) Collect and disseminate information relating to emergency response to hazardous substance incidents.

(g) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, made to the state for emergency response activities provided for in this chapter.

(h) Submit an annual report prior to February 1 to the governor and to the legislature concerning emergency response to hazardous substance incidents.

(i) Prepare, coordinate, implement and update a statewide hazardous materials incident command and response plan that coordinates state and local emergency response authorities to respond to hazardous substance incidents within the state for approval by the legislature. The plan shall address radiation incidents. The Idaho hazardous materials incident command and response plan shall be consistent with and a part of the Idaho state disaster plan provided in section 46-1006, Idaho Code, after legislative approval.

(2) The military division shall have the powers and duties of a state emergency response commission under the federal emergency planning and community right-to-know act, 42 U.S.C. section 11001 et seq.

(3) The military division ~~shall~~ may promulgate rules and procedures ~~which shall~~ to govern reimbursement of claims pursuant to this chapter.

(4) All state agencies and institutions will cooperate and provide staff assistance to the military division in carrying out its duties under this chapter.

Approved March 19, 1998.

CHAPTER 100
(H.B. No. 525)

AN ACT

RELATING TO DRIVER'S LICENSES; AMENDING SECTION 49-301, IDAHO CODE, TO PROVIDE FOR SURRENDER OF DRIVER'S LICENSES ISSUED FOR USE WITHIN THE UNITED STATES AND TO PROVIDE THAT NO PERSON SHALL BE PERMITTED TO HAVE MORE THAN ONE DRIVER'S LICENSE ISSUED FOR USE WITHIN THE UNITED STATES AT ANY TIME.

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

SECTION 1. That Section 49-301, Idaho Code, be, and the same is hereby amended to read as follows:

49-301. DRIVERS TO BE LICENSED. (1) No person, except those expressly exempted by the provisions of this chapter, shall drive any motor vehicle upon a highway unless the person has a valid Idaho driver's license. No person shall operate a motorcycle upon a highway unless he has a motorcycle endorsement on his valid driver's license. No person shall operate a commercial motor vehicle as defined in section 49-123, Idaho Code, upon a highway unless he has a seasonal or class A, B or C driver's license with required endorsements. No person shall operate a motor vehicle in violation of any valid restriction identified on or attached to, his valid driver's license. No person shall receive a driver's license unless and until he surrenders to the department all driver's licenses in his possession issued to him by Idaho or any other jurisdiction <u>for use within the United States,</u> or until he executes an affidavit that he does not possess a driver's license. No person shall be permitted to have more than one (1) driver's license <u>issued for use within the United States</u> at any time.

(2) Any holder of a class A, B or C commercial driver's license issued by a jurisdiction other than Idaho shall apply for an Idaho-issued commercial driver's license within thirty (30) days of establishing a domicile in Idaho.

Approved March 19, 1998.

CHAPTER 101
(H.B. No. 550, As Amended in the Senate)

AN ACT

RELATING TO CHEMIGATION; AMENDING SECTION 22-1408, IDAHO CODE, TO PROVIDE THAT ALL CIVIL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE REMITTED TO THE GENERAL FUND.

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

SECTION 1. That Section 22-1408, Idaho Code, be, and the same is hereby amended to read as follows:

22-1408. CONDUCTING CHEMIGATION WITHOUT A LICENSE. Any person who engages in, conducts or carries on chemigation without having a valid chemigation category on a private or professional applicator license in full force and effect pursuant to this chapter shall be liable for a civil penalty of not less than one thousand dollars ($1,000) and not more than twenty-five thousand dollars ($25,000). The director may file a civil action to enforce this section in a court of competent jurisdiction in the county in which the violation occurred. All civil penalties collected pursuant to this section shall be remitted to the ~~water--pollution-control-account~~ general fund. The burden of proof for such liability shall be met by showing a preponderance of the evidence. The civil liability contained in this section shall be in addition to, and not in lieu of, any liability contained in chapter 1, title 39, Idaho Code.

Approved March 19, 1998.

CHAPTER 102
(H.B. No. 562)

AN ACT

RELATING TO PROPERTY TAXATION; AMENDING SECTION 63-315, IDAHO CODE, TO DELETE COUNTY RESPONSIBILITY FOR CONDUCTING SCHOOL DISTRICT RATIO STUDIES AND TO CLARIFY DETERMINATION OF THE RATIO; AMENDING SECTION 63-705, IDAHO CODE, TO PROVIDE FOR PUBLICATION BY THE STATE TAX COMMISSION OF ADJUSTMENTS TO INCOME LIMITATIONS AND PROPERTY TAX REDUCTION AMOUNTS; AND AMENDING SECTION 63-711, IDAHO CODE, TO PROVIDE FOR CANCELLATION OF PROPERTY TAXES FOR CERTAIN CASUALTY LOSS.

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

SECTION 1. That Section 63-315, Idaho Code, be, and the same is hereby amended to read as follows:

63-315. ASSESSMENT RATIOS AND THE DETERMINATION OF ADJUSTED MARKET VALUE FOR ASSESSMENT PURPOSES FOR SCHOOL DISTRICTS. (1) For the purpose of this section, adjusted market value for assessment purposes shall be the adjusted market value for assessment purposes of all property assessed for property tax purposes for the year referred to in sections 33-802 and 33-1002, Idaho Code.

(2) The state tax commission shall conduct a ratio study to annually ascertain the ratio between the assessed value and the market value for assessment purposes of all property assessed for property tax purposes. Said ratio study shall be conducted in accordance with nationally accepted procedures. From the ratio so ascertained the state tax commission shall compute the adjusted market value of all property assessed for property tax purposes.

(3) ~~This--ratio--shall--be-computed-in-each-county-and-applied-to the-market-value-for-assessment-purposes-within-each--school--district in--each--county.~~ The ratio shall be computed in each school district

and applied to the market value for assessment purposes within each school district.

(4) ~~The--ratio-will-be-determined-using~~ Sales used in determining the ratio required by this section shall be arm's length, market value property sales occurring ~~between~~ in the year beginning on October 1 ~~and-September-30~~ of the year preceding the year for which the adjusted market value is to be determined. The state tax commission may, at its discretion, modify the sales period when doing so produces provably better representativeness of the actual ratio in any ~~county-or~~ school district. The state tax commission may also add independently conducted appraisals when the state tax commission believes that this procedure will improve the representativeness and reliability of the ratio.

(5) Whenever the state tax commission is unable to determine with reasonable statistical certainty that the assessed value within any ~~county-or~~ school district differs from the market value for assessment purposes, the state tax commission may certify the assessed value to be the adjusted market value of any ~~county-or~~ school district.

(6) The state tax commission shall certify the adjusted market value of each school district to the state department of education and each county auditor no later than the first Monday in April each year. The state tax commission shall prepare a report indicating procedures used in computing the adjusted market value and showing statistical measures computed in the ratio study. This report shall be submitted to the state department of education at the same time as the certification of adjusted market value. The report of the state tax commission shall also be made available for public inspection in the office of the county auditor.

(7) The state tax commission shall promulgate rules to implement the ratio study described in this section.

SECTION 2. That Section 63-705, Idaho Code, be, and the same is hereby amended to read as follows:

63-705. ~~RULES~~ --- PUBLICATION OF CHANGES IN INCOME LIMITATIONS AND PROPERTY TAX REDUCTION AMOUNTS. (1) The state tax commission shall ~~promulgate-rules-adjusting~~ publish adjustments to the income limitations and property tax reduction amounts to reflect cost-of-living fluctuations. The ~~rules~~ adjustments shall effect changes in each income limitation by a percentage equal as near as practicable to the annual cost-of-living percentage modification as determined by the secretary of health and human services pursuant to 42 USC 415 (i). The lowest limitation shall allow a maximum reduction of ~~nine--hundred-dollars-($900),-in-the-tax-year--1996,one-thousand-dollars--($1,000)--in-tax-year-1997,~~ one thousand one hundred dollars ($1,100) in tax year 1998, and one thousand two hundred dollars ($1,200) in tax year 1999, or actual property taxes, whichever is less. Each income limitation and reduction amount shall be prorated based on the basic maximum reduction, in practicable increments so that the highest income limitation will provide for a reduction of one hundred fifty dollars ($150), or actual property taxes, whichever is less.

(2) The tax commission shall ~~promulgate-rules~~ publish the adjustments required by this section each and every year the secretary of

health and human services announces said cost-of-living modification. The ~~rules~~ adjustments shall be ~~promulgated~~ published no later than October 1 of each such year and shall be effective for claims filed in and for the following property tax year.

(3) The publication of adjustments under this section shall be exempt from the provisions of chapter 52, title 67, Idaho Code, but shall be provided to each county and to members of the public upon request and without charge.

SECTION 3. That Section 63-711, Idaho Code, be, and the same is hereby amended to read as follows:

63-711. CANCELLATION OF TAXES -- HARDSHIP AND CASUALTY LOSSES -- (1) Property taxes may be cancelled for reason of undue hardship. The commissioners may, at their discretion, grant such cancellation for a specified time period. The commissioners may, at their discretion, cancel taxes on property which has been damaged by an event causing casualty loss to all or a portion of the property when the event occurs after the fourth Monday of June or casualty losses for which the amount of loss cannot be determined until after the fourth Monday of June.

(2) Applicants seeking a cancellation pursuant to this section must apply to the county commissioners. Each applicant shall give a sworn statement containing full and complete information of his financial status to the county commissioners and shall make true answers to all questions put before him touching such person's right to the cancellation. The county commissioners shall decide and determine from each examination and from each written application for said cancellation whether or not such person is entitled to the cancellation claimed or any part thereof accordingly. In applying for a cancellation pursuant to this section, an applicant may submit an application at any time and the county commissioners may grant such application, either in whole or in part, at any regular meeting and the burden of proving the right of such cancellation shall rest upon the applicant.

(3) The county commissioners may, for good cause shown, allow an agent or some person acting for and on behalf of the applicant to make the application for the cancellation provided in this section for any applicant, or where a person is entitled to cancellation shall be mentally incompetent or physically unable to make such sworn statement, his or her spouse, widow, widower, guardian or personal representative, or other person having knowledge of the facts, may make the application for the cancellation.

(4) Any time within thirty (30) days after mailing of a decision of the county commissioners, or pronouncement of a decision announced at a meeting, or the failure of the county commissioners to act, an appeal may be taken to the district court for the county in which the property is located. Such appeal may only be filed by the property owner or by any person aggrieved when he deems any such action illegal or prejudicial to the public interest. Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

Notice of such appeal stating the grounds thereafter shall be filed with the county auditor, who shall forthwith transmit a copy of

said notice to the county commissioners.

(5) The county commissioners shall order all necessary adjustments to be made in the property tax records of the various county officers and taxing districts.

(6) The cancellation of property taxes which have become delinquent shall affect only those property taxes granted a cancellation by order of the county commissioners and all interest and late charges on such taxes.

Approved March 19, 1998.

CHAPTER 103
(H.B. No. 580)

AN ACT

RELATING TO MOTOR FUELS TAX; AMENDING SECTION 41-4908, IDAHO CODE, TO CLARIFY THAT THE ONE CENT PER GALLON TRANSFER FEE IMPOSED ON THE DELIVERY OR STORAGE OF ALL PETROLEUM PRODUCTS APPLIES TO MOTOR FUELS TAXES AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 63-2405, IDAHO CODE, TO DELETE IMPROPER TERMINOLOGY; AMENDING SECTION 63-2406, IDAHO CODE, TO REQUIRE REMITTANCE OF TAX DUE UPON SUBMISSION OF A DISTRIBUTOR'S REPORT UNLESS AMOUNTS DUE ARE PAID BY ELECTRONIC FUNDS TRANSFER, TO PROVIDE PENALTIES AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 63-2407, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; REPEALING SECTIONS 63-2420 AND 63-2422, IDAHO CODE; AMENDING SECTION 63-2423, IDAHO CODE, TO PROVIDE CREDITS AND REFUNDS ON SPECIAL FUELS TAX PAID ON SPECIAL FUELS USED FOR PURPOSES OTHER THAN OPERATION OF MOTOR VEHICLES ON THE HIGHWAY AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 63-2424, IDAHO CODE, TO INCREASE THE ANNUAL FEE COLLECTED IN LIEU OF THE EXCISE TAX ON GASEOUS FUELS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING CHAPTER 24, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-2427B, IDAHO CODE, TO PROVIDE FOR A GASEOUS FUELS DISTRIBUTOR'S LICENSE; AMENDING SECTION 63-2428, IDAHO CODE, TO DELETE REFERENCES TO A REPEALED CODE SECTION; AND AMENDING SECTION 63-2438, IDAHO CODE, TO PERMIT CERTAIN INTRASTATE VEHICLES TO OPERATE WITHOUT A FUEL PERMIT.

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

SECTION 1. That Section 41-4908, Idaho Code, be, and the same is hereby amended to read as follows:

41-4908. SOURCE OF TRUST FUND -- APPLICATION FEES -- APPLICATION FOR ENROLLMENT -- TRANSFER FEES. (1) Every owner or operator of an underground storage tank may, if he desires to apply to the trust fund to insure the underground tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed twenty-five dollars ($25.00) for each tank for which application for coverage is made.

(2) Every owner or operator of an above ground storage tank may,

if he desires to apply to the trust fund to insure the above ground tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed twenty-five dollars ($25.00) for each tank for which application for coverage is made.

(3) Every owner or operator of a farm tank or residential tank may, if he desires to apply to the trust fund to insure the tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed twenty-five dollars ($25.00) for each tank for which application for coverage is made.

(4) Every owner or operator of a heating tank may, if he desires to apply to the trust fund to insure the tank, make application for and pay into the trust fund an initial application fee set by the administrator, but not to exceed five dollars ($5.00) for each tank for which application for coverage is made.

(5) The application for insurance shall be made to the administrator on forms furnished and prescribed by him for the purpose of eliciting reasonably available information as to the type and use of the storage tank, the type of business enterprise of the tank owner or operator, the age of the storage tank, the materials used in the construction of the tank and the inside and outside protective coatings and other corrosion protective measures, leak detection methods, spill and overfill prevention methods of the tank, the location of the tank and its proximity to roads and buildings, the foundation and type of material used as a bedding and fill for the tank, any available inspection records of the tank including the gallons of petroleum products entered into the tank and the gallon dispersements from the tank, and other information that is reasonably prudent in order to obtain a sufficient body of statistical data to determine the relative hazards of various categories of tanks, the potential that future leaks or discharges may occur, and the conditions under which cleanup costs and personal injury and property damage costs may occur and vary in the severity of the release and the resultant costs to the trust fund.

(6) The administrator shall act upon the application for insurance with all reasonable promptness, and he shall make such investigations of the applicant as he deems advisable to determine if the information contained in the application for insurance is accurate and complete. The administrator shall determine if the applicant's storage tanks meet all the eligibility requirements and promptly notify the applicant of the acceptance or nonacceptance of the application for insurance. The absence of unknown data requested on the application shall not preclude an applicant's acceptance for coverage by the trust fund, if the applicant is otherwise eligible for insurance under this chapter.

(7) In addition to the application fees received by the trust fund pursuant to this section, the trust fund shall receive the revenue produced by the imposition of a "transfer fee" of one cent ($.01) per gallon on the delivery or storage of all petroleum products as defined in subsection (23) of section 41-4903, Idaho Code, delivered or stored within the state of Idaho. This transfer fee is hereby imposed upon the first licensed distributor who ~~transfers--title--to~~ receives, as receipt is determined in section 63-2403, Idaho Code, a

petroleum product ~~to another legal entity~~ within this state for the privilege of engaging in the delivery or storage of petroleum products whose delivery or storage may present the danger of a discharge into the environment and thus create the liability to be funded. The fee imposed by this subsection shall not apply to (a) petroleum or petroleum products which are first delivered or stored in this state in a container of fifty-five (55) gallons or less if such container is intended to be transferred to the ultimate consumer of the petroleum or petroleum products or (b) petroleum or petroleum products delivered or stored in this state for the purpose of packaging or repackaging into containers of fifty-five (55) gallons or less if such container is intended to be transferred to the ultimate consumer of the petroleum or petroleum products.

(8) The transfer fee shall be collected by the commission on all petroleum products delivered or stored within this state after April 1, 1990. This transfer fee shall be in addition to any excise tax imposed on ~~gasoline and/or aircraft engine~~ motor fuel or other petroleum products and shall be remitted to the commission with the distributor's monthly report as required in section 63-2406, Idaho Code. The distributor may deduct from his monthly report those gallons of petroleum products returned to a licensed distributor's refinery or pipeline terminal storage or exported from the state when supported by proper documents approved by the commission. For the purpose of carrying out its duties under the provisions of this chapter, the commission shall have the powers and duties provided in sections 63-3038, 63-3039, 63-3042 through 63-3066, 63-3068, 63-3071, and 63-3074 through 63-3078, Idaho Code, which sections are incorporated by reference herein as though set out verbatim.

(9) No person shall be excused from liability for any duty or fee imposed in this chapter for failure to obtain a distributor's license.

(10) The director shall certify to the commission when the unencumbered balance in the trust fund equals thirty million dollars ($30,000,000). Effective the first day of the second month following the date of such certification, the imposition of the transfer fee shall be suspended. Thereafter, the director shall certify to the commission when the unencumbered balance in the trust fund equals twenty million dollars ($20,000,000). Effective the first day of the second month following the date of such certification, the imposition of the transfer fee shall be reinitiated.

SECTION 2. That Section 63-2405, Idaho Code, be, and the same is hereby amended to read as follows:

63-2405. IMPOSITION OF TAX. (1) An excise tax is hereby imposed on all gasoline ~~and/or aircraft engine fuel~~ received. The tax is to be paid by the licensed distributor, and measured by the total number of gallons of gasoline ~~and/or aircraft engine fuel~~ received by him, at the rate of twenty-five cents (25¢) per gallon. That tax, together with any penalty and/or interest due, shall be remitted with the monthly distributor's report required in section 63-2406, Idaho Code.

(2) The excise tax rate set forth in this section shall, when applied to gasohol or to special fuels designed for use in diesel engines, be reduced by the same percentage that the quantity of dena-

tured anhydrous ethanol contained in the gasoline or, in the case of special fuels the quantity of such special fuel which is derived from agricultural products or the wastes of such products, bears to the total fuel subject to tax. Provided however, in no event shall the rate set forth in this section be reduced more than ten percent (10%).

SECTION 3. That Section 63-2406, Idaho Code, be, and the same is hereby amended to read as follows:

63-2406. DISTRIBUTOR REPORTS. (1) Each distributor shall, not later than the last day of each calendar month or for such other reporting period as the commission may authorize, render to the commission an accurate report of all ~~gasoline--and/or--aircraft--engine~~ motor fuel received by him in this state during the preceding reporting period. The report shall be made in the manner and on forms required by the commission.

(2) The distributor's report shall include:

(a) An itemized statement of the total number of gallons of ~~gasoline~~ motor fuel received during the preceding calendar month; and

(b) ~~An--itemized-statement-of-the-total-number-of-gallons-of-aircraft-engine-fuel-received-during-the--preceding--calendar--month; and~~

~~(c)~~ Other information as the commission may require for the proper administration of this chapter.

(3) The report shall be accompanied by a remittance of the tax shown to be due on the report together with any applicable interest and penalty, unless the amounts due are paid by electronic funds transfer in the manner provided by section 67-2026, Idaho Code.

(4) Any distributor required to collect the tax imposed by this chapter who fails to collect such tax or any distributor required to remit tax pursuant to this section who fails to make such remittance, shall be liable to the commission for the amount of tax not collected or remitted plus any applicable penalty or interest. The commission may collect such amounts in the manner provided in section 63-2434, Idaho Code.

SECTION 4. That Section 63-2407, Idaho Code, be, and the same is hereby amended to read as follows:

63-2407. DEDUCTIONS AUTHORIZED. Each licensed distributor shall deduct from his monthly report:

(1) ~~Gasoline-and/or-aircraft-engine~~ Motor fuel exported from this state other than in the supply tanks of motor vehicles, motor boats or aircraft when supported by a shipping document, ~~issued-by-a-common carrier,~~ an invoice signed by the purchaser, or other proper documents approved by the commission but only if:

(a) the purchaser is not a licensed distributor and the seller can establish that any tax due in the jurisdiction to which the ~~gasoline-and/or-aircraft-engine~~ motor fuel is destined is paid, or

(b) the purchaser is a licensed distributor in the jurisdiction to which the ~~gasoline--and/or--aircraft--engine~~ motor fuel is destined.

(2) ~~Gasoline-and/or-aircraft-engine~~ Motor fuel returned to a

licensed distributor's refinery or pipeline terminal storage when supported by proper documents approved by the commission.

(3) ~~Gasoline--and/or-aircraft-engine~~ Motor fuel lost or destroyed by fire, lightning, flood, tornado, windstorm, explosion, or other accidental casualty, after presenting to the commission satisfactory proof of loss.

(4) The number of gallons which would be equal to one per cent (1%) of the total number of gallons received during the reporting period, less the total number of gallons deducted under subsections (1) through (3) of this section, which credit is granted to the licensed distributor to reimburse him for the expense incurred on behalf of the state of Idaho in collecting and remitting ~~gasoline and/or-aircraft-engine~~ motor fuel tax moneys, maintaining necessary records for the state, preparing necessary reports and remittances in compliance with this chapter, and for loss from evaporation, handling, spillage and shrinkage, except losses caused by casualty as provided in subsection (3) of this section. The licensed distributor may, in addition to the above, deduct the number of gallons equal to one per cent (1%) of the total number of gallons received during the preceding calendar month, less the total number of gallons deducted under subsections (1) through (3) of this section, to cover shrinkage, evaporation, spillage and handling losses of a retail dealer. The latter deductions are to be allowed only upon filing with the commission satisfactory evidence as may be prescribed by it indicating the credit allowance has been made in favor of the retail dealer or paid to him. The evidence shall be submitted together with the report wherein this portion of the deduction is claimed. A licensed distributor who sells and delivers ~~gasoline~~ motor fuel directly to the consumer and not for resale shall, with respect to those sales, be deemed a retail dealer for the purposes of this section.

(5) ~~Gasoline--and/or-aircraft-engine~~ Motor fuel sold to the Idaho national guard for use in aircraft and in vehicles used off public highways provided, however, such deduction is supported by an exemption certificate signed by an authorized officer of the Idaho national guard.

(6) For sales made on or after July 1, 1995, taxes previously paid on gallons represented by accounts found to be worthless and actually charged-off for income tax purposes may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, the tax per gallon shall be paid based upon the amount actually received divided by the price per gallon of the original sale multiplied by the appropriate tax rate.

SECTION 5. That Sections 63-2420 and 63-2422, Idaho Code, be, and the same are hereby repealed.

SECTION 6. That Section 63-2423, Idaho Code, be, and the same is hereby amended to read as follows:

63-2423. CREDITS AND REFUNDS TO CONSUMERS. (1) Any person who has paid his special fuels tax directly to the vendor from whom it was purchased shall be refunded the amount of:

(a) Any special fuels tax paid on special fuels used for purposes other than operation or propulsion of motor vehicles upon the highways in the state of Idaho;

(b) Any tax paid on special fuels used in motor vehicles owned or leased and operated by an instrumentality of the federal government or of the state of Idaho, including the state and all of its political subdivisions;

(c) Any tax paid on special fuels used in motor vehicles to which gaseous special fuel is delivered and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code;

(d) Any special fuels tax paid on special fuels exported for use outside the state of Idaho. Special fuels carried from the state in the fuel tank of a motor vehicle will not be deemed to be exported from the state unless it is subject to a like or similar tax in the ~~state~~ jurisdiction to which it is taken and that tax is actually paid to the other ~~state~~ jurisdiction; and

(e) Any tax, penalty or interest erroneously or illegally paid or collected.

(2) No refund of special fuels tax shall be paid on:

(a) Special fuels used in a recreational vehicle; or

(b) Special fuels used in noncommercial motor boats or in motor boats operated by a governmental entity.

(3) Refunds authorized in this section shall be claimed in the same manner as applies to refunds of gasoline tax under section 63-2410, Idaho Code.

SECTION 7. That Section 63-2424, Idaho Code, be, and the same is hereby amended to read as follows:

63-2424. GASEOUS FUELS. (1) In the case of special fuels which are in a gaseous form, the commission shall provide by ~~regulation~~ rule the method to be used for converting the measurement of the fuel to the equivalent of gallons for the purpose of applying tax rates. The method provided shall cause the tax rate provided in section 63-2405, Idaho Code, to apply to an amount of gaseous fuels having energy equal to one (1) gallon of gasoline.

(2) As an alternative to the provisions of subsection (1) of this section, an annual fee in lieu of the excise tax may be collected on a vehicle powered by gaseous fuels. The rate of the fee shall be based on the following schedule for all types of gaseous fuels as adjusted by the formula for proration set out below. The permits shall be sold by gaseous fuels vendors dispensing gaseous fuels into motor vehicles.

VEHICLE TONNAGE (GVW)	FEE
0 -- 8,000	$ ~~5~~60.00
8,001 -- 16,000	$ ~~75~~89.00
16,001 -- 26,000	$1~~5~~079.00
26,001 and above	$~~175~~208.00

Permits for vehicles which are converted to gaseous fuels after the first of July in any year shall have the fee prorated for the appropriate number of months until renewal. The commission shall provide by ~~regulation~~ rule the method to be used for converting the measurement of fuel to the equivalent of gallons for the purpose of applying increases in tax rates after this law becomes effective. A decal

issued by the ~~department~~ commission shall be displayed in any vehicle for which a permit is issued hereunder as evidence that the annual fee has been paid in lieu of the fuel tax. This decal shall be displayed in a conspicuous place.

SECTION 8. That Chapter 24, 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 63-2427B, Idaho Code, and to read as follows:

63-2427B. LICENSED GASEOUS FUELS DISTRIBUTORS -- REPORTS. (1) In lieu of the distributor's license required by section 63-2427A, Idaho Code, the commission may issue a gaseous fuels distributor's license to a distributor who applies for the license and who does not deal in fuel, other than gaseous fuels, except fuel which is either:

(a) Motor fuel on which any tax due under this chapter has previously been imposed upon a licensed distributor; or

(b) Dyed fuel upon which the transfer fee imposed in section 41-4908, Idaho Code, has been imposed upon a licensed distributor.

(2) Licensed gaseous fuels distributors shall, not later than the last day of each calendar month or for such other reporting period as the commission may authorize, render to the commission an accurate report of all gaseous fuels that are subject to tax under this chapter during the preceding reporting period. The report shall be made in the manner and on forms required by the commission and shall include such other information as the commission may require for the proper administration of this chapter.

SECTION 9. That Section 63-2428, Idaho Code, be, and the same is hereby amended to read as follows:

63-2428. BONDING. (1) At the time an application for a distributor's license under section 63-2427A, Idaho Code, is submitted to the commission, the applicant shall file a bond with the commission conditioned upon faithful performance of all of the requirements of this chapter. The total amount of the bond shall be fixed by the commission and shall be equivalent to at least twice the estimated average tax liability for the reporting period for which the applicant will be required to file ~~either~~ a distributor's report under section 63-2406, Idaho Code~~;--or--a--special-fuels-dealer's-return-under-section 63-2420,-Idaho-Code;-or-both.--If-a-person-is-both-a-licensed-distributor-and-a-licensed-special-fuels-dealer;--the-bonding--requirements--in regard--to--each--may--be--consolidated--into--a--single-bond~~. The bond required by this section shall in no case be less than one thousand dollars ($1,000) nor more than two hundred thousand dollars ($200,000). Based on prior years' experience, the total amount required to be secured by the bond may be increased or reduced by the commission at any time. The bond will be waived if the commission is satisfied that the distributor has the financial responsibility to meet the required bond amount. Financial responsibility may be determined by the commission upon review of all relevant public documents including appropriate county records and records of tax payments to the state of Idaho. The distributor can be required to provide a com-

mercial credit rating, balance sheet, or income statement to demonstrate present financial solvency, i.e. ownership of real and/or personal property, the unencumbered value of which exceeds the bond amount otherwise required. If such financial solvency is established, and if the distributor has been doing business in Idaho as a licensed distributor for five (5) or more consecutive years without a default in the payment of taxes imposed in this chapter, financial responsibility shall be presumed. Any bond given in conjunction with this chapter shall be a continuing instrument, and shall cover the period during which the license in connection with which the bond is given is in effect, unless the surety on the bond is released or discharged by the commission. Any surety on any bond furnished by a licensee shall be discharged and released from any and all liability to the state accruing on the bond after the expiration of thirty (30) days from the date upon which the surety shall have lodged with the commission a written request to be released and discharged. The request shall not operate to relieve, release or discharge the surety from any liability accrued, or which will accrue, before the expiration of the thirty (30) day period. The commission shall promptly, upon receipt of the notice of the request, notify the licensee and require him to furnish a new bond. Unless the licensee files a new bond with the commission in the amount provided in this section before the expiration of the thirty (30) day period, the commission shall immediately cancel the licensee's license.

(2) In the event that any taxes due under the provisions of this chapter are not paid by a licensed distributor, ~~or a licensed special fuels dealer,~~ and the unpaid taxes are assessed by the commission, and after all avenues for appeal of the assessment have been exhausted, the commission may apply the unpaid tax liability against the bond required by this section.

SECTION 10. That Section 63-2438, Idaho Code, be, and the same is hereby amended to read as follows:

63-2438. INTERNATIONAL FUEL TAX AGREEMENT (IFTA) LICENSE. (1) It shall be unlawful for any person to consume special fuels in the operation or propulsion of a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight on the highways of this state unless such motor vehicle is:

(a) Licensed under the provisions of the international fuels tax agreement; or

(b) Operating under a temporary trip permit under section 49-432, Idaho Code; or

(c) Registered solely for operation in this state under section 49-434, Idaho Code, and is n~~N~~ot a vehicle proportionally registered under section 49-435, Idaho Code.

(2) The application for an Idaho IFTA license shall be made to the commission upon a form prepared and furnished by the commission and containing such information as the commission deems necessary. Carriers based in other IFTA jurisdictions must apply to their base jurisdiction to obtain an IFTA license.

(3) No IFTA license shall be transferable.

(4) The commission may collect a fee for issuance of the IFTA license and decal, which fee shall not exceed the cost of issuance.

Approved March 19, 1998.

CHAPTER 104
(H.B. No. 582)

AN ACT

RELATING TO EXEMPTIONS FROM MOTOR VEHICLE OPERATING FEES; AMENDING SECTION 49-426, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM OPERATING FEES FOR MOTOR VEHICLES OWNED OR LEASED BY ANY STATE REGISTERED NONPROFIT SUBSCRIPTION FIRE PROTECTION UNIT.

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

SECTION 1. That Section 49-426, Idaho Code, be, and the same is hereby amended to read as follows:

49-426. EXEMPTIONS FROM OPERATING FEES. The provisions of this chapter with respect to operating fees shall not apply to:

(1) Motor vehicles owned or leased by the United States, the state, a city, a county, any department thereof, any political subdivision or municipal corporation of the state, any taxing district of the state, <u>any state registered nonprofit subscription fire protection unit,</u> or any organization, whether incorporated or unincorporated, organized for the operation, maintenance, or management of an irrigation project or irrigation works or system or for the purpose of furnishing water to its members or shareholders, but in other respects shall be applicable.

(2) Farm tractors, implements of husbandry, road rollers, wheel mounted tar buckets, portable concrete and/or mortar mixers, wheel mounted compressors, tow dollies, portable toilet trailers, street sweepers, and similar devices as determined by the department which are temporarily operated or moved upon the highways need not be registered under the provisions of this chapter, nor shall implements of husbandry be considered towed units under registration of vehicle combinations as defined in section 49-108(2), Idaho Code. In addition, self-propelled wheelchairs, invalids' tricycles, and wheelchair conveyances operated by persons who by reason of physical disability are otherwise unable to move about as pedestrians shall be exempt from registration requirements under the provisions of this chapter. Motorcycles and all-terrain vehicles, as defined in section 67-7101, Idaho Code, need not be registered under the provisions of this chapter while being used exclusively in connection with agricultural, horticultural, dairy and livestock growing and feeding operations or used exclusively for snow removal purposes. Travel upon the public highways shall be limited to travel between farm or ranch locations. Motorcycles and all-terrain vehicles used for this purpose shall meet the requirements of section 49-619, Idaho Code.

Approved March 19, 1998.

CHAPTER 105
(H.B. No. 586)

AN ACT

RELATING TO THE STATE TAX COMMISSION AND ALTERNATIVE DISPUTE RESOLUTION; AMENDING CHAPTER 1, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-118, IDAHO CODE, TO PROVIDE FOR USE OF ALTERNATIVE DISPUTE RESOLUTION BY THE STATE TAX COMMISSION TO ARBITRATE OR MEDIATE ANY ISSUE WITHIN ITS TAX JURISDICTION.

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

SECTION 1. That Chapter 1, 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 63-118, Idaho Code, and to read as follows:

63-118. ALTERNATIVE DISPUTE RESOLUTION. (1) The state tax commission may use alternative dispute resolution procedures to arbitrate or mediate any issue within its tax jurisdiction.

(2) The state tax commission may enter into contracts, not subject to the provisions of chapter 52, title 67, Idaho Code, with individuals and organizations including, but not limited to, the multistate tax commission, to conduct alternative dispute resolution. Costs of alternative dispute resolution procedures may be paid from resultant proceeds without regard to budgetary or appropriation restrictions.

(3) The state tax commission shall appoint one (1) of its members as alternative dispute resolution coordinator and from its staff one (1) or more assistant coordinators.

Approved March 19, 1998.

CHAPTER 106
(H.B. No. 601)

AN ACT

RELATING TO PATERNITY; AMENDING SECTION 7-1106, IDAHO CODE, TO GOVERN PROCEDURE FOR ACKNOWLEDGMENT OF PATERNITY, RESCISSION OF ACKNOWLEDGMENT AND AFFIDAVIT OF NONPATERNITY AND TO AUTHORIZE RULES, FORMS AND FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-250, IDAHO CODE, TO GOVERN ISSUANCE OF A CERTIFICATE OF BIRTH WHEN AN ACKNOWLEDGMENT OF PATERNITY BY AN ALLEGED FATHER WHO IS NOT THE HUSBAND OR AN AFFIDAVIT OF NONPATERNITY IS FILED OR RESCINDED AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 39-255, IDAHO CODE, TO CLARIFY PROCEDURES GOVERNING ESTABLISHMENT OF PATERNITY AND ENTERING THE NAME OF THE FATHER ON THE CERTIFICATE OF BIRTH.

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

SECTION 1. That Section 7-1106, Idaho Code, be, and the same is hereby amended to read as follows:

7-1106. ~~VOLUNTARY~~ ACKNOWLEDGMENTS~~----APPROVAL-BY-COURT----EFFECT~~ OF PATERNITY. (1) ~~In-lieu-of-contested-paternity-proceedings,-a--verified--voluntary--acknowledgment--of--parentage-executed-jointly-by-the father-and-the-mother-of-a-child-may-be-filed-with-a-court--of--competent--jurisdiction--and--proper-venue.-A-voluntary-acknowledgment-executed-after-July-1,-1994,-shall-be-admissible-as-evidence-of-paternity and-shall-create-a-rebuttable-presumption-of-paternity.-After--filing, either-parent-may,-upon-notice-to-the-other-parent,-move-the-court-for entry--of--an--order--of--filiation.--Upon-notice-to-both-parents,-the department-of-health-and-welfare-may-move-the-court-for--entry--of--an order--of--filiation--on-behalf-of-a-child-for-whom-services-are-being provided-under-Title-IV-D-of-the-social-security-act.~~

~~(2)~~ A voluntary acknowledgment of paternity ~~executed--after--July 1,--1996,~~ for an Idaho birth shall be admissible as evidence of paternity and shall constitute a legal finding of paternity ~~subject-to--the right--of--any--party--executing--the--acknowledgment--to--rescind-the acknowledgment~~ upon the filing of a signed and notarized acknowledgment with the vital statistics unit of the department of health and welfare. If the mother was married at the time of either conception or birth, or between conception and birth, and the husband is not the father of the child, the husband may file an executed and notarized affidavit of nonpaternity if it is accompanied by a voluntary acknowledgment of paternity signed and notarized by the mother and the alleged father. Any party executing an acknowledgment of paternity or affidavit of nonpaternity may file a notarized rescission of such with the vital statistics unit within the earlier of:

(a) ~~Six-(6)-months,-or-less-if-so-prescribed-by--federal--law--or regulation,--of-execution~~ Sixty (60) days after the acknowledgment is filed; or

(b) The date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

Such rescission shall be effective upon filing with the vital statistics unit. The vital statistics unit shall notify the other party or parties of the rescission by certified mail.

(~~3~~2) After the period for ~~recision~~ rescission, an executed acknowledgment of paternity may be challenged only in court ~~only~~ on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the party challenging the acknowledgment. The legal responsibilities, including the obligation to pay child support, ~~or~~ of any party to the acknowledgment shall not be stayed except for good cause shown.

~~(4)--Judicial--or--administrative--proceedings-are-not-required-or permitted-to-ratify-an-unchallenged-acknowledgment-of-paternity.~~

~~(5)--An-executed-acknowledgment-of-paternity-shall-be--filed--with the-department-of-health-and-welfare,-bureau-of-vital-statistics,-however,-failure-to-file-the-acknowledgment-shall-not-affect-the-validity or-legal-effect-of-the-acknowledgment.~~

~~(6)--The--voluntary--acknowledgment--of-parentage-may-also-contain agreements-regarding-custody,-support-and-visitation.-Such-agreements,~~

~~if-approved-by-the-court,-shall-have-the-same-force-and--effect--as--a judgment-of-the-court.-However,-the-court-shall-have-the-same-power-to investigate--the-facts-regarding-custody,-support-and-visitation-prior to-entering-an-order-relative-to-those-issues-as-it-would-have--if--no agreement--had--been--filed;--and--provided-further,-that-an-agreement regarding-the-issues-of-child-support,-custody,-or-visitation-shall-be approved-only-if-the-court-finds-it-to-be-in-the-best-interest-of--the child.~~

(3) The court may enter an order for the support of a child upon execution of a voluntary acknowledgment without further proceedings to ~~establish~~ paternity.

(4) The director shall prescribe forms for acknowledgment of paternity, affidavits of nonpaternity, and rescission thereof, and the board of health and welfare may promulgate such rules as are necessary to prescribe forms and establish fees to recover costs of maintaining such system.

SECTION 2. That Section 39-250, Idaho Code, be, and the same is hereby amended to read as follows:

39-250. COMPLETION AND CORRECTION OF CERTIFICATES -- PROCEDURE -- OTHER ALTERATIONS PROHIBITED. A certificate of any event shall be completed, corrected, amended or otherwise altered after being filed with the vital statistics unit only in accordance with this chapter and ~~regulations~~ rules promulgated by the board.

(a) A certificate that is amended under the provisions of this section shall be marked "amended," except as otherwise provided in this section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be filed with or made a part of the record. The department shall prescribe by ~~regulation~~ rule the conditions under which additions or minor corrections may be made to certificates or records within one (1) year after the date of the event without the certificate being marked "amended."

(b) Upon ~~written-notarized-request-of-both-parents-and~~ receipt of a notarized voluntary acknowledgment of paternity, ~~signed-by-both-parents--of--a-child-born-out-of-wedlock,~~ the state registrar shall amend the certificate of birth to show such paternity if paternity is not already shown on the certificate of birth, and change the child's surname to that of the father, if both parents so request. Such certificate shall not be marked "amended."

(c) Upon receipt of both a notarized affidavit of nonpaternity signed by the husband attesting that he is not the father, and a notarized acknowledgment of paternity signed by the mother and the alleged father attesting that the alleged father is the father, the state registrar shall amend the certificate of birth to show such paternity, and change the child's name, if so requested by the mother and the alleged father. Such certificate shall not be marked "amended."

(d) Upon receipt of a certified copy of an order of a court of competent jurisdiction changing the name of a person born in this state and upon request of such person or the parent(s), guardian, or legal representative, the state registrar shall amend the certificate of birth to show the new name.

(~~d~~e) When an applicant does not submit the minimum documentation

required in the ~~regulations~~ rules for amending a vital record or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right to appeal to a court of competent jurisdiction.

(f) If an acknowledgment of paternity or affidavit of nonpaternity is rescinded pursuant to section 7-1106, Idaho Code, and the certificate of birth had been prepared or amended in accordance with the acknowledgment, the state registrar shall not release any copies of the certificate of birth except as required for a legal proceeding until a court order determining paternity has been provided to the state registrar. If the mother was married at the time of either conception or birth, or between conception and birth, the court shall also determine if the husband is the father of the child.

SECTION 3. That Section 39-255, Idaho Code, be, and the same is hereby amended to read as follows:

39-255. REGISTRATION OF BIRTHS. A certificate of each birth which occurs in this state shall be filed with the local registrar of the district in which the birth occurs, or as otherwise directed by the state registrar, within fifteen (15) days of the date of birth. No certificate shall be deemed complete until every item of information required shall have been provided or its omission satisfactorily accounted for.

(a) When a birth occurs in an institution or en route thereto, the person in charge of the institution or a designated representative shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate within fifteen (15) days of the date of birth. The physician or other person in attendance shall provide the medical information required by the certificate and certify to the facts of birth. When the physician, or other person in attendance, is physically unable to certify to the facts of birth within the time prescribed in this section, the person in charge of the institution may complete and sign the certificate.

(b) When a birth occurs outside an institution, the certificate shall be prepared and filed by:

(1) The physician or other person in attendance at or immediately after such birth; or

(2) When no physician or other person is present at or immediately after such birth: the father, or in the event of the death, disability or absence of the father, the mother; or in the event of the death or disability of the mother, the householder or owner of the premises where the birth occurred.

(c) The father, mother or guardian shall verify the facts entered on the certificate by their signature.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and the place where the child is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international air

space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth insofar as can be determined.

(e) (1) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless:

(i) Paternity has been determined otherwise by a court of competent jurisdiction; or

(ii) The ~~mother--executes--an--affidavit-attesting-that-the husband-is-not-the-father-and-that-the-putative-father-is-the father~~ husband has executed an affidavit of nonpaternity attesting that he is not the father, the mother has executed an acknowledgment of paternity attesting that the alleged father is the father, and the ~~putative~~ alleged father ~~executes~~ has executed an ~~affidavit~~ acknowledgment of paternity attesting that he is the father~~,-and-the-husband-executes-an affidavit-attesting-that-he-is-not-the-father~~. Affidavits may be joint or individual or a combination thereof, and each signature shall be individually notarized. In such event, the ~~putative~~ alleged father shall be shown as the father on the certificate.

(2) If the mother was not married at the time of either conception or birth, or between conception and birth, the name of the father shall not be entered on the certificate without ~~the-written notarized-consent-of-the-mother-and-the-person-to-be-named-as--the father,-in-which-case,-upon-written-notarized-request-of-both-parents,-the-surname-of-the-child-shall-be-entered-on-the-certificate as--that--of--the--father~~ a notarized voluntary acknowledgment of paternity.

(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

Approved March 19, 1998.

CHAPTER 107
(H.B. No. 412)

AN ACT

RELATING TO THE MINIMUM WAGE LAW; AMENDING SECTION 44-1502, IDAHO CODE, TO DELETE THE PROVISION WHICH REQUIRES THE STATE DEPARTMENT OF LABOR TO ENFORCE OVERTIME PAY PROVISIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT.

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 ~~AND OVERTIME PAY~~. (1) Except as hereinafter otherwise provided, no employer shall pay to any of his employees any wages computed at a rate of less than four dollars and seventy-five cents ($4.75) commencing April 1, 1997, and five dollars and fifteen cents ($5.15) commencing September 1, 1997, per hour for employment.

(2) In determining the wage of a tipped employee, the amount paid such employee by an employer shall be deemed to be increased on account of tips actually received by the employee but not by an amount in excess of thirty-three percent (33%) of the applicable minimum wage, beginning April 1, 1997, and until August 31, 1997, and thirty-five percent (35%) on and after September 1, 1997, as set forth in subsection (1) of this section. In the event a dispute arises between the employee and the employer with respect to the amount of tips actually received by the employee, it shall be the employer's burden to demonstrate the amount of tips actually received by the employee. Any portion of tips paid to an employee, which is shared with other employees under a tip pooling or similar arrangement, shall not be deemed, for the purpose of this section, to be tips actually received by the employee.

(3) ~~Except as hereinafter otherwise provided in the case of overtime pay only and subject to the same exemptions and/or exceptions for overtime as provided now or hereafter under the federal fair labor standards act; i.e., those employers not exempted or excepted by the overtime provisions of the federal fair labor standards act shall pay overtime as provided in this section, no employer shall employ any employee longer than forty (40) hours in a workweek consisting of seven (7) consecutive twenty-four (24) hour periods unless such employee receives compensation for employment in excess of forty (40) hours at a rate of not less than one and one-half (1-1/2) times the employee's regular rate of pay.~~

~~(4)~~ In lieu of the rate prescribed by subsection (1) of this section, an employer may pay an employee who has not attained twenty (20) years of age a wage which is not less than four dollars and twenty-five cents ($4.25) an hour during the first ninety (90) consecutive calendar days after such employee is initially employed. No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

Approved March 19, 1998.

CHAPTER 108
(H.B. No. 413)

AN ACT

RELATING TO MOTOR VEHICLE OPERATING FEES FOR NONREDUCIBLE LOADS AND PERMITS FOR OVERLEGAL LOADS; AMENDING SECTION 49-434, IDAHO CODE,

TO CLARIFY THE FEE CHARGED FOR VEHICLES HAULING NONREDUCIBLE LOADS IN EXCESS OF THOSE PROVIDED BY LAW BUT LESS THAN THE WEIGHTS SPECIFIED IN THE SCHEDULE IN SECTION 49-1004, IDAHO CODE; AND AMENDING SECTION 49-1004, IDAHO CODE, TO PROVIDE A FEE SCHEDULE FOR VEHICLES HAULING NONREDUCIBLE LOADS AT WEIGHTS IN EXCESS OF THOSE ALLOWED BY LAW, TO PROVIDE FOR ASSESSMENT OF ONE-HALF THE FEE UNTIL JULY 1, 1999, TO PROVIDE AUTHORITY TO THE TRANSPORTATION BOARD OR OTHER AUTHORITY HAVING JURISDICTION OF A HIGHWAY TO REDUCE THE FEES CHARGED FOR VEHICLES OPERATING WITH SPECIFIED AXLE WIDTHS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 49-434, Idaho Code, be, and the same is hereby amended to read as follows:

49-434. OPERATING FEES. (1) There shall be paid on all commercial vehicles, noncommercial vehicles, and on all farm vehicles having a maximum gross weight not in excess of sixty thousand (60,000) pounds, an annual registration fee in accordance with the following schedule.

Maximum Gross Weight (Pounds)	Annual Registration Fee Noncommercial and Farm Vehicles	Annual Registration Fee Commercial Vehicles
8,001-16,000 inc.	$ 31.08	$ 30.60
16,001-26,000 inc.	61.08	143.40
26,001-30,000 inc.	91.68	223.80
30,001-40,000 inc.	130.08	291.60
40,001-50,000 inc.	188.28	360.00
50,001-60,000 inc.	311.88	515.40

(2) There shall be paid on all commercial vehicles, irrespective of body type, and on all farm vehicles having a maximum gross weight in excess of sixty thousand (60,000) pounds, an annual registration fee in the amount of one hundred twenty dollars ($120).

(3) In addition, an annual registration fee shall be required for each trailer or semitrailer in a combination of vehicles in the amount of fifteen dollars ($15.00). As an option to the trailer and semitrailer annual registration, the department may provide extended registration.

(a) The optional extended-registration period shall not extend beyond seven (7) years.

(b) The fee shall be fifteen dollars ($15.00) for each year.

(c) The license plate originally issued shall remain on the trailer or semitrailer until the registration expires.

(d) If the ownership of a trailer or semitrailer changes during the extended-registration period, the original owner may transfer the plate to another vehicle. The remaining fee shall be credited against the cost of the new registration. No refunds shall be given for any unexpired portion of the trailer or semitrailer registration fee if the plate is not transferred by the owner to another trailer. An extended plate shall not be transferred to another owner when the ownership of a trailer or semitrailer changes.

(e) A sticker validating the extended registration shall be

affixed to the license plate. The owner shall obtain a replacement plate, validation sticker and a registration document from the department when a plate is lost, destroyed or illegible.

(4) An annual registration fee of eight dollars ($8.00) shall be required for each rental utility trailer having a maximum laden or gross weight of up to two thousand (2,000) pounds, or fifteen dollars ($15.00) for each rental utility trailer having a maximum laden or gross weight in excess of two thousand (2,000) pounds.

(a) For a fee of eight dollars ($8.00) or fifteen dollars ($15.00) per year, as applicable, for each rental utility trailer, the department may issue a rental utility trailer license plate that shall remain valid for a period of five (5) years.

(b) The license plate shall become void if the owner's interest in the rental utility trailer changes during the five (5) year period.

(c) If the owner fails to enter the rental utility trailer on the annual renewal application during the five (5) year period, the registration record shall be purged. Any unrenewed, unexpired plate shall be returned to the department if it is not entered on the renewal application.

(5) An administrative fee of four dollars ($4.00) shall be paid and deposited to the state highway account on all registrations completed by the department under this section.

(6) In addition to the registration and license fees provided by subsections (1) and (2) of this section, there shall be paid on all commercial vehicles having a maximum gross weight in excess of sixty thousand (60,000) pounds, a use fee based upon the registered maximum gross weight in accordance with the following schedule. The use fees shall be calculated by multiplying the mills per mile, determined from the mills per mile schedule table, times the reported mileage for the vehicle, subject to the provisions of this section.

Maximum Gross Weight of Vehicle (Pounds)	Mills per Mile
60,001-62,000	30.05
62,001-64,000	31.35
64,001-66,000	32.60
66,001-68,000	33.90
68,001-70,000	35.15
70,001-72,000	36.40
72,001-74,000	38.55
74,001-76,000	40.65
76,001-78,000	42.75
78,001-80,000	44.90
80,001-82,000	47.00
82,001-84,000	49.10
84,001-86,000	51.20
86,001-88,000	53.30
88,001-90,000	55.40
90,001-92,000	57.50
92,001-94,000	59.60
94,001-96,000	61.70
96,001-98,000	63.80

98,001-100,000	65.90
100,001-102,000	68.00
102,001-104,000	70.10
104,001-106,000	72.20

For each additional two thousand (2,000) pounds or fraction thereof in excess of one hundred six thousand (106,000) pounds add 2.1 mills per mile.

(7) In addition to the registration and license fees of this section, there shall be paid on all farm vehicles, and any commercial vehicle exclusively engaged in the transportation of logs, pulp wood, stull, poles, piling, rough lumber, ores, ore concentrates, sand and gravel aggregates in bulk, livestock and vehicles used for the sole purpose of transporting milk from the farm to processing plant, having a maximum gross weight in excess of sixty thousand (60,000) pounds, a use fee in accordance with the following schedule. The use fees shall be calculated by multiplying the mills per mile, determined from the mills per mile schedule table, times the reported mileage for the vehicle, subject to the provisions of this section.

Maximum Gross Weight of Vehicle (Pounds)	Mills per Mile
60,001-62,000	22.45
62,001-64,000	22.45
64,001-66,000	22.45
66,001-68,000	22.45
68,001-70,000	22.45
70,001-72,000	22.45
72,001-74,000	22.45
74,001-76,000	22.45
76,001-78,000	22.45
78,001-80,000	22.45
80,001-82,000	24.55
82,001-84,000	26.65
84,001-86,000	28.75
86,001-88,000	30.85
88,001-90,000	32.95
90,001-92,000	35.05
92,001-94,000	37.15
94,001-96,000	39.25
96,001-98,000	41.35
98,001-100,000	43.45
100,001-102,000	45.55
102,001-104,000	47.65
104,001-106,000	49.75

For each additional two thousand (2,000) pounds or fraction thereof in excess of one hundred six thousand (106,000) pounds add 2.1 mills per mile.

(8) If any vehicle, or combinations of vehicles move on the highways of the state, and the vehicle or combination exceeds its registered maximum gross weight there shall be paid for that vehicle, the fees provided for in either subsection (6) or (7) of this section, as applicable, for the actual gross weight of the vehicle or combination of vehicles for the miles traveled at the heavier weight.

(9) If any vehicle or combinations of vehicles haul nonreducible loads, as authorized under the provisions of section 49-1004, Idaho Code, and weigh less than the starting weights per axle configuration listed in column 1 of subsection (2), section 49-1004, Idaho Code, then and in that event there shall be paid for that vehicle, in addition to the other fees required in this section, an additional use fee of 2.1 mills per mile for each two thousand (2,000) pounds or fraction thereof of the maximum gross weight in excess of those set forth in section 49-1001, Idaho Code.

(10) Any owner operating vehicle combinations may apply to the department for authority to report multiple weights and pay use fees based upon the maximum gross weight of each configuration in the combination being operated. The owner shall declare a maximum gross weight for each configuration being operated but not more than three (3) maximum gross weights for a vehicle combination may be declared. Any owner who receives authority to report and pay use fees at multiple maximum gross weights shall register the motor vehicle in a combination at the highest maximum gross weight of the vehicle. Any owner who reports vehicle combinations at multiple weights and fails to maintain records and furnish said records to the department upon request which show the configuration of the combination of vehicles and the trailer and unit number for all miles and trip segments traveled shall have all miles assessed at the highest maximum gross weight of the combination of vehicles.

(11) An applicant for registration of a commercial vehicle, a noncommercial vehicle or a farm vehicle shall set forth the maximum gross weight of the vehicle or combination of vehicles and the applicant shall pay any annual registration fees and any annual license fees on trailers and semitrailers required at the time he makes application for registration subject to the provisions of subsections (1) and (2) of this section. No part of the registration or license fees shall be subject to refund. The use fee payment required shall be computed according to the schedule in either subsection (6) or (7) of this section on the mileage operated over the highways of the state of Idaho and the owner of any vehicle against which a use fee is assessed, shall at the time of making his next quarterly report pay the use fee, if any, for the three (3) calendar months immediately prior. In determining the mileage subject to the use fee, there shall be deducted the miles traveled on roadways maintained with private funds by agreement with the public agency or agencies having jurisdiction over them. In no event shall the total money credited to the owner for the mileage exceed the actual cost of maintenance expended by him.

(12) Any owner who operates or intends to operate non-Idaho based vehicles in Idaho that are subject to the use fee required under the provisions of this section shall apply for a use fee account before operating the vehicles in Idaho. In lieu of establishing a use fee account the owner may purchase a trip permit under the provisions of section 49-432 or 49-433, Idaho Code, as applicable. The department shall develop rules to administer the use fee account. Any owner who has not established a use fee account or has not purchased a trip permit prior to operating in Idaho shall have committed an infraction.

SECTION 2. That Section 49-1004, Idaho Code, be, and the same is hereby amended to read as follows:

49-1004. PERMITS FOR OVERWEIGHT OR OVERSIZE LOADS. (1) Upon application in writing to the board or other proper authorities in charge of, or having jurisdiction over a highway, the board or authorities may in their discretion issue a special permit to the owner or operator of any vehicle allowing vehicles or loads having a greater weight or size than permitted by law to be moved or carried over and on the highways and bridges.

(a) Special permits shall be in writing and may limit the time of use and operation over the particular highways and bridges which may be traversed and may contain any special conditions and require any undertaking or other security as the board or other proper authority shall deem to be necessary to protect the highways and bridges from injury, or provide indemnity for any injury to highways and bridges or to persons or property resulting from such operation.

(b) The owner or operator of an overweight or oversize vehicle shall obtain a permit, or shall ~~stablish~~ establish intent to obtain a permit by contacting a permit office and receiving a permit number before moving the vehicle on the highways.

(c) All special permits or evidence of intent to obtain a permit, shall be carried in the vehicles to which they refer and shall upon demand be delivered for inspection to any peace officer, authorized agent of the board or any officer or employee charged with the care or protection of the highways.

(2) Nonreducible vehicles or combinations of vehicles hauling nonreducible loads at weights in excess of those set forth in section 49-1001, Idaho Code, shall pay fees as set forth in this subsection (2). Such fees are based on the number of axles on the vehicle or combination of vehicles and the total gross weight.

Number of axles	Column 1 Gross weight of vehicle and load in pounds	Column 2 Gross weight of vehicle and load in pounds
2	40,001	-
3	54,001	-
4	68,001	-
5	80,001	131,001
6	97,001	148,001
7	114,001	165,001

(a) To determine the maximum allowable permit fee for vehicles with more than seven (7) axles, the table can be extended by adding seventeen thousand (17,000) pounds to the last listed weight in both columns 1 and 2 for each added axle.

(b) Permit fees for column 1 shall start at four cents (4¢) per mile and increase four cents (4¢) per mile for each additional two thousand (2,000) pound increment up to the weight indicated in column 2. Permit fees for column 2 shall start at one dollar and two cents ($1.02) per mile and increase seven cents (7¢) per mile for each additional two thousand (2,000) pound increment.

(c) Vehicles operating at weights less than the starting weights per axle configuration listed in column 1 shall be charged fees as

stated in section 49-434(9), Idaho Code.

(d) For vehicles operating with axles wider than eight (8) feet six (6) inches or axles with more than four (4) tires per axle, the fee may be reduced by the board or other proper authority having jurisdiction over a highway.

(e) From July 1, 1998, through June 30, 1999, the fee charged per mile pursuant to this subsection shall be assessed at one-half (1/2) the calculated fee. On and after July 1, 1999, the fee charged per mile shall be calculated and assessed in accordance with this subsection.

(3) It shall be unlawful for any person to violate, or to cause or permit to be violated, the limitations or conditions of special permits and any violation shall be deemed for all purposes to be a violation of the provisions of this chapter.

Approved March 19, 1998.

CHAPTER 109
(H.B. No. 418)

AN ACT

RELATING TO MEDICAL INDIGENCY; AMENDING SECTION 31-3502, IDAHO CODE, TO DEFINE THE TERM "CLERK" AS THE CLERK OF THE BOARD OF COUNTY COMMISSIONERS OR HIS OR HER DESIGNEE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 31-3502, Idaho Code, be, and the same is hereby amended to read as follows:

31-3502. DEFINITIONS. As used in this chapter, the terms defined in this section shall have the following meaning, unless the context clearly indicates another meaning:

(1) "Medically indigent" means any person who is in need of necessary medical services and who, if an adult, together with his or her spouse, or whose parents or guardian if a minor, does not have income and other resources available to him from whatever source sufficient to pay for necessary medical services. Nothing in this definition shall prevent the board of county commissioners and administrator from requiring the applicant and obligated persons to reimburse the county and the catastrophic health care costs program, where appropriate, for all or a portion of their medical expenses, when investigation of their application pursuant to this chapter, determines their ability to do so.

(2) "Hospital" means a facility licensed and regulated pursuant to sections 39-1301 through 39-1314, Idaho Code, excluding state institutions.

(3) "Dependent" means any person whom a taxpayer could claim as a dependent under the income tax laws of the state of Idaho.

(4) "Applicant" means any person who is or may be requesting

financial assistance under this chapter.

(5) "Reimbursement rates" means the unadjusted medicaid rate of reimbursement for medical charges allowed pursuant to title XIX of the social security act, as amended. For long-term care facilities, maximum "reimbursement rates" means the unadjusted medicaid rate of reimbursement allowed pursuant to the medical assistance program as determined by chapter 1, title 56, Idaho Code, or the unadjusted medicare rate of reimbursement established under title XVIII of the social security act, as amended, whichever is greater.

(6) "Board" means the board of county commissioners.

(7) "Obligated persons" means those persons who are legally responsible for an applicant.

(8) "County hospital" means any county approved institution or facility for the care of sick persons.

(9) "Administrator" means the board of the catastrophic health care cost program, as provided in section 31-3517, Idaho Code.

(10) "Catastrophic health care costs" means all necessary medical expenses for services which are incurred by a recipient for which the reimbursement rate exceeds in aggregate the sum of ten thousand dollars ($10,000) in any twelve (12) consecutive month period.

(11) "Recipient" means an individual determined eligible for necessary medical services under this chapter.

(12) "Resident" means a person with a home, house, place of abode, place of habitation, dwelling or place where he or she actually lived for a consecutive period of thirty (30) days or more. A resident does not include a person who comes into this state for temporary purposes, including, but not limited to, education, vacation, or seasonal labor. Entry into active military duty shall not change a person's residence for the purposes of this chapter. Those physically present within the following facilities and institutions shall be residents of the county where they were residents prior to entering the facility or institution:

(a) Correctional facilities;

(b) Nursing homes or residential care facilities;

(c) Other medical facility or institution.

(13) "Emergency service" means a service provided for a medical condition in which sudden, serious and unexpected symptoms of illness or injury are sufficiently severe to necessitate or call for immediate medical care.

(14) "Provider" means any person, firm, or corporation certified or licensed by the state of Idaho or holding an equivalent license or certification in another state, that provides necessary medical services as it appears on an application for assistance pursuant to this chapter.

(15) "Third party applicant" means a person other than an obligated person who completes, signs and files an application on behalf of a patient.

(16) "Clerk" means the clerk of the board or ~~designated case--manager approved by the board and administrator~~ his or her designee.

(17) "Resources" means all property, whether tangible or intangible, real or personal, liquid or nonliquid, including, but not limited to, all forms of public assistance, crime victim's compensation, worker's compensation, veterans benefits, medicaid, medicare and any

other property from any source for which an applicant and/or an obligated person may be eligible or in which he or she may have an interest. Resources shall include the ability of an applicant and obligated persons to pay for necessary medical services over a period of up to three (3) years. For purposes of determining approval for medical indigency only, resources shall not include the value of the homestead on the applicant or obligated persons residence, a burial plot, exemptions for personal property allowed in section 11-605(1) through (3), Idaho Code, and additional exemptions allowed by county resolution.

(18) A. "Necessary medical services" means a requested or provided medical service required in order to identify or treat a medically indigent person's health condition, illness or injury and is:

(a) Consistent with the symptoms, diagnosis or treatment of the medical indigent's condition, illness or injury;

(b) In accordance with generally accepted standards of medical or surgical practice then prevailing in the community where the services were provided;

(c) Furnished on an outpatient basis whenever it is safe, efficient and reasonable to do so;

(d) Not provided primarily for the convenience of the medically indigent person or the provider;

(e) The standard, most economical service or item that can safely, reasonably and ethically be provided.

B. Necessary medical services shall not include the following:

(a) Bone marrow transplants;

(b) Organ transplants;

(c) Elective, cosmetic and/or experimental procedures;

(d) Services related to, or provided by, residential and/or shelter care facilities;

(e) Normal, uncomplicated pregnancies, excluding caesarean section, and childbirth well-baby care;

(f) Medicare copayments and deductibles; and

(g) Services provided by, or available to an applicant from state, federal and local health programs.

Provided however, each board may determine, by ordinance or resolution duly adopted in its county, to include as necessary medical services additional services not covered in this section. Necessary medical services provided by this option shall not be paid by the catastrophic health care costs program, and shall remain the liability of the respective county.

Approved March 19, 1998.

CHAPTER 110
(H.B. No. 422, As Amended in the Senate)

AN ACT

RELATING TO MOTOR VEHICLE DRIVER LICENSES AND DRIVING PRIVILEGES; AMENDING SECTION 18-8001, IDAHO CODE, TO PROVIDE FOR RECEIPT OF LEGAL NOTICE PURSUANT TO LAW AND TO REQUIRE THAT THE TRANSPORTA-

TION DEPARTMENT BE NOTIFIED OF CHANGE OF ADDRESS; AMENDING SECTION 31-2202, IDAHO CODE, TO AUTHORIZE THE SALE OF IDENTIFICATION CARDS BY COUNTY SHERIFFS; AMENDING SECTION 33-1702, IDAHO CODE, TO REQUIRE THE TRANSPORTATION DEPARTMENT TO WORK WITH THE STATE BOARD OF EDUCATION IN ESTABLISHING STANDARDS FOR DRIVER TRAINING PROGRAMS; AMENDING SECTION 33-4804, IDAHO CODE, AS ADDED BY SECTION 10, CHAPTER 234, LAWS OF 1994, TO REDESIGNATE THE SECTION AND TO PROVIDE THAT THE AMOUNT OF REVENUE CREDITED TO THE MOTORCYCLE SAFETY PROGRAM FUND IS THE SAME AMOUNT AS IS ASSESSED FOR A MOTORCYCLE ENDORSEMENT INSTRUCTION PERMIT OR ENDORSEMENT; AMENDING SECTION 49-104, IDAHO CODE, TO DELETE THE DEFINITION OF CHAUFFEUR AND TO CLARIFY PROCEDURE TO REINSTATE A CANCELLED DRIVER'S LICENSE; AMENDING SECTION 49-105, IDAHO CODE, TO PROVIDE THAT AN ENDORSEMENT T MAY BE OBTAINED ON CLASS B AND C DRIVER'S LICENSES; AMENDING SECTION 49-108, IDAHO CODE, TO REDEFINE "GROSS COMBINATION WEIGHT RATING" AND TO REDEFINE "GROSS VEHICLE WEIGHT RATING"; AMENDING SECTION 49-116, IDAHO CODE, TO REDEFINE "OUT OF SERVICE ORDER"; AMENDING SECTION 49-202, IDAHO CODE, TO REVISE RECORDKEEPING REQUIREMENTS PERFORMED BY THE TRANSPORTATION DEPARTMENT RELATING TO STOLEN VEHICLES, CERTIFICATES OF TITLE, VEHICLE REGISTRATION NUMBERS, RENEWAL OF DRIVER LICENSES AND IDENTIFICATION CARDS AND EVIDENCE OF EXAMINATIONS TAKEN, CANCELLATION OF DRIVER'S LICENSE OR IDENTIFICATION CARD PENDING PAYMENT OF FEES AND ADMINISTRATION OF SPECIFIED TESTS; AMENDING SECTION 49-237, IDAHO CODE, TO CLARIFY THE CONTENT AND FORM OF RECORDS OF CONVICTION RECEIVED BY THE TRANSPORTATION DEPARTMENT FROM JUDICIAL OFFICERS; AMENDING THE HEADING FOR CHAPTER 3, TITLE 49, IDAHO CODE; AMENDING SECTION 49-302, IDAHO CODE, TO CLARIFY TERMINOLOGY RELATING TO EXEMPTION FROM LICENSURE AND TO DELETE PROVISION FOR EXEMPTION OF CERTAIN NONRESIDENTS EIGHTEEN YEARS OF AGE AND OLDER; AMENDING SECTION 49-303, IDAHO CODE, TO CLARIFY CONDITIONS UNDER WHICH CERTAIN PERSONS SHALL NOT BE LICENSED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-303A, IDAHO CODE, TO PROVIDE THAT REINSTATEMENT FEES SHALL BE PAID BEFORE A MINOR WHOSE DRIVING PRIVILEGES WERE LOST MAY BE REINSTATED; AMENDING SECTION 49-304, IDAHO CODE, TO CLARIFY TIMELINES IN THE ISSUANCE OF A MOTORCYCLE ENDORSEMENT; AMENDING SECTION 49-305, IDAHO CODE, TO PROVIDE THAT AN INSTRUCTION PERMIT IS VALID UP TO 180 DAYS, TO PROVIDE FOR CANCELLATION OF A TEMPORARY LICENSE AND FOR ISSUANCE OF A DRIVER'S TRAINING INSTRUCTION PERMIT AND TO DELETE REQUIREMENT FOR DIRECT SUPERVISION WHILE OPERATING A MOTORCYCLE WITH A MOTORCYCLE ENDORSEMENT INSTRUCTION PERMIT; AMENDING SECTION 49-306, IDAHO CODE, TO PROVIDE A FEE FOR A RESTRICTED DRIVING PERMIT AND FOR DISPOSITION OF THE FEE, TO REVISE THE PROCEDURE FOR ISSUANCE OF A DRIVER'S TRAINING INSTRUCTION PERMIT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-307, IDAHO CODE, TO PROVIDE THAT FEES PAID FOR DRIVER'S TRAINING INSTRUCTION PERMITS ARE NONREFUNDABLE; AMENDING SECTION 49-313, IDAHO CODE, TO CLARIFY PROVISIONS RELATING TO THE EXAMINATION OF APPLICANTS FOR A DRIVER'S LICENSE, SEASONAL LICENSE, INSTRUCTION PERMIT OR MOTORCYCLE ENDORSEMENT; AMENDING SECTION 49-315, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT MAY ALLOW AN APPLICANT FOR A DRIVER'S LICENSE PHOTOGRAPH TO WEAR HEADGEAR FOR RELIGIOUS PURPOSES SO LONG AS THE FACE IS NOT DIS-

GUISED OR CONCEALED AND TO PROVIDE PROPER TERMINOLOGY; AMENDING SECTION 49-318, IDAHO CODE, TO PROVIDE PROPER TERMINOLOGY; AMENDING SECTION 49-319, IDAHO CODE, TO CLARIFY TIMELINES AND TESTS REQUIRED UPON THE EXPIRATION AND RENEWAL OF A DRIVER'S LICENSE; AMENDING SECTION 49-320, IDAHO CODE, TO ALLOW A LICENSED DRIVER THIRTY DAYS TO NOTIFY THE DEPARTMENT OF CHANGE OF ADDRESS; AMENDING SECTION 49-321, IDAHO CODE, TO PROVIDE THAT ACCIDENT REPORTS AND ABSTRACTS OF COURT RECORDS MAY BE IN EITHER PAPER OR ELECTRONIC FORM; AMENDING SECTION 49-324, IDAHO CODE, TO PROVIDE THAT THE TRANSPORTATION DEPARTMENT SHALL SUSPEND, DISQUALIFY OR REVOKE A DRIVER'S LICENSE OR DRIVING PRIVILEGE UPON RECEIPT OF NOTICE OF ANY ADMINISTRATIVE ACTION OR COURT ORDER IN ANOTHER STATE; AMENDING SECTION 49-326, IDAHO CODE, TO PROVIDE THAT A CONVICTION, COURT ORDER OR ADMINISTRATIVE ACTION AUTHORIZES THE TRANSPORTATION DEPARTMENT TO SUSPEND, DISQUALIFY OR REVOKE A DRIVER'S LICENSE OR DRIVING PRIVILEGE AS PROVIDED BY LAW AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 49-335, IDAHO CODE, TO PROVIDE FOR DISQUALIFICATION OF COMMERCIAL DRIVING PRIVILEGES FOR A FIRST VIOLATION OF ANY STATE OR FEDERAL LAW; AMENDING SECTION 49-1208, IDAHO CODE, TO CLARIFY THAT DRIVING PRIVILEGES SHALL REMAIN SUSPENDED OR REVOKED UNTIL PROOF OF FINANCIAL RESPONSIBILITY IS GIVEN AND MAINTAINED FOR THE REQUIRED PERIOD OF TIME; AMENDING SECTION 49-1301, IDAHO CODE, TO DELETE A CODE REFERENCE; AMENDING SECTION 49-1416, IDAHO CODE, TO PROVIDE THAT REPORTS TO THE DEPARTMENT MAY BE IN EITHER PAPER OR ELECTRONIC FORM AND TO CLARIFY THAT RECORDS ARE OPEN TO THE PUBLIC UNLESS EXEMPT FROM DISCLOSURE; AMENDING SECTION 49-2443, IDAHO CODE, TO DELETE THE REQUIREMENT TO PROVIDE PLACE OF BIRTH ON APPLICATION FOR AN IDENTIFICATION CARD; AND AMENDING SECTION 49-2444, IDAHO CODE, TO CLARIFY PROCEDURES FOR ISSUANCE OF AN IDENTIFICATION CARD.

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

SECTION 1. That Section 18-8001, Idaho Code, be, and the same is hereby amended to read as follows:

18-8001. DRIVING WITHOUT PRIVILEGES. (1) Any person who drives or is in actual physical control of any motor vehicle upon the highways of this state with knowledge <u>or who has received legal notice pursuant to section 49-320, Idaho Code,</u> that his driver's license, driving privileges or permit to drive is revoked, disqualified or suspended in this state or any other jurisdiction is guilty of a misdemeanor.

(2) A person has knowledge that his license, driving privileges or permit to drive is revoked, disqualified or suspended when:

(a) He has actual knowledge of the revocation, disqualification or suspension of his license, driving privileges or permit to drive; or

(b) He has received oral or written notice from a verified, authorized source, that his license, driving privileges or permit to drive was revoked, disqualified or suspended; or

(c) Notice of the suspension, disqualification or revocation of his license, driving privileges or permit to drive was mailed by certified mail ~~to--his--address--as--shown-on-the-citation-which~~

~~resulted in the suspension, disqualification or revocation, and if such notice was returned it was remailed~~ to his address pursuant to section 49-320, Idaho Code, as shown in the transportation department records, and he failed to receive the notice or learn of its contents as a result of his own unreasonable, intentional or negligent conduct or his failure to keep the transportation department apprised of his mailing address as required by section 49-320, Idaho Code; or

(d) He has knowledge of, or a reasonable person in his situation exercising reasonable diligence would have knowledge of, the existence of facts or circumstances which, under Idaho law, might have caused the revocation, disqualification or suspension of his license, driving privileges or permit to drive.

(3) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for the first time:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than two (2) days, and may be sentenced to not more than six (6) months, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work detail program within the custody of the county sheriff during the period of incarceration;

(b) May be fined an amount not to exceed five hundred dollars ($500); and

(c) Shall have his driving privileges suspended by the court for an additional six (6) months following the end of any period of suspension, disqualification or revocation existing at the time of the violation; the defendant may request restricted driving privileges during the period of the suspension or disqualification, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment or for family health needs.

(4) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for a second time within five (5) years, irrespective of the form of the judgment(s) or withheld judgment(s):

(a) Shall be sentenced to jail for a mandatory minimum period of not less than twenty (20) days, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work detail program within the custody of the county sheriff during the period of incarceration;

(b) May be fined an amount not to exceed one thousand dollars ($1,000); and

(c) Shall have his driving privileges suspended by the court for an additional one (1) year following the end of any period of suspension, disqualification or revocation existing at the time of the second violation, during which time he shall have absolutely no driving privileges of any kind.

(5) Any person who has pled guilty to or been found guilty of more than two (2) violations of the provisions of subsection (1) of this section within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony; and

(a) Shall be sentenced to the custody of the state board of correction for not to exceed three (3) years; provided that notwith-

standing the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days; and further provided that notwithstanding the provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed three thousand dollars ($3,000); and

(c) Shall have his driving privileges suspended by the court for an additional three (3) years following the end of any period of suspension, disqualification or revocation existing at the time of the violation, during which time he shall have absolutely no driving privileges of any kind.

(6) A minor may be prosecuted for a violation of subsection (1) of this section under title 16, Idaho Code.

(7) If a person is convicted for a violation of section 18-8004 or 18-8006, Idaho Code, and at the time of arrest had no driving privileges, the penalties imposed by this section shall be in addition to any penalties imposed under the provisions of section 18-8005 or 18-8006, Idaho Code, and not in lieu thereof.

SECTION 2. That Section 31-2202, Idaho Code, be, and the same is hereby amended to read as follows:

31-2202. DUTIES OF SHERIFF. The policy of the state of Idaho is that the primary duty of enforcing all penal provisions and statutes of the state is vested with the sheriff of each county as provided in section 31-2227, Idaho Code. The sheriff shall perform the following:

1. Preserve the peace.

2. Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense, unless otherwise provided by law.

3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge.

4. Attend all courts, including magistrate's division of the district court when ordered by a district judge, at their respective terms held within his county, and obey the lawful orders and directions of the courts.

5. Command the aid of as many inhabitants of the county as he may think necessary in the execution of these duties.

6. Take charge of and keep the county jail and the prisoners therein.

7. Indorse upon all process and notices the year, month, day, hour and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper and time of reception.

8. Serve all process and notices in the manner prescribed by law.

9. Certify under his hand upon process or notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

10. Perform such other duties as are required of him by law.

11. Keep a record of all stolen cars reported within his county,

which record shall contain the name of the motor vehicle, the engine number thereof, a complete description of such vehicle and such other information as may aid in the identification of the stolen car. Such record shall be open to public inspection during office hours, and immediately upon receiving a report of a stolen car the sheriff shall prepare and forward a copy thereof to the director of the department of law enforcement and he shall also notify the director of the department of law enforcement of any and all cars recovered.

12. Work in his county with the Idaho state department of law enforcement in the following respects:

(a) Require all persons using the highways in the state to do so carefully, safely and with exercise of care for the persons, property and safety of others;

(b) Safeguard and protect the surface and other physical portions of the state highways;

(c) Enforce all of the laws of the state enacted for the identification, inspection and transportation of livestock and all laws of the state designed to prevent the theft of livestock;

(d) Regulate traffic on all highways and roads in the state; and respond to calls following wrecks and make investigations relative thereto.

13. Work in his county with the Idaho transportation department to give examinations for and sell drivers' licenses <u>and identification cards</u>.

14. Expeditiously and promptly investigate all cases involving missing children when such cases are reported to him.

SECTION 3. That Section 33-1702, Idaho Code, be, and the same is hereby amended to read as follows:

33-1702. MINIMUM STANDARDS FOR COURSES. (1) The state board of education and the <u>transportation</u> department ~~of law--enforcement~~ shall cooperate in establishing, and amending as need arises, minimum standards for driver training programs reimbursable hereunder.

(2) Such standards shall require not less than thirty (30) clock hours of classroom instruction and six (6) hours behind the wheel practice driving; but the state board of education may allow in lieu of not more than three (3) hours of such practice driving, such equivalent thereof in simulated practice driving as the said board may have, by uniform regulations, approved. The board shall adopt standards necessary to allow completion of the thirty (30) clock hours of required classroom instruction through an approved correspondence course.

(3) When an approved driver training course is provided by a private, commercial driver training school, the standards for the driver training program as specified in subsection (2) of this section can be satisfied if all of the following alternative requirements are met:

(a) No more than four (4) students are in a class; and

(b) Not less than thirty (30) hours of classroom instruction are provided; and

(c) Not less than six (6) hours behind-the-wheel practice driving are required; and

(d) Not less than six (6) hours of observation time are completed

with a parent or legal guardian.

SECTION 4. That Section 33-4804, Idaho Code, as added by Section 10, Chapter 234, Laws of 1994, be, and the same is hereby amended to read as follows:

33-48~~9~~04. MOTORCYCLE SAFETY PROGRAM FUND. (1) The motorcycle safety program fund is established in the state treasury and appropriated on a continual basis to the department of education which shall administer the moneys. Money in the fund shall only be used for administration and implementation of the program, including reimbursement of entities which offer approved motorcycle rider training courses.

(2) At the end of each fiscal year, moneys remaining in the motorcycle safety program fund shall be retained in said fund and shall not revert to any other general fund. The interest and income earned on money in the fund, after deducting any applicable charges, shall be credited to and remain in the motorcycle safety program fund.

(3) Revenue credited to the fund shall include ~~thirteen~~ eleven dollars and fifty cents ($13~~1~~.50) of each fee assessed for a motorcycle endorsement instruction permit and a motorcycle endorsement as provided in section 49-306, Idaho Code.

SECTION 5. That Section 49-104, Idaho Code, be, and the same is hereby amended to read as follows:

49-104. DEFINITIONS -- C.

(1) "Cancellation of driver's license" means the annulment or termination by formal action of the department of a person's driver's license because of some error or defect in the driver's license or because the licensee is no longer entitled to the driver's license.~~, but t~~The cancellation of a driver's license is without prejudice and ~~application~~ after compliance with requirements, the individual may apply for a new driver's license ~~may be made~~ at any time after cancellation.

(2) "Caravaning" means the transportation of any motor vehicle into, out of, or within the state operating on its own wheels or in tow for the purpose of sale or offer of sale by any agent, dealer, manufacturer's representative, purchaser, or prospective purchaser, regardless of residence unless the motor vehicle is licensed by the state of Idaho, or is owned by an automobile dealer, duly licensed as a dealer by this state. It shall also be considered as the transportation of property for hire by a motor vehicle upon the highways of this state.

(3) "Certificate of liability insurance" means a certificate of liability insurance issued by an insurance company authorized to do business in this state or a certificate of liability insurance issued by the department of insurance which demonstrates current insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by accident and arising out of the operation, maintenance or use of a motor vehicle described in the certificate in an amount not less than that required by section 49-1212, Idaho Code, and also demonstrates the Current existence of any other coverage required by title 41, Idaho

Code, or a certificate of self-insurance issued pursuant to law for each motor vehicle to be registered. A certificate of liability insurance shall contain the information required by the department of insurance, including the name and address of the owner of the motor vehicle and a description of the motor vehicle including identification number if there is one, or a statement that all vehicles owned by a person or entity are covered by insurance, the inception date of coverage, and the name of the insurer. "Certificate of liability insurance" may also include the original contract of liability insurance or a true copy, demonstrating the current existence of the liability insurance described above.

(4) ~~"Chauffeur" means every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a motor vehicle while in use as a public contract or common carrier of persons or property.~~

~~(5)~~ "Commercial coach." (See section 39-4105, Idaho Code)

(6~~5~~) "Commercial driver's license" means any class A, class B or class C driver's license as defined in section 49-105, Idaho Code.

(7~~6~~) "Commercial driver license information system (CDLIS)" is the information system established to serve as a clearinghouse for locating information related to the licensing and identification of motor vehicle drivers.

(8~~7~~) "Commercial driver training school" means a business enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically, or both, to operate or drive motor vehicles, and charging a consideration or tuition for such services.

(9~~8~~) "Commercial vehicle" or "commercial motor vehicle." (See "Vehicle", section 49-123, Idaho Code)

(10~~9~~) "Construction danger zone" means a construction or maintenance area that is located on or adjacent to a highway and marked by appropriate warning signs.

(11~~10~~) "Controlled substance" means any substance so classified under section 102(6) of the controlled substances act (21 U.S.C. 802(6)), and includes all substances listed on schedules I through V, of 21, CFR part 1308, as they may be revised from time to time.

(12~~11~~) "Conviction" means the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

(13~~2~~) "Crosswalk" means:

(a) That part of a highway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable highway; and in the absence of a sidewalk on one side of the highway, that part of a highway included within the extension of the lateral lines of the existing sidewalk at right angles to the centerline.

(b) Any portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

SECTION 6. That Section 49-105, Idaho Code, be, and the same is hereby amended to read as follows:

49-105. DEFINITIONS -- D.

(1) "Dealer" means every person in the business of buying, selling or exchanging five (5) or more new or used vehicles, new or used motorcycles, snow machines or motor scooters, travel trailers, all-terrain vehicles or motor homes in any calendar year, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, or who has an established place of business for the sale, lease, trade, or display of these vehicles. No insurance company, bank, finance company, public utilities company, or other person coming into possession of any vehicle, as an incident to its regular business, who shall sell that vehicle under any contractual rights it may have, shall be considered a dealer. See also "salvage pool", section 49-120, Idaho Code.

(2) "Dealer's selling agreement." (See "Franchise", section 49-107, Idaho Code)

(3) "Department" means the Idaho transportation department acting directly or through its duly authorized officers and agents, except in chapters 6 and 9, title 49, Idaho Code, where the term means the Idaho department of law enforcement, except as otherwise specifically provided.

(4) "Designated family member" means the spouse, child, grandchild, parent, brother or sister of the owner of a vehicle dealership who, in the event of the owner's death, is entitled to inherit the ownership interest in the dealership under the same terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a dealership, has been appointed by a court as the legal representative of the dealer's property.

(5) "Director" means the director of the Idaho transportation department, except in chapters 6, 9 and 22, title 49, Idaho Code, where the term means the director of the Idaho department of law enforcement.

(6) "Disclose" means to engage in any practice or conduct to make available and make known personal information contained in records of the department about a person to any other person, organization or entity, by any means of communication.

(7) "Disqualification" as defined in 49 CFR part 383, means withdrawal by the department of commercial vehicle driving privileges.

(8) "Distributor" means any person, firm, association, corporation or trust, resident or nonresident, who has a franchise from a manufacturer of vehicles to distribute vehicles in this state, and who in whole or in part sells or distributes new vehicles to dealers or who maintains distributor representatives.

(9) "Distributor branch" means a branch office similarly maintained by a distributor for the same purposes a factory branch is maintained.

(10) "Distributor representative" means any person, firm, association, corporation or trust, and each officer and employee thereof engaged as a representative of a distributor or distributor branch of vehicles for the purpose of making or promoting the sale of vehicles, or for supervising or contacting dealers or prospective dealers.

(11) "District" means:

(a) Business district. The territory contiguous to and including

a highway when within any six hundred (600) feet along the highway there are buildings in use for business or industrial purposes, including hotels, banks or office buildings, railroad stations and public buildings which occupy at least three hundred (300) feet of frontage on one side or three hundred (300) feet collectively on both sides of the highway.

(b) Residential district. The territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred (300) feet or more is in the main improved with residences, or residences and buildings in use for business.

(c) Urban district. The territory contiguous to and including any highway which is built up with structures devoted to business, industry or dwelling houses. For purposes of establishing speed limits in accordance with the provisions of section 49-654, Idaho Code, no state highway or any portion thereof lying within the boundaries of an urban district is subject to the limitations which otherwise apply to nonstate highways within an urban district. Provided, this subsection shall not limit the authority of the duly elected officials of an incorporated city acting as a local authority to decrease speed limits on state highways passing through any district within the incorporated city.

(12) "Documented vessel" means a vessel having a valid marine document as a vessel of the United States.

(13) "Drag race" means the operation of two (2) or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one (1) or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicles within a certain distance or time limit.

(14) "Driver" means every person who drives or is in actual physical control of a vehicle.

(15) "Driver's license" means a license or permit issued by the department or by any other jurisdiction to an individual which authorizes the individual to operate a motor vehicle or commercial motor vehicle on the highways in accordance with the requirements of title 49, Idaho Code.

(16) "Driver's license -- classes of" are issued for the operation of a vehicle based on the size of the vehicle or the type of load and mean:

(a) Class A. This license shall be issued and valid for the operation of any combination of motor vehicles with a manufacturer's gross combination weight rating (GCWR) in excess of twenty-six thousand (26,000) pounds, provided the manufacturer's gross vehicle weight rating (GVWR) of the vehicle(s) being towed is in excess of ten thousand (10,000) pounds. Persons holding a valid class A license may also operate vehicles requiring a class B, C, or D license.

(b) Class B. This license shall be issued and valid for the operation of any single vehicle with a manufacturer's gross vehicle weight rating (GVWR) in excess of twenty-six thousand (26,000) pounds, or any such vehicle towing a vehicle not in excess of ten

thousand (10,000) pounds manufacturer's gross vehicle weight rating (GVWR). Persons holding a valid class B license may also operate vehicles requiring a class C license or a class D license.

(c) Class C. This license shall be issued and valid for the operation of any single vehicle or combination of vehicles that does not meet the definition of class A or class B, as defined in this section, but that either is designed to transport sixteen (16) or more people including the driver, or is of any size which does not meet the definition of class A or class B and is used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F. Persons holding a valid class C license may also operate vehicles requiring a class D license.

(d) Class D. This license shall be issued and valid for the operation of a motor vehicle that is not a commercial vehicle as defined in section 49-123, Idaho Code.

(e) "Seasonal driver's license" means a special restricted class B or C driver's license to operate certain commercial vehicles in farm-related industries under restrictions imposed by the department. As used in this definition, "farm-related industry" shall mean custom harvesters, farm retail outlets and suppliers, agrichemical businesses and livestock feeders. Seasonal driver's licenses are not valid for driving vehicles carrying any quantities of hazardous material requiring placarding, except for diesel fuel in quantities of one thousand (1,000) gallons or less, liquid fertilizers, i.e., plant nutrients, in vehicles or implements of husbandry with total capacities of three thousand (3,000) gallons or less, and solid fertilizers, i.e., solid plant nutrients, that are not mixed with any organic substance.

(17) "Driver record" means any record that pertains to an individual's driver's license, driving permit, driving privileges, driving history, identification documents or other similar credentials issued by the department.

(18) "Driver's license endorsements" means special authorizations that are required to be displayed on a driver's license which permit the driver to operate certain types of commercial vehicles or commercial vehicles hauling certain types of cargo, or to operate a motorcycle.

(a) "Endorsement T -- Double/triple trailer" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle authorized to tow more than one (1) trailer.

(b) "Endorsement H -- Hazardous material" means this endorsement is required on a class A, B or C license if the driver is operating a vehicle used in the transportation of materials found to be hazardous according to the hazardous material transportation act and which requires the motor vehicle to be placarded under the federal hazardous materials regulations 49 CFR part 172, subpart F.

(c) "Endorsement P -- Passenger" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle designed to transport sixteen (16) or more peo-

ple including the driver.

(d) "Endorsement N -- Tank vehicle" means this endorsement is required on a class A, B or C license to permit the licensee to operate a vehicle which is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in federal regulations 49 CFR part 171. This definition does not include portable tanks having a rated capacity under one thousand (1,000) gallons.

(e) "Endorsement M -- Motorcycle" means this endorsement is required on a driver's license to permit the driver to operate a motorcycle.

(19) "Driveway" means a private road giving access from a public way to a building on abutting grounds.

(20) "Dromedary tractor" means every motor vehicle designed and used primarily for drawing a semitrailer and so constructed as to carry manifested cargo in addition to a part of the weight of the semitrailer.

SECTION 7. That Section 49-108, Idaho Code, be, and the same is hereby amended to read as follows:

49-108. DEFINITIONS -- G.

(1) "Good cause" means the failure of a dealer to comply with reasonable performance criteria established by a manufacturer, if the dealer was apprised by the manufacturer, in writing, of that failure; and

(a) The notification stated that notice was provided of failure of performance;

(b) The dealer was afforded a reasonable opportunity, for a period of not less than six (6) months, to comply with the criteria; and

(c) The dealer did not demonstrate substantial progress toward compliance with the performance criteria of the manufacturer during the period.

(2) "Gross combination weight rating (GCWR)" <u>for the purposes of chapter 4, title 49, Idaho Code,</u> means the value specified by the manufacturer as the maximum loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon or registered weight rating whichever is greater. Towed units shall not include implements of husbandry. <u>For the purposes of chapter 3, title 49, Idaho Code, "gross combined weight rating (GCWR) is as defined in 49 CFR part 383.</u>

(3) "Gross vehicle weight rating (GVWR)" <u>for the purposes of chapter 4, title 49, Idaho Code,</u> means the value specified by the manufacturer as the maximum loaded weight of a single vehicle or registered weight rating, whichever is greater. <u>For the purposes of chapter 3, title 49, Idaho Code, "gross vehicle weight rating (GVWR) is as defined in 49 CFR part 383.</u>

(4) "Gross weight" means the weight of a vehicle without load plus the weight of any load on that vehicle.

(5) "Group of vehicles" is one motor vehicle operated under its own motive power with one (1) motor vehicle in tow, or one or more motor vehicles in tow in saddlemount fashion, providing that saddlemounting meets the requirements prescribed by the United States department of transportation.

SECTION 8. That Section 49-116, Idaho Code, be, and the same is hereby amended to read as follows:

49-116. DEFINITIONS -- O.

(1) "Operator" means every person who is in actual physical control of a motor vehicle upon a highway or private property open to public use.

(2) "Out of service order" means a temporary prohibition against operating a commercial vehicle as declared by an authorized enforcement officer of a federal, state, Canadian, Mexican or local jurisdiction and which is applicable to a driver, a commercial motor vehicle or a motor carrier operation pursuant to federal regulations 49 CFR part 386.72, 392.5, 395.13 or 396.9, or ~~to similar laws of jurisdictions outside the United States~~ compatible laws, or to the North American uniform out-of-service criteria.

(3) "Owner" means a person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security. "Owner" for the purposes of chapter 12 means the person legally responsible for the operation of a vehicle upon the highways of the state of Idaho, whether as owner, lessee or otherwise.

SECTION 9. That Section 49-202, Idaho Code, be, and the same is hereby amended to read as follows:

49-202. DUTIES OF DEPARTMENT. (1) All registration and driver's license records in the office of the department shall be public records and open to inspection by the public during normal business hours, except for those records declared by law to be for the confidential use of the department, or those records containing personal information subject to restrictions or conditions regarding disclosure. If the department has contracted for a service to be provided by another entity, an additional fee shall be charged by that contractor whether the service is rendered during normal business hours, other than normal business hours or on weekends.

(2) In addition to other fees required by law to be collected by the department, the department shall collect the following:

(a) For certifying a copy of any record pertaining to any vehicle license, any certificate of title, or any driver's license $8.00

(b) For issuing every Idaho certificate of title $8.00

(c) For furnishing a duplicate copy of any Idaho certificate of title $8.00

(d) For issuance or transfer of every certificate of title on a new or used vehicle or other titled vehicle in an expedited manner

(rush titles), in addition to any other fee required by this section $15.00

(e) For furnishing a replacement of any receipt of registration $3.00

(f) For answering inquiries as to registration or ownership of motor vehicles or driver's license records, per vehicle registration, accident report records, title or per driver's license record $4.00

Additional contractor fee, not to exceed $4.00

(g) For services in furnishing copies of files of vehicle or other registrations, vehicle titles, or driver's licenses per hour $10.00

(h) Placing "stop" cards in vehicle registration or title files, each $12.00

(i) For issuance of an assigned or replacement vehicle identification number (VIN) $10.00

(j) For a vehicle identification number (VIN) inspection whether conducted by a city or county peace officer or any other peace officer or designated agent of the state of Idaho, per inspection $3.00

(k) For all replacement registration stickers, each $1.00

(l) For issuing letters of temporary vehicle clearance to Idaho based motor carriers $10.00

(m) For all sample license plates, each $12.00

(n) For filing release of liability statements $2.00

(3) The fees required in this section shall not apply when the service is furnished to any federal, state, county or city peace officer when such service is required in the performance of their duties as peace officers.

(4) The department may enter into agreements with private companies or public entities to provide the services for which a fee is collected in subsection (2)(f) of this section. Such private contractor shall collect the fee prescribed and remit the fee to the department. The contractor shall also collect and retain the additional fee charged for his services.

(5) The department shall pay three dollars ($3.00) of the fee collected by a county assessor or other agent of the department as provided in subsection (2)(a) through (f) of this section, to the county assessor of the county or agent collecting such fee, which shall be deposited with the county treasurer and credited to the county current expense fund. The remainder of the fees collected as provided in that subsection shall be paid by the department to the state treasurer and placed in the state highway account. The fee collected under subsection (2)(j) of this section for a VIN inspection shall be placed in the city general fund if conducted by a city peace officer, in the county current expense fund if conducted by a county peace officer, shall be retained by the special agent authorized to perform the inspection, or paid to the state treasurer and placed to the credit of the department of law enforcement if conducted by the Idaho state police division or in the state highway account if conducted by the department.

(6) The department as often as practicable may provide to law enforcement agencies the record of ~~stolen and recovered motor vehicles~~

~~and~~ suspensions and revocations of driver licenses via the Idaho law enforcement telecommunications system (ILETS).

(7) The department shall provide the forms prescribed in chapter 5 of this title, shall receive and file in its office in Boise, Idaho, all instruments required in chapter 5 of this title to be filed with the department, shall prescribe a uniform method of numbering certificates of title, and maintain in the department indices for such certificates of title. All indices shall be by motor or identification number and alphabetical by name of the owner~~;-and-the-department-shall maintain-two-(2)-separate-files-on-each-vehicle;-one;-a-motor-or-identification-number-file;-the-other-a-file-by-the-name-of-the-owner~~.

(8) The department shall file each registration received under a distinctive registration number assigned to the vehicle and to the owner thereof~~;-alphabetically-under-the-name-of-the-owner;-and-numerically-and-alphabetically-under-the-name-of-the-vehicle~~.

(9) The department shall not renew a driver's license or identification card when fees required by law have not been paid or where fees for past periods are due, owing and unpaid including nonsufficient fund checks, until those fees have been paid.

(10) The department shall not grant the registration of a vehicle when:

(a) The applicant is not entitled to registration under the provisions of this title; or

(b) The applicant has neglected or refused to furnish the department with the information required in the appropriate form or reasonable additional information required by the department, or has failed to comply with the provisions of section 49-436, Idaho Code, in past registration periods; or

(c) The fees required by law have not been paid, or where fees for past registration periods are due, owing and unpaid including nonsufficient fund checks.

(11) The department ~~has~~ or its authorized agents have the authority to request any person, ~~based-upon-evidence;~~ to submit to medical, vision, highway, or written examinations, to protect the safety of the public upon the highways. The department or its authorized agents may exercise such authority based upon evidence which may include, but is not limited to, observations made.

(12) The department shall revoke the registration of any vehicle:

(a) Which the department shall determine is unsafe or unfit to be operated or is not equipped as required by law;

(b) Whenever the person to whom the registration card or registration plate has been issued shall make or permit to be made any unlawful use of the same or permit their use by a person not entitled thereto;

(c) For any violation of vehicle registration requirements by the owner or operator in the current or past registration periods;

(d) Whenever a motor carrier as defined in section 61-801, Idaho Code, has his permit revoked for any cause except at the request of the permit holder, as provided in section 61-808, Idaho Code, or whenever an interstate carrier has his registration revoked by reason of a revocation of his interstate commerce commission operating authority;

(e) For nonpayment by the owner or operator of the vehicle of use

fees computed under sections 49-434 and 49-435, Idaho Code;

(f) For failure of the owner or operator to file the reports required or nonpayment of fees assessed against the owner by the department pursuant to audit under the provisions of section 49-436, Idaho Code;

(g) Identified by any city or county administering a program established by ordinance for the inspection and readjustment of motor vehicles (which program is part of an approved state implementation plan adopted by both the state and federal governments under 42 USC section 7410) as having failed to comply with an ordinance requiring motor vehicle emission inspection and readjustment; provided that no vehicle shall be identified to the department under this subsection (g) unless (i) the city or county certifies to the department that the owner of the motor vehicle has been given notice and had the opportunity for a hearing concerning compliance with the ordinance and has exhausted all remedies and appeals from any determination made at such hearing; and (ii) the city or county reimburses the department for all direct costs associated with the registration revocation procedure.

(13) The department shall not reregister or permit a vehicle to operate on a special trip permit until all fees, penalties and interest have been paid.

(14) The department shall institute educational programs, demonstrations, exhibits and displays.

(15) The department shall cancel a driver's license or identification card when fees required by law have not been paid or where fees ~~for past periods~~ are due, owing and unpaid including nonsufficient fund checks, until those fees have been paid.

(16) The department shall examine persons and vehicles by written, oral, vision and ~~physical~~ skills tests without compulsion except as provided by law.

(17) The department shall employ expert and special help as needed in the department.

(18) The department shall compile accident statistics and disseminate information relating to those statistics.

(19) The department shall cooperate with the United States in the elimination of road hazards, whether of a physical, visual or mental character.

(20) The department shall place and maintain traffic-control devices, conforming to the board's manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this title or to regulate, warn, or guide traffic. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the department except by the latter's permission, except where the duly elected officials of an incorporated city have established speed limits lower than those set by the department on the portion of state highways, excluding controlled access and interstate highways, that pass through residential, urban or business districts within the jurisdiction of the incorporated city. The placement and maintenance of such a traffic control device by a local authority shall be made according to the board's manual and specifications for a uniform system of traffic control devices.

(21) The department may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall find that the structure cannot with safety to itself withstand vehicles traveling at a speed otherwise permissible under this title, shall determine and declare the maximum speed of vehicles which the structure can safely withstand, and shall cause or permit suitable signs stating the maximum speed to be erected and maintained before each end of the structure.

(22) Whenever the department shall determine on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the department may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, and that limit shall be effective when posted upon appropriate fixed or variable signs, except in cases where the duly elected officials of an incorporated city have established speed limits lower than those set by the department on portions of state highways, excluding controlled access and interstate highways, that pass through residential, urban or business districts within the jurisdiction of the incorporated city.

(23) The department shall regulate or prohibit the use of any controlled-access highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(24) The department shall erect and maintain traffic-control devices on controlled-access highways on which any prohibitions are applicable.

(25) Wherever a highway crosses one or more railroads at grade, the department or local authorities within their respective jurisdictions shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when in the determination of public highway agencies the existence of stop signs at a given crossing would constitute a greater hazard than their absence based on a recognized engineering study.

Nothing in this subsection shall be construed as granting immunity to any railroad company as to liability, if any, for an accident which might occur at a crossing where stop signs are erected and in place, but liability, if any, shall be determined as provided by law. Liability on the part of governmental authorities on account of absence of any stop sign at a crossing shall be determined as provided by law.

(26) The department and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of those zones and when signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey those directions.

(27) The department and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of

the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this title or title 40, Idaho Code.

(28) The department and local highway authorities within their respective jurisdictions may place official traffic-control devices prohibiting, limiting or restricting the stopping, standing or parking of vehicles on any highway where such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles unduly interferes with the free movement of traffic thereon.

(29) On any informational material printed after July 1, 1995, by or at the order of the department and distributed to counties, school districts or individuals for the purpose of assisting a person to successfully pass a driver's license test, the department shall include material about the state's open range law and responsibilities, liabilities and obligations of drivers driving in the open range.

SECTION 10. That Section 49-237, Idaho Code, be, and the same is hereby amended to read as follows:

49-237. RECORD OF CONVICTIONS TO BE SENT TO DEPARTMENT. Upon the conviction of any person for the violation of any of the provisions of this title, the judicial officer before whom the proceedings are had shall immediately certify the facts of the case to the department, in either paper or electronic form, including the name and address of the ~~offender, the character of the punishment~~ parties charged, the number, if any, of his driver's license, the registration number of the motor vehicle involved, the nature of the offense, the date of the hearing, the plea, the judgment, the sentence, and the amount of any fine imposed and paid. The department shall enter the facts either in the records of registered vehicles, or in the records of registered dealers, as the case may be, opposite the name of the person so convicted, and in the case of any other person, in a record of offenders, to be kept for that purpose. If the conviction be reversed on appeal, the person whose conviction has been reversed may serve on the department a certified copy of the order of reversal, and the department shall enter the reversal in the proper records.

SECTION 11. That the heading for Chapter 3, Title 49, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 3
~~OPERATOR AND CHAUFFEUR~~ MOTOR VEHICLE DRIVER'S LICENSES

SECTION 12. That Section 49-302, Idaho Code, be, and the same is hereby amended to read as follows:

49-302. WHAT PERSONS ARE EXEMPT FROM LICENSE. The following persons are exempt from licensing if driving privileges are not suspended, cancelled, revoked, disqualified, denied or refused:

(1) Any person while driving or operating any ~~special--mobile equipment,~~ farm tractor~~,~~ or implement of husbandry ~~moved~~ when incidentally operated on a highway.

(2) Farmers are exempt from obtaining a class A, B or C driver's license to operate a commercial motor vehicle which is:

(a) Controlled and operated by a farmer, including operation by employees or family members; and

(b) Used to transport either agricultural products, farm machinery, farm supplies, or both, to or from a farm; and

(c) Not used in the operations of a common or contract motor carrier; and

(d) Used within one hundred fifty (150) miles of the person's farm.

(3) Any person is exempt from obtaining a class A, B or C driver's license for the operation of ~~fire-fighting-or-other-emergency equipment-used-in-response-to-emergencies-involving~~ commercial motor vehicles which are necessary to the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulations.

(4) Any person is exempt from obtaining a class A, B or C license to operate a commercial vehicle which is exclusively used to transport personal possessions or family members for nonbusiness or recreational purposes.

(5) A nonresident who is at least fifteen (15) years of age and who has in his immediate possession a valid driver's license issued to him in his home state or country may operate a motor vehicle in Idaho only as a class D operator with driving privileges restricted to daylight hours only, and with full privileges at sixteen (16) years of age, and only if Idaho residency is not established.

(6) A nonresident who is at least fifteen (15) years of age and who has in his possession a valid driver's license with a motorcycle endorsement or who has a valid motorcycle driver's license issued to him in his home state or country may operate a motorcycle in Idaho with driving privileges restricted to daylight hours only, and with full privileges at sixteen (16) years of age.

(7) A nonresident who has in his immediate possession a valid commercial driver's license issued to him in his home state or country may operate a motor vehicle in Idaho.

(8) ~~A--nonresident--who--is--at-least-eighteen-(18)-years-of-age, whose-home-state-or-country-does-not-require-the-licensing--of--operators,--may--operate--a-motor-vehicle-as-a-class-D-operator-only,-for-a period-of-not-more-than-ninety-(90)-days-in-any-calendar-year,-if--the motor--vehicle-is-currently-registered-in-the-home-state-or-country-of the-nonresident.~~

~~(9)~~ A nonresident on active duty in the armed forces of the United States who has a valid driver's license issued by his home jurisdiction, and such nonresident's spouse or dependent son or daughter who has a valid driver's license issued by such person's home jurisdiction.

(~~10~~9) Any active duty military personnel, active duty U.S. coast guard personnel, and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training and national guard military technicians who as civilians are required to wear military uniforms and are subject to the code of military justice, are exempt from obtaining a com-

mercial driver's license to operate military vehicles. This exemption does not apply to U.S. reserve technicians.

SECTION 13. That Section 49-303, Idaho Code, be, and the same is hereby amended to read as follows:

49-303. WHAT PERSONS SHALL NOT BE LICENSED. The department shall not issue any driver's license, instruction permit, driver's training permit, privileges or right to drive and if issued, may revoke or cancel the driver's license of a person who:

(1) As an operator of a vehicle requiring a class D driver's license, is under the age of seventeen (17) years, except that the department may issue a driver's license to any person who has successfully completed an approved driver training course and who is at least fifteen (15) years of age, with driving privileges restricted to daylight hours only, and with full privileges at sixteen (16) years of age. The restriction of daylight hours only shall mean that period of time one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset.

(2) As an operator of a vehicle requiring a class D driver's license, is under the age of seventeen (17) years and has not successfully completed an approved driver training course.

(3) As an operator of a commercial vehicle requiring a class A, B or C driver's license is under the age of eighteen (18) years.

(4) Applicants with less than one (1) year of driving experience, as evidenced by a ~~valid class D~~ previous driver's license shall not be issued a class A, B or C driver's license.

(5) As a driver has had his license, instruction permit, driver training permit, privileges or right to drive suspended for the duration of the suspension, nor to any person whose license has been revoked, ~~until the expiration of one (1) year after the license was revoked~~ suspended, cancelled or disqualified by this state or any other jurisdiction.

(6) Is an habitual drunkard, or is addicted to the use of narcotic drugs.

(7) Has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.

(8) Is required by the provisions of this chapter to take an examination, unless that person shall have successfully passed such examination.

(9) May be required under any law of this state to furnish proof of financial responsibility and who has not furnished that proof.

(10) The department has good cause to believe that the operation of a motor vehicle on the highways by that person would be harmful to public safety or welfare.

(11) Is disqualified for a class A, B or C license, except he may be issued a class D driver's license.

(12) Is under eighteen (18) years of age and is not enrolled in school, has not received a waiver pursuant to or has not satisfactorily completed school as provided in section 49-303A, Idaho Code.

(1~~2~~3) Is not a resident of the state of Idaho.

SECTION 14. That Section 49-303A, Idaho Code, be, and the same is hereby amended to read as follows:

49-303A. DRIVER'S LICENSE ISSUED TO CERTAIN PERSONS UNDER THE AGE OF EIGHTEEN YEARS. (1) Attendance requirements. The department may issue a driver's license or instruction permit to a minor younger than eighteen (18) years of age if, at the time of application, the minor:

(a) Has received a high school diploma, a high school equivalency diploma, a special diploma or a certificate of high school completion;

(b) Is enrolled in a public or private school and satisfies relevant attendance requirements;

(c) Is enrolled in a study course in preparation for a test of general educational development and satisfies relevant attendance requirements;

(d) Is enrolled in a home education program and satisfies the requirements of rules of the state board of education and the state department of education for such programs; provided that students shall be in compliance with the requirements and have been enrolled in the home education program for at least one (1) school year prior to verification of the attendance request, unless documentation of meeting the requirements of this section in the school year contiguous to enrollment in the home education program can be provided;

(e) Is enrolled in an accredited college or university;

(f) Is enrolled in a postsecondary vocational program or a postsecondary adult vocational program and satisfying relevant attendance requirements;

(g) Is enrolled in a job training program pursuant to state or federal law and satisfying relevant attendance requirements; or

(h) Is enrolled in other educational activities approved by the board of trustees of the school district and satisfying relevant attendance requirements.

(2) (a) An applicant for a driver's license who is under the age of eighteen (18) shall provide written verification of compliance with the requirements of subsection (1) of this section or receipt of a waiver therefrom pursuant to subsection (3) of this section to the department. The necessary verification shall be obtained from the school district. If the applicant is enrolled in or has graduated from a private high school, the verification shall be obtained by the applicant from the governing body of the private school. A school district shall not refuse to provide written verification of compliance with the requirements of this section to the department.

(b) Schools may implement interventions designed to improve student attendance with their district policies and procedures.

(c) When applying for a license or permit, an applicant under age eighteen (18) must provide written verification to the department of compliance with the requirements of subsection (1) of this section or receipt of a waiver therefrom, pursuant to subsection (3) of this section. Written verification shall be obtained from the applicant's school. The applicant's school shall not refuse to provide written verification of compliance with the require-

ments of this section to the department.

(3) (a) A public school principal, or the principal's designee, or the designee of the governing body of a private school shall provide written notification to a minor and the minor's parent, guardian or custodian of the school district's or private school's intent to request that the department suspend the minor's driving privileges because the minor has dropped out of school and has failed to comply with the requirements of subsection (1) of this section.

(b) The minor or the parent, guardian or custodian of the minor shall have fifteen (15) calendar days from the date of receipt of this notice to request a hearing before the public school principal, or the principal's designee, or the designee of the governing body of a private school for the purpose of reviewing the pending suspension. The hearing shall be conducted within thirty (30) calendar days after the public school principal, or the principal's designee, or the designee of the governing body of a private school receives the request.

(c) The public school principal, or the principal's designee, or the designee of the governing body of a private school shall waive the requirements of subsection (1) of this section for any minor under its jurisdiction for whom a personal or family hardship requires that the minor have a driver's license for his or her own or his or her family's employment or medical care. The public school principal, or the principal's designee, or the designee of the governing body of a private school shall take into account the recommendations of teachers, other school officials, guidance counselors or academic advisors prior to granting a waiver to the requirements of subsection (1) of this section.

(d) The hardship waiver provided in paragraph (c) of this section shall be requested, if desired by the minor or the minor's parent, guardian or custodian at the initial hearing.

(4) Any person denied a hardship waiver by a public school principal, or the principal's designee, or the designee of the governing body of a private school may appeal the decision to the board of trustees of the school district or the governing body of the private school. The public or private school shall notify the department of all students not in compliance with subsection (1) of this section or who have been granted a hardship waiver pursuant to subsection (3) of this section.

(5) Upon receiving written verification that the reinstatement fees have been paid and the minor is again in compliance with the requirements of subsection (1) of this section, the department shall reinstate the minor's privilege to drive. Thereafter, if the school district determines that the minor is not in compliance with the requirements of subsection (1), the department shall suspend the minor's driving privilege until the minor is eighteen (18) years old or otherwise satisfies the requirements of subsection (1) of this section, whichever occurs first.

(6) The department shall report quarterly to each school district the disposition of all requests to suspend driver's licenses of students of that district. Beginning with the 1996-97 school year, each school district and each private school shall report the number of

notifications issued of possible student driver's license suspensions based on nonattendance, requests to the department to suspend a driver's license and student driver's licenses actually suspended.

SECTION 15. That Section 49-304, Idaho Code, be, and the same is hereby amended to read as follows:

49-304. MOTORCYCLE ENDORSEMENT. The department shall issue a motorcycle "M" endorsement on a driver's license to applicants who complete the requirements to operate a motorcycle.

(1) Any person who holds a valid Idaho driver's license on September 1, 1994, may operate a motorcycle without a motorcycle "M" endorsement until that driver's license expires or September 1, 1998, whichever occurs first.

(2) Any person who applies for a driver's license or renewal of a license after September 1, 1994, may also apply for a motorcycle "M" endorsement. Until September 1, 1998, the requirements for obtaining a motorcycle "M" endorsement are:

(a) The applicant shall be tested by written examination for his knowledge of safe motorcycle operating practices and traffic laws specific to the operation of motorcycles upon payment of the fee specified in section 49-306, Idaho Code.

(b) Upon successful completion of the knowledge test and upon payment of the fee required for an "M" endorsement, the applicant shall obtain a motorcycle "M" endorsement on his driver's license.

(3) ~~After--September-1,-1996,-n~~No person under the age of twenty-one (21) years may apply for or obtain a motorcycle "M" endorsement on his driver's license unless he has successfully completed a motorcycle rider training course approved under the provisions of chapter 48, title 33, Idaho Code, in addition to satisfying the requirements specified in subsection (2) of this section. The provisions of this subsection shall not be effective unless and until the motorcycle rider training course is fully implemented by the department of education.

(4) Any person who applies for a motorcycle endorsement on a driver's license after September 1, 1998, in addition to the requirements specified in subsection (2) of this section, may also be required to pass the motorcycle "M" skills test before he can obtain the motorcycle "M" endorsement.

SECTION 16. That Section 49-305, Idaho Code, be, and the same is hereby amended to read as follows:

49-305. INSTRUCTION PERMITS -- TEMPORARY LICE~~NS~~ES TEMPORARY DRIVER'S TRAINING INSTRUCTION PERMIT. (1) Upon passage of the required knowledge tests appropriate for the vehicle being operated, the department may issue an instruction for the type of vehicle(s) the person will be operating, entitling the applicant, while having the permit in his immediate possession, to drive a motor vehicle upon the highways for a period of ~~at-least~~ up to one hundred eighty (180) days. That person must be accompanied by an adult driver who holds a driver's license appropriate for the vehicle being operated and who is actually occupying a seat beside the driver.

(a) Any person who has reached the age of fifteen (15) years, and

who has successfully completed an approved driver training course may apply for a class D instruction permit with driving privileges restricted to daylight hours only, and with full privileges at sixteen (16) years of age. The restriction of daylight hours only shall mean that period of time one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset. Any person applying for an instruction permit or driving privileges who is under the age of eighteen (18) years shall be in compliance with school attendance requirements of section 49-303A, Idaho Code.

(b) Any person who has reached the age of eighteen (18) years may apply for a class A, B or C instruction permit.

(c) On and after April 1, 1992, federal highway administration rules and regulations concerning instruction permits, as specified in 49 CFR part 383, will be in effect for commercial motor vehicles operators.

(2) The department may, ~~in~~ at its discretion, issue a temporary class D driver's license to an applicant for a class D driver's license permitting him to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The temporary license may be cancelled at the department's discretion at any time after issuance. The temporary license must be in the applicant's immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's driver's license has been issued or for good cause has been refused.

(3) If an applicant for a driver's training instruction permit cannot provide a certified copy of his birth certificate at the time of application, the department may issue a temporary driver's training instruction permit upon receipt of both a photo identification and a letter from the school verifying the applicant's enrollment in a driver training course. ~~Upon receipt of the certified copy of the birth certificate, the department shall issue the driver's training instruction permit.~~

(4) The department may issue a motorcycle endorsement instruction permit to an applicant who has a valid driver's license and who has successfully completed the motorcycle riders knowledge test and paid the appropriate fees. The permit entitles the applicant, while having the permit in his immediate possession, ~~and while riding under the direct supervision of any person eighteen (18) years or older who possesses a valid driver's license, and after September 1, 1998, who also possesses a motorcycle endorsement,~~ to operate a motorcycle upon the highways for a period not to exceed one hundred eighty (180) days. If the permittee passes the skills test for a motorcycle endorsement within one hundred eighty (180) days of issuance of the motorcycle endorsement instruction permit, he shall not be required to pay the motorcycle endorsement fee. ~~"Direct supervision" means that any person eighteen (18) years of age or older who possesses a valid driver's license, and after September 1, 1998, who also possesses a motorcycle endorsement, is within two hundred (200) feet of the permittee at all times during the permittee's operation of a motorcycle.~~ A person holding a motorcycle instruction permit shall not carry any passenger while operating a motorcycle, shall not operate a motorcycle except during the hours of daylight only and shall not operate a motorcycle

upon any interstate highway system.

A violation of the conditions of a motorcycle endorsement instruction permit is a misdemeanor. The department shall cancel the permit whether or not such violation results in conviction of the misdemeanor.

SECTION 17. That Section 49-306, Idaho Code, be, and the same is hereby amended to read as follows:

49-306. APPLICATION FOR DRIVER'S LICENSE OR INSTRUCTION PERMIT. (1) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the department and shall be verified by the applicant before a person authorized to administer oaths. Officers and employees of the department and sheriffs and their deputies are authorized to administer the oaths without charge. Every application for a permit, extension or driver's license shall be accompanied by the following fee, none of which is refundable:

(a) Class A, B, C license with endorsements $24.50
(b) Class D license $20.50
(c) Class A, B, C instruction permit $15.50
(d) Class D instruction permit $11.50
(e) Duplicate driver's license or permit issued under section 49-318, Idaho Code $11.50
(f) Driver's license extension issued under section 49-319, Idaho Code ..... $ 6.50
(g) License classification change (upgrade) $15.50
(h) Endorsement addition $11.50
(i) Class A, B, C skills tests $35.00
(j) Class D skills test $15.00
(k) Motorcycle endorsement skills test .....$ 5.00
(l) Knowledge test ..... $ 3.00
(m) Seasonal driver's license..... $23.50
(n) One time motorcycle "M" endorsement $11.50
(o) Motorcycle endorsement instruction permit $11.50
(p) Restricted driving permit $35.00

(2) Every application shall state the full name, date of birth, place of birth, sex, Idaho residence address and mailing address, if different, of the applicant, height, weight, hair color, and eye color, and for a class A, B, or C driver's license or seasonal driver's license the applicant's social security number as verified by the applicant's social security card. A driver's license or instruction permit issued on and after January 1, 1993, shall not contain an applicant's social security number. Applications on file shall be exempt from disclosure except as provided in sections 49-202, 49-203, 49-203A and 49-204, Idaho Code. Every application shall also state whether the applicant has previously been licensed as a driver, and if so, when and by what state or country, and whether a driver's license or privileges have ever been suspended, revoked, denied, disqualified, cancelled or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, denial, disqualification, cancellation or refusal and the applicant's oath that all information is correct as signified by the applicant's signature.

The applicant may be required to submit proof of identity and date of birth as set forth in a certified copy of his birth certificate and other satisfactory evidence to satisfy the issuing officer or the department. ~~If an applicant for a driver's training instruction permit cannot provide a certified copy of his birth certificate at the time of application, the department may issue a temporary driver's training instruction permit in accordance with the provisions of section 49-305, Idaho Code.~~

(3) Whenever an application is received from a person previously licensed in another jurisdiction, the department shall request a copy of the driver's record from the other jurisdiction and shall contact the national driver register. When received, the driver's record from the previous jurisdiction shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(4) Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

(5) The department shall contact and notify the commercial driver license information system of the proposed application for a class A, B or C driver's license to insure identification of the person and to obtain clearance to issue the license.

(6) When the fees required under this section are collected by a county officer, they shall be paid over to the county treasurer not less often than monthly, who shall immediately:

(a) Deposit an amount equal to five dollars ($5.00) from each driver's license or instruction permit application fees, application for a duplicate driver's license or permit, classification change, seasonal driver's license and additional endorsement in the current expense fund; and

(b) Deposit two dollars and fifty cents ($2.50) from each motorcycle endorsement and motorcycle endorsement instruction permit fee in the current expense fund; and

(c) Deposit an amount equal to three dollars ($3.00) from each fee for a knowledge test in the current expense fund; and

(d) Deposit an amount equal to five dollars ($5.00) from each fee for a motorcycle endorsement skills test in the current expense fund; provided however, if a contractor administers the skills test he shall be entitled to the five dollar ($5.00) fee;

(e) Remit the remainder to the state treasurer; and

(f) Deposit eleven dollars and fifty cents ($11.50) from each fee for a class D skills test into the county current expense fund, unless the test is administered by a department-approved contractor, in which case the contractor shall be entitled to eleven dollars and fifty cents ($11.50) of each fee.

(7) When the fees required under this section are collected by a state officer or agency, they shall be paid over to the state treasurer.

(8) The state treasurer shall distribute the moneys received from fees imposed by the provisions of this section, whether collected by a county officer or by a state officer or agency as follows:

(a) Two dollars ($2.00) of each fee for a driver's license or seasonal driver's license shall be deposited in the emergency med-

ical services account II created in section 39-146A, Idaho Code; and

(b) Sixteen dollars and fifty cents ($16.50) of each fee for a seasonal or class A, B, or C driver's license shall be deposited in the state highway account; and

(c) Ten dollars and fifty cents ($10.50) of each fee for a class A, B, or C instruction permit or driver's license classification change shall be deposited in the state highway account; and

(d) Six dollars and fifty cents ($6.50) of each fee for a duplicate seasonal or class A, B, or C driver's license, class A, B, or C driver's license extension, or additional endorsement shall be deposited in the state highway account; and

(e) Four dollars ($4.00) of each fee for a motorcycle endorsement and motorcycle endorsement instruction permit shall be deposited in the state highway account; and

(f) Five dollars and thirty cents ($5.30) of each fee for a class D driver's license shall be deposited in the driver training account; and

(g) Seven dollars and twenty cents ($7.20) of each fee for a class D driver's license shall be deposited in the highway distribution account; and

(h) Two dollars and sixty cents ($2.60) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the driver training account; and

(i) Three dollars and ninety cents ($3.90) of each fee for a class D instruction permit, duplicate class D license or permit, and class D license extension shall be deposited in the highway distribution account; and

(j) Five dollars ($5.00) of each fee for a class A, B, or C skills test shall be deposited in the state highway account; and

(k) One dollar ($1.00) of each fee for a class A, B, C or D driver's license shall be deposited in the motorcycle safety program fund established in section 33-48904, Idaho Code.

(l) Three dollars and fifty cents ($3.50) of each fee for a class D skills test shall be deposited into the state highway account.

(9) The contractor administering a class A, B, or C skills test shall be entitled to thirty dollars ($30.00) of the skills test fee. A contractor administering a class A, B, or C skills test may collect an additional fee for the use of the contractor's vehicle for the skills test.

(10) Thirty-five dollars ($35.00) of each restricted driving permit shall be deposited in the state highway account.

(11) The department may issue seasonal class B or C driver's licenses that:

(a) Will only be valid for driving commercial vehicles that normally require class B or C commercial driver's licenses;

(b) Will be valid for seasonal periods that begin on the date of issuance and that are not to exceed one hundred eighty (180) days in a twelve (12) month period;

(c) May only be obtained twice in a driver's lifetime;

(d) Are valid only within a one hundred fifty (150) mile radius of the place of business or farm being serviced; and

(e) Will be valid only in conjunction with valid Idaho class D driver's licenses.

(1~~1~~2) The department may issue seasonal class B or C driver's licenses to drivers who:

(a) Have not violated the single license provisions of 49 CFR part 383;

(b) Have not had any license suspensions, revocations or cancellations;

(c) Have not had any convictions in any vehicle for any offense listed in section 49-335(1) or 49-335(2), Idaho Code, or any one (1) serious traffic offense;

(d) Have at least one (1) year of driving experience with a class D or equivalent license in any type motor vehicle; and

(e) Are at least sixteen (16) years old.

SECTION 18. That Section 49-307, Idaho Code, be, and the same is hereby amended to read as follows:

49-307. FEE FOR DRIVER'S TRAINING INSTRUCTION PERMIT. (1) Every enrollee of a driver training course in a public school shall pay a nonrefundable fee of thirty dollars ($30.00). Twenty-five dollars ($25.00) of each fee so imposed shall be deposited in the driver training account and five dollars ($5.00) will be deposited in the county current expense fund.

(2) Every enrollee of a driver's training course offered by a commercial business shall pay a nonrefundable fee of ten dollars ($10.00). Five dollars ($5.00) of the fee so imposed shall be deposited in the driver training account and five dollars ($5.00) shall be deposited in the county current expense fund.

(3) Each enrollee of a driver training course shall provide the type of information required for a driver's license or instruction permit, but the driver's training instruction permit shall be issued to the instructor of the course, and the driver training instruction permit shall expire one (1) year from the issue date.

(4) No enrollee of any driver training course shall be allowed to complete the course unless he has obtained a driver's training instruction permit.

SECTION 19. That Section 49-313, Idaho Code, be, and the same is hereby amended to read as follows:

49-313. EXAMINATION OF APPLICANTS. (1) The sheriff, his deputy or authorized agents of the department shall examine every applicant for an instruction permit, seasonal driver's license, or a driver's license or a motorcycle endorsement, except as otherwise provided by law. ~~It~~ The examination shall include a test of the applicant's eyesight, ~~and--hearing,~~ his ability to read and understand highway signs regulating, warning, and directing traffic. A skills test shall be required for an applicant who has not been previously licensed for the class of license requested, or who holds a license issued by another country unless a reciprocal agreement is in force. However, a~~A~~ skills test may be required for any and all other applicants at the discretion of the examiner or department for a class A, B, C or D driver's

license or a motorcycle endorsement. In addition, the applicant's knowledge of traffic laws of this state and when a motorcycle endorsement is applied for, the applicant's knowledge of safe motorcycle operating practices and traffic laws specifically relating to motorcycle operation shall be tested by a written examination, except as provided in section 49-319, Idaho Code. At the discretion of the examiner, the prescribed written examination may be conducted orally.

(2) The knowledge and skill examinations for applicants for driver's licenses in class A, B or C shall be conducted in compliance with 49 CFR part 383.

(3) The skill test for a class A, B, C or D driver's license or for any endorsement ~~other than a motorcycle endorsement~~ shall be given by the department or its authorized agents. The skills examiner for a motorcycle endorsement shall be certified by the department of education.

(4) Any person who has successfully completed an approved driver training course and who applies for a driver's license more than three (3) months after completion of the driver training course shall be required to retake the skill test in addition to any other tests required upon application for a driver's license.

(5) The department shall not issue a tank, double/triple trailer, or hazardous material endorsement unless the applicant, in addition to all other applicable qualifications, has passed an appropriate knowledge test. The department shall not issue a passenger endorsement unless the applicant, in addition to all other applicable qualifications, has passed an appropriate knowledge and skills test.

(6) Any person failing to pass a knowledge or skill test for a class A, B, C or D driver's license, or a knowledge test for a seasonal driver's license, or any endorsement may not retake the test within three (3) business days of the failure.

(7) Any person retaking a knowledge or skill test for a driver's license shall pay the appropriate testing fee as specified in section 49-306, Idaho Code.

(8) ~~A skill examination for a class A, B or C driver's license may be waived for an applicant who certifies within the preceding two (2) years:~~

~~(a) He has not violated the single license provisions of 49 CFR part 383;~~

~~(b) He has not had any license suspension, revocation or cancellation;~~

~~(c) He has not had any conviction for any type of motor vehicle for any of the disqualification offenses contained in 49 CFR part 383.51;~~

~~(d) He has not had any violation of state or local laws relating to motor vehicle traffic control, arising in connection with any traffic accident, and has no record of an accident in which he was at fault; and~~

~~(e) He is regularly employed in a job requiring operation of a commercial motor vehicle; and~~

~~(f) He has previously taken and passed a skills test given by a state classified licensing and testing system and that the test was behind the wheel in a representative vehicle for that applicant's driver's license classification; or~~

~~(g)--He--has-operated,-for-at-least-two-(2)-years-immediately-preceding-application-for-a-commercial-driver's--license,--a--vehicle representative--of--the--commercial--motor--vehicle-he-operates-or expects-to-operate.~~

~~(9)~~ The motorcycle skills test for a motorcycle endorsement shall be waived by the department:

(a) On and after September 1, 1998, if the applicant presents satisfactory evidence of successful completion of a recognized motorcycle rider training course approved by the department of education;

(b) On and after September 1, 1998, if the applicant presents evidence of a motorcycle endorsement on his current license by a state or province which requires a motorcycle skills test equivalent to that required by Idaho law as determined by the department of education;

(c) Until September 1, 1998.

(~~10~~9) At the discretion of the department, an alternate skills test for the motorcycle endorsement may be administered when the endorsement is for operation of a three-wheeled motorcycle only.

(~~11~~0) The department or its authorized agents may refuse to give an applicant a skills test if there are reasonable grounds to believe that the safety of the applicant, public, or the examiner would be jeopardized by doing so. Reasonable grounds would include, but not be limited to, the applicant's inability to pass the eye test, written tests, or a statement by a licensed physician stating the applicant is not physically able to drive a motor vehicle.

(~~12~~1) The department or its authorized agents may deny issuance or renewal of a driver's license or endorsement to any applicant who does not meet the licensing requirements for the class of driver's license or endorsement being renewed or issued.

(~~13~~2) Skill examinations for seasonal driver's licenses shall be waived.

SECTION 20. That Section 49-315, Idaho Code, be, and the same is hereby amended to read as follows:

49-315. LICENSES ISSUED TO DRIVERS. (1) The department shall issue to every qualifying applicant a driver's license as applied for, which shall bear a distinguishing number assigned to the licensee, the full name, date of birth, Idaho residence address, sex, weight, height, eye color, hair color, color photograph, name of this state, date of issuance, date of expiration, license class, endorsements, restrictions and "under 21 until (month, day, year)", and any other distinguishing printing of the words "under 21" on the license, if applicable, and the applicant's signature. No driver's license shall be valid until it has been signed on the signature line of the license by the licensee.

(2) Every driver's license shall bear a color photograph of the licensee, which shall be taken by the examiner at the time the application is made. The photograph shall ~~normally~~ be taken without headgear or other clothing or device that disguises or otherwise conceals the face or head of the applicant~~,-but-the--requirement--for--an uncovered--face--photograph~~. A waiver may be ~~waived~~ granted by the

department allowing the applicant to wear headgear or other head covering for medical, religious or safety purposes so long as the face is not disguised or otherwise concealed. A driver's license may contain a statement or indication of the medical condition of the licensee.

(3) The department shall notify the commercial driver license information system that a class A, B or C driver's license has been issued as required by 49 CFR part 383.

(4) A licensee desiring to donate any or all organs or tissue in the event of death, pursuant to the provisions for donation of anatomical gifts as set forth in chapter 34, title 39, Idaho Code, at the option of the donor may indicate this desire on the driver's license by the imprinting of the word "donor" on the license.

SECTION 21. That Section 49-318, Idaho Code, be, and the same is hereby amended to read as follows:

49-318. DUPLICATE DRIVER LICENSES. In the event that any instruction permit, class A, B, C, or D or seasonal driver's license is lost or destroyed, or a name of a licensee is changed by marriage or otherwise legally changed, the person to whom the permit or driver's license was issued may, upon payment of the fee fixed in section 49-306, Idaho Code, and upon furnishing satisfactory proof to the department that the permit, class A, B, C, or D or seasonal driver's license has been lost or destroyed, or the name has been legally changed, ~~obtain~~ apply for a duplicate or substitute permit or driver's license together with appropriate endorsements that may have existed on the previous permit or license. The applicant shall provide proof of identity and date of birth as set forth in a certified copy of his birth certificate and other satisfactory evidence. In the case of a name change, the applicant shall provide legal documentation to verify the change in accordance with department rules.

SECTION 22. That Section 49-319, Idaho Code, be, and the same is hereby amended to read as follows:

49-319. EXPIRATION AND RENEWAL OF DRIVER'S LICENSE. (1) Every Idaho driver's license issued to a driver shall expire on the licensee's birthday in the fourth year following the issuance of the driver's license. Every driver's license that ~~has~~ is not, as provided by law, ~~been~~ suspended, revoked or disqualified in this state or any other jurisdiction shall be renewable on or before its expiration, but not more than twelve (12) months before, upon application, payment of the required fee, and satisfactory completion of the required eyesight ~~and hearing~~ examination. No knowledge test shall be required for renewal of a driver's license, except for renewal of a hazardous material endorsement. Appropriate knowledge and skill tests shall be required for an upgrade in a driver's license class or an endorsement addition. In the case of a name change, the applicant shall provide legal documentation to verify the change in accordance with department rules.

(2) When a driver's license has been expired for less than twelve (12) months, the renewal of the driver's license shall start from the original date of expiration regardless of the year in which the appli-

cation for renewal is made. If the driver's license is expired for ~~more than~~ twelve (12) months or more, the applicant shall be required to take the knowledge, skills and vision test and the application shall expire on the licensee's birthday in the fourth year following issuance of the driver's license.

(3) (a) If a driver's license has expired or will expire and the licensee is temporarily out-of-state except on active military duty, and the driver's license has not, as provided by law, been suspended, revoked, cancelled, denied, refused or disqualified, the licensee may request in writing on a form prescribed by the department an extension of the driver's license. The request shall be accompanied by the fee fixed in section 49-306, Idaho Code, and the extension shall be less than a twelve (12) month period. If the department determines that an extension of the driver's license is necessary, it may issue a certificate of extension showing the date to which the expired driver's license is extended, and this certificate shall be attached to the expired driver's license. Certificates of extension are limited to one (1) per licensee.

(b) Upon returning to the state of Idaho, the licensee shall within ten (10) days, apply for a renewal of the expired driver's license and surrender the certificate of extension and the expired driver's license.

(c) A hazardous material endorsement cannot be extended.

(4) An Idaho driver's license issued to any person prior to serving on active duty in the armed forces of the United States, or a member of the immediate family accompanying such a person, if valid and in full force and effect upon entering active duty, shall remain in full force and effect and shall, upon application, be extended for a period of four (4) years so long as active duty continues, if the driver's license is not suspended, denied, disqualified, cancelled or revoked, as provided by law, during the active duty, and the driver's license shall remain in full force and effect sixty (60) days following the date the holder is released from active duty.

(5) The department may use a mail renewal process for class D licenses based on criteria established by rule.

(6) A seasonal driver's license is only valid for a one hundred eighty (180) day period from the date of issuance. Only one (1) seasonal driver's license may be obtained in any twelve (12) month period, and may only be obtained twice in a driver's lifetime.

SECTION 23. That Section 49-320, Idaho Code, be, and the same is hereby amended to read as follows:

49-320. NOTICE OF CHANGE OF ADDRESS. It is the responsibility of every licensed driver and every person applying for a driver's license to keep a current address on file with the department.

(1) Whenever any person after applying for or receiving a driver's license shall move from the address shown in the application or in the driver's license issued, that person shall, within ~~fourteen~~ thirty (~~14~~30) days, notify the department in writing of the old and new addresses.

(2) Whenever any statute or rule requires a driver to receive

notice of any official action with regard to the person's driver's license or driving privileges taken or proposed by a court or the department, notification by certified mail at the address shown on the application for a driver's license or at the address shown on the driver's license or at the address given by the driver, shall constitute all the legal notice that is required.

SECTION 24. That Section 49-321, Idaho Code, be, and the same is hereby amended to read as follows:

49-321. RECORDS TO BE KEPT BY THE DEPARTMENT. (1) The department shall file every application for a driver's license received by it and shall maintain suitable indices containing:

(a) All applications denied and on each note the reason for denial;

(b) All applications granted;

(c) The name of every licensee whose driver's license has been suspended, revoked, cancelled, denied or disqualified by the department and after each name note the reasons for the action;

(d) The driver's license number for the applicant; and

(e) The social security number of the applicant for a commercial driver's license.

(2) The department shall also file all accident reports and abstracts of court records of convictions received by it under the law in either paper or electronic form and maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions and the traffic accidents in which the licensee has been involved shall be readily ascertainable and available for consideration of the department upon any application for renewal of a driver's license and at other suitable times.

(3) The department of health and welfare, on or about the 25th day of each month shall, upon the request of the department, furnish the department a listing showing the name, age, county of residence, and residence address of each Idaho resident who has died during the preceding month. The listing shall be used only for purposes of updating the driver's license files of the department and shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

SECTION 25. That Section 49-324, Idaho Code, be, and the same is hereby amended to read as follows:

49-324. SUSPENDING RESIDENT'S LICENSE AND PRIVILEGES UPON CONVICTION, ADMINISTRATIVE ACTION OR COURT ORDER IN ANOTHER STATE. The department shall suspend, disqualify or revoke the driver's license or privilege of any resident of this state or the privilege of a nonresident to operate a motor vehicle in this state upon receiving notice of the conviction, administrative action or court order of that person in another state of an offense which, if committed in this state, would be grounds for the suspension, disqualification or revocation of the driver's license and privileges of the driver. The department shall forward a certified copy or electronic transfer to the national driver register.

SECTION 26. That Section 49-326, Idaho Code, be, and the same is hereby amended to read as follows:

49-326. AUTHORITY OF DEPARTMENT TO SUSPEND, DISQUALIFY OR REVOKE DRIVER'S LICENSE AND PRIVILEGES. (1) If the court has not ordered the suspension of a license or privileges, the department is authorized to suspend, disqualify or revoke the license or privileges of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the driver:

(a) Has committed an offense for which mandatory revocation, suspension or disqualification of license or privileges is required upon conviction, court order or administrative action;

(b) Has been convicted in any court in this state of an offense against a municipal ordinance which would have been grounds for suspension, revocation or disqualification of his driver's license or privileges had the charge been prosecuted under a state law;

(c) Is incompetent to drive a motor vehicle;

1. Any person who in the opinion of the department, based upon recommendation of the person's personal physician, is afflicted with or subject to any condition which brings about momentary or prolonged lapses of consciousness or control, which is or may become chronic, or when the person is suffering from a physical or mental disability or disease serving to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating it upon the streets and highways, or any person who is unable to understand highway signs, warning, regulating or directing traffic, is incompetent to drive a motor vehicle.

2. Any person who shall not have minimum visual acuity with or without corrective lenses of 20/40 in at least one (1) eye as determined by the Snellen system or other available systems is incompetent to operate a motor vehicle, however, the department shall have the authority to license such person upon the recommendation of an ophthalmologist or qualified physician and upon passage of a skills test. At 20/70 or more in both eyes with or without corrective lenses the department may suspend the driver's license and privileges. Any person who applies for or receives any type of tax, welfare or other benefits or exemptions for the blind shall be conclusively presumed incompetent to operate a motor vehicle.

3. Any person, department, or political subdivision of the state of Idaho who receives an application for any type of tax, welfare, aid or other benefits or exemptions for the blind shall immediately forward the name, address, sex, date of birth, and date of application of the applicant to the department;

(d) Has permitted an unlawful or fraudulent use of a driver's license;

(e) Has committed an offense, as evidenced by a conviction, court order or administrative action, in another state which if committed in Idaho would be grounds for suspension, disqualification or revocation;

(f) Has been convicted of the offense of reckless driving, or

fleeing or attempting to elude a peace officer, and providing that the operating privilege shall be suspended for a period of thirty (30) days upon conviction and providing further, that if a second conviction occurs within a two (2) year period of time from the time of the first conviction, the suspension shall be for ninety (90) days, and if a third conviction shall occur within a three (3) year period of time from the time of the first conviction, the period of suspension shall be for one (1) year;

(g) Has failed to satisfy a judgment as set forth in chapter 12, title 49, Idaho Code;

(h) Has failed to maintain proof of financial responsibility as set forth in chapter 12, title 49, Idaho Code;

(i) Has a driving record which shows a violation point count of twelve (12) or more points in any consecutive twelve (12) month period;

(j) Is an habitual violator of traffic laws;

(k) Has been convicted of the offense of violation of a restricted license and providing the driver's license and privileges be suspended for a period of thirty (30) days;

(l) Has been convicted for the offense of leaving the scene of an accident involving damages to a vehicle, the period of revocation shall be one (1) year;

(m) Has been convicted for the offense of leaving the scene of an accident resulting in injury or death, the period of revocation shall be one (1) year;

(n) Is under the age of eighteen (18) years and is not satisfactorily enrolled in school, has not received a waiver pursuant to or has not completed school as provided in section 49-303A, Idaho Code.

(2) A violation point is assessed for conviction of any charge or with proof of any infraction involving a moving traffic violation. A value of one (1) point shall be given for a less serious violation and up to four (4) points for a more serious violation. Conviction or proof of infraction for only one (1) violation arising from one (1) occasion of arrest or citation shall be counted in determining the violation point count.

(3) The department is authorized and directed to establish a violation point count system for various moving traffic violations and infractions occurring either within or without the state of Idaho, affecting all holders of driver's licenses issued by the department.

(4) Notification of suspension, revocation, cancellation or disqualification. Upon suspending, revoking, canceling or disqualifying the driver's license or driving privileges of any person, the department shall immediately notify the applicant or licensee in writing, at the licensee's address on file with the department pursuant to section 49-320, Idaho Code. Upon his request the department shall afford him an opportunity for a hearing before a hearing officer appointed by the director. The hearing may be held by telephone within twenty (20) days after receipt of the request, unless this period is for good cause shown, extended by the hearing officer for one ten-day period. The notice and hearing shall be required prior to the imposition of additional suspension or disqualification periods beyond the periods as set forth in this section. Upon a hearing the hearing officer may

administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee. Upon the hearing the department shall either rescind its order or, with good cause, may affirm or extend the suspension or disqualification of the driver's license or revoke the driver's license.

Whenever a driver's license, permit or driving privilege has been suspended or revoked by the department as provided in this section, other than as set forth in subsection (1)(c), (d), (g), (h), (m) or (n), the department may issue a temporary restricted permit restricting the time, area and purpose of use. The application, eligibility requirements and form of the temporary restricted permit shall be provided by administrative rule.

(5) The department shall not suspend a driver's license or privileges for a period of more than one (1) year, ~~and--upon--revoking--a driver's--license--or-privileges-shall-not-in-any-event-grant-application-for-a-new-driver's-license-until-the-expiration-of-one--(1)--year after--the--revocation~~ except as otherwise provided by law. The provisions of this subsection shall not be applicable with respect to the issuance of temporary restricted permits as provided in section 49-325, Idaho Code.

(6) The department shall not disqualify a driver for a period longer than specified by 49 CFR part 383.

SECTION 27. That Section 49-335, Idaho Code, be, and the same is hereby amended to read as follows:

49-335. DISQUALIFICATIONS AND PENALTIES -- COMMERCIAL DRIVER'S LICENSE. (1) Any person who operates a commercial motor vehicle and who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if convicted of a first violation under any state or federal law of:

(a) Operating a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(b) Operating a commercial motor vehicle while the alcohol concentration of the person's blood, breath or bodily substance is 0.04 or more;

(c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(d) Using a commercial motor vehicle in the commission of any felony.

(2) Any person who operates a commercial motor vehicle and who holds a class A, B or C driver's license is disqualified from operating a commercial motor vehicle for a period of not less than one (1) year if the person refuses to submit to a test to determine the driver's alcohol concentration while operating a commercial motor vehicle.

(3) If any of the offenses specified in subsection (1) or (2) of this section occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three (3) years.

(4) A person is disqualified for the period of time specified in

49 CFR part 383 if found to have committed two (2) or more of any of the offenses specified in subsection (1) or (2) of this section, or any combination of those offenses, arising from two (2) or more separate incidents.

(5) A person is disqualified for the period of time specified in 49 CFR part 383 from operating a commercial motor vehicle who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession of a controlled substance with the intent to manufacture, distribute or dispense such controlled substance.

(6) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty (60) days if convicted of two (2) serious traffic violations, or one hundred twenty (120) days if convicted of three (3) serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three (3) year period.

(7) A person who drives, operates, or is in physical control of a commercial motor vehicle within this state while having any detectable amount of alcohol in his system or who refuses to submit to an alcohol test must be placed out of service for twenty-four (24) hours and be subject to the provisions of section 18-8002, Idaho Code.

(8) A person who is convicted of a violation of an out-of-service order while driving a commercial motor vehicle is disqualified for not less than:

(a) Ninety (90) days nor more than one (1) year for a first conviction;

(b) One (1) year nor more than five (5) years for a second conviction arising from separate incidents during any ten (10) year period;

(c) Three (3) years nor more than five (5) years for three (3) or more convictions arising from separate incidents during any ten (10) year period.

(9) A person who is convicted of a violation of an out-of-service order while driving a commercial motor vehicle and while transporting hazardous materials required to be placarded under the hazardous materials transportation act, or while operating motor vehicles designed to transport sixteen(16) or more people including the driver, is disqualified for not less than:

(a) One hundred eighty (180) days nor more than two (2) years for a first conviction;

(b) Three (3) years nor more than five (5) years for subsequent convictions arising from separate incidents in any ten (10) year period.

SECTION 28. That Section 49-1208, Idaho Code, be, and the same is hereby amended to read as follows:

49-1208. PROOF REQUIRED UPON CERTAIN CONVICTIONS. (1) If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial or has entered a plea of guilty for any offense requiring the suspension or revocation of the driver's license, or for operating a motor vehicle upon the highways without being licensed to do so, no

driver's license shall be issued to that person and his driving privilege shall remain suspended or revoked until he gives and maintains proof of financial responsibility.

(2) Whenever the department or a court suspends, or the department revokes a resident's driver's license or nonresident's driving privilege by reason of a conviction, forfeiture of bail, or upon a plea or finding of guilty, the license or privilege shall remain suspended or revoked unless the person shall have previously given or shall immediately give and maintain proof of financial responsibility.

(3) Any person who is convicted of violating the provisions of either section 49-1229, 49-1232 or 49-1428, Idaho Code, shall have his driver's license and driving privileges suspended for a three (3) year period following such conviction. The driver's license and driving privileges shall remain suspended unless the person gives and maintains proof of financial responsibility throughout the three (3) year period following such conviction.

(4) Whenever a person is required to maintain proof of financial responsibility, and who is not a resident of Idaho, files and maintains proof of financial responsibility in his home state the department shall reinstate the person's driving privileges as long as proof of financial responsibility is maintained in the person's home state.

SECTION 29. That Section 49-1301, Idaho Code, be, and the same is hereby amended to read as follows:

49-1301. ACCIDENTS INVOLVING DAMAGE TO VEHICLE. (1) The driver of any vehicle involved in an accident, either on public or private property open to the public, resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop the vehicle at the scene of the accident, or as close as possible, and shall immediately return to, and in every event shall remain at, the scene of the accident until he has fulfilled the requirements of law. A stop as required by this section shall be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or to comply with the requirements under these circumstances shall be guilty of a misdemeanor.

(3) The department shall revoke for a period of one (1) year the driver's license, privileges or permit to drive, or the nonresident operating privilege, of any person convicted of a violation of the provisions of this section~~and section 49-326, Idaho Code~~.

SECTION 30. That Section 49-1416, Idaho Code, be, and the same is hereby amended to read as follows:

49-1416. RECORD OF TRAFFIC CASES -- REPORT OF CONVICTIONS TO DEPARTMENT. (1) Every magistrate or judge of a court shall keep or cause to be kept a record of every traffic complaint, traffic citation, or other legal form of traffic charge deposited with or presented to the court, and shall keep a record of every official action by the court in reference thereto, including a record of every conviction, forfeiture resulting from every traffic complaint or citation deposited with or presented to the court.

(2) Within ten (10) days after a conviction or forfeiture of bail

of a person upon a charge of violating any provision of this title or other law regulating the operation of vehicles on highways, the magistrate of the court or clerk of the court of record in which the conviction was had or bail was forfeited shall prepare and immediately forward to the department, either by paper or electronically, an abstract of the record of the court covering the case in which the person was convicted or forfeited bail. The abstract shall be certified by the person required to prepare the abstract to be true and correct. A report need not be made of any conviction involving the illegal parking or standing of a vehicle.

(3) The abstract, whether paper or electronic, shall be made upon a form as prescribed by the supreme court and shall include the name and address of the party charged, the number if any of his driver's license, the registration number of the motor vehicle involved, the nature of the offense, the date of hearing, the plea, the judgment, or whether bail was forfeited, and the amount of the fine or forfeiture as applicable.

(4) Every court of record shall also forward a like report to the department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

(5) The failure, refusal, or neglect of any judicial officer to comply with any of the requirements of this section shall constitute misconduct in office and shall be grounds for removal.

(6) The department shall keep all abstracts received ~~at its main office~~ in either electronic format or on microfilm, and abstracts shall be open to public inspection during reasonable business hours with the exception of personal information which may be exempt from disclosure as otherwise provided by law.

SECTION 31. That Section 49-2443, Idaho Code, be, and the same is hereby amended to read as follows:

49-2443. APPLICATION. Application for an identification card must be made in person before an examiner authorized by the department to issue driver's licenses. The examiner shall obtain the following from the applicant:

(1) The true and full name and Idaho residence address and mailing address, if different, of the applicant;

(2) The identity and date ~~and place~~ of birth of the applicant as set forth in a certified copy of his birth certificate and, subject to subsection (6) of this section, other satisfactory evidence of identity acceptable to the examiner or the department;

(3) The height and weight of the applicant;

(4) The color of eyes and hair of the applicant; and

(5) Applicant's signature.

(6) An applicant who has no photo identification or other secondary identification document satisfactory to the department as acceptable to verify identity shall be eligible to receive an identification card upon presentation of a certified copy of his birth certificate and either a social security card or current medicaid card.

SECTION 32. That Section 49-2444, Idaho Code, be, and the same is hereby amended to read as follows:

49-2444. IDENTIFICATION CARD ISSUED. (1) The department shall issue an identification card which shall set forth the information contained in the application, in a form as prescribed by the department. All identification cards issued on or after January 1, 1993, shall not contain the applicant's social security number. An applicant's social security number shall be exempt from disclosure except for inquiries from agencies or institutions authorized to obtain such information by federal law or regulation, from peace officers or from jury commissioners. Each card shall be issued a distinguishing number and shall bear upon it a color photograph of the applicant which shall be taken by the examiner at the time of application. The photograph shall ~~normally~~ be taken without headgear or other clothing or device that disguises or otherwise conceals the face or head of the applicant~~, but the requirement for an uncovered face--photograph.~~ A waiver may be ~~waived~~ granted by the department allowing the applicant to wear headgear or other head covering for medical, religious or safety purposes so long as the face is not disguised or otherwise concealed. No person shall receive an identification card unless and until he surrenders to the department all identification cards in his possession issued to him by Idaho or any other jurisdiction, or until he executes an affidavit that he does not possess an identification card. A notation of "under 21 until (month, day, year)" and any other distinguishing printing of the words "under 21" on the identification card shall be made if applicable. The nonrefundable fee for an identification card shall be seven dollars and fifty cents ($7.50) of which five dollars ($5.00) shall be retained by the county and credited to the current expense fund, and two dollars and fifty cents ($2.50) shall be deposited in the state treasury to the credit of the highway distribution account. Every identification card shall expire on the cardholder's birthday in the fourth year following issuance of the card.

(2) Every identification card shall be renewable on or before its expiration, but not more than twelve (12) months before, and upon application and payment of the required fee.

(3) When an identification card has been expired for less than twelve (12) months, the renewal of the identification card shall start from the original date of expiration regardless of the year in which the application for renewal is made. If the identification card is expired for more than twelve (12) months, the application shall expire on the applicant's birthday in the fourth year following issuance of the identification card.

(4) A person possessing an identification card desiring to donate any or all organs or tissue in the event of death, pursuant to the provisions for donation of anatomical gifts as set forth in chapter 34, title 39, Idaho Code, at the option of the donor may indicate this desire on the identification card by the imprinting of the word "donor" on the identification card.

(5) In the case of a name change, the applicant shall provide legal documentation to verify the change in accordance with department rules.

(6) Whenever any person, after applying for or receiving an identification card, shall move from the address shown on the application or on the identification card issued, that person shall, within four-

teen (14) days, notify the transportation department in writing of the old and new addresses.

(7) The department shall cancel any identification card upon determining that the person was not entitled to the issuance of the identification card, or that the person failed to give the required and correct information in his application or committed fraud in making the application. Upon cancellation, the person shall surrender the cancelled identification card to the department.

(~~7~~8) If any person shall fail to return to the department the identification card as required, the department may direct any peace officer to secure its possession and return the identification card to the department.

Approved March 19, 1998.

CHAPTER 111
(H.B. No. 425)

AN ACT

RELATING TO CIVIL REMEDIES FOR RACKETEERING; AMENDING SECTION 18-7805, IDAHO CODE, TO PROVIDE FOR ENTRY OF A COURT ORDER REQUIRING PAYMENT OF THE COSTS AND EXPENSES OF PROSECUTION AND INVESTIGATION OF A RACKETEERING OFFENSE DIRECTLY TO THE MUNICIPAL, COUNTY OR STATE GOVERNMENT AGENCY INCURRING THE COSTS OR EXPENSES.

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

SECTION 1. That Section 18-7805, Idaho Code, be, and the same is hereby amended to read as follows:

18-7805. RACKETEERING -- CIVIL REMEDIES. (a) A person who sustains injury to his person, business or property by a pattern of racketeering activity may file an action in the district court for the recovery of three (3) times the actual damages proved and the cost of the suit, including reasonable attorney's fees.

(b) The state, through the attorney general or the proper county prosecuting attorney, may file an action on behalf of those persons injured or to prevent, restrain or remedy racketeering as defined by the racketeering act.

(c) The district court has jurisdiction to prevent, restrain and remedy racketeering after making provisions for the rights of all innocent persons affected by such violation and after hearing or trial, as appropriate, by issuing appropriate orders. Prior to a determination of liability, such orders may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture or other restraints pursuant to this section as it deems proper.

(d) Following a determination of liability, such orders may include, but are not limited to:

(1) Ordering any person to divest himself of any interest, direct or indirect, in any enterprise;
(2) Imposing reasonable restrictions on the future activities or investments of any person;
(3) Ordering dissolution or reorganization of any enterprise;
(4) Ordering the payment of three (3) times the damages proved to those persons injured by racketeering;
(5) Ordering the suspension or revocation of a license, permit or prior approval granted to any enterprise by any agency of the state;
(6) Ordering the forfeiture of the charter of a corporation organized under the laws of the state or the revocation of a certificate authorizing a foreign corporation to conduct business within this state; and
(7) Ordering the payment of all costs and expenses of the prosecution and investigation of any offense included in the definition of racketeering incurred by ~~the~~ a municipal, county or state government agency to ~~be paid to the general fund of Idaho~~ the agency incurring the costs or expenses.

Approved March 19, 1998.

CHAPTER 112
(H.B. No. 432)

AN ACT

RELATING TO CONTEMPTS; AMENDING SECTION 7-612, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 7-613 AND 7-614, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING CHAPTER 6, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-612, IDAHO CODE, TO PROVIDE ADDITIONAL PENALTIES FOR CHILD SUPPORT DELINQUENCIES; AND AMENDING CHAPTER 6, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-613, IDAHO CODE, TO PROVIDE ADDITIONAL PENALTIES FOR FAILING TO COMPLY WITH AN ORDER PROVIDING VISITATION WITH A MINOR CHILD.

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

SECTION 1. That Section 7-612, Idaho Code, be, and the same is hereby amended to read as follows:

7-61~~2~~4. NONAPPEARANCE OF DEFENDANT. When the warrant of arrest has been returned served, if the person arrested ~~do~~ does not appear on the return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

SECTION 2. That Section 7-613, Idaho Code, be, and the same is

hereby amended to read as follows:

7-613~~5~~. EXCUSE FOR NONATTENDANCE -- RESTRAINT OF PERSONAL LIBERTY. Whenever, by the provisions of this chapter, an officer is required to keep a person arrested on a warrant of attachment in custody, and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend, is a sufficient excuse for not bringing him up; and the officer must not confine a person arrested upon the warrant in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

SECTION 3. That Section 7-614, Idaho Code, be, and the same is hereby amended to read as follows:

7-614~~6~~. JUDGMENT IS FINAL. The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive.

SECTION 4. That Chapter 6, Title 7, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 7-612, Idaho Code, and to read as follows:

7-612. ADDITIONAL PENALTIES FOR CHILD SUPPORT DELINQUENCY. In addition to the penalties for contempt contained in this chapter, the following additional penalties are available for a child support delinquency:

(1) Work activities. In all cases under chapter 2, title 56, Idaho Code, where the custodial parent or children receive temporary assistance for families in Idaho, and the obligor owes past due support and is not incapacitated, the court may issue an order requiring the obligor to participate in work activities.

(2) License suspension. Pursuant to chapter 14, title 7, Idaho Code, the court may issue an order suspending a license for a child support delinquency as defined by section 7-1402, Idaho Code.

SECTION 5. That Chapter 6, Title 7, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 7-613, Idaho Code, and to read as follows:

7-613. ADDITIONAL PENALTIES FOR FAILING TO COMPLY WITH AN ORDER PROVIDING VISITATION WITH A MINOR CHILD. In addition to the penalties for contempt contained in this chapter, the court may issue an order suspending a license for failing to comply with an order providing for visitation with a minor child pursuant to chapter 14, title 7, Idaho Code.

Approved March 19, 1998.

CHAPTER 113
(H.B. No. 444)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATE PROGRAMS; AMENDING SECTIONS 49-404, 49-404A, 49-405, 49-407, 49-408, 49-409, 49-410, 49-414, 49-415, 49-415A, 49-415B, 49-416, 49-417, 49-417A, 49-418 AND 49-418A, IDAHO CODE, TO PROVIDE FOR THE ISSUANCE OF SPECIAL LICENSE PLATES FOR COMMERCIAL, NONCOMMERCIAL AND FARM VEHICLES WITH A REGISTERED MAXIMUM GROSS WEIGHT OF NOT MORE THAN SIXTEEN THOUSAND POUNDS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-404, Idaho Code, be, and the same is hereby amended to read as follows:

49-404. NATIONAL GUARD MEMBERS -- DISTINCTIVE PLATES. (1) In order to enhance visibility and identification of national guard members during mobilizations and emergencies, any active member of the Idaho national guard residing in the state of Idaho may, upon application to the department, register not more than two (2) ~~passenger~~ motor vehicles and receive for each vehicle distinctive national guard license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds. The national guard license plates shall be designed, subject to the approval of the department, by the adjutant general. Proof of being an active member in the Idaho national guard must be furnished to the department before plates will be issued.

The Idaho national guard shall, prior to an individual's discharge from active duty in the national guard, require that the national guard license plates either be turned in to the department or exchanged for other proper license plates as a condition of discharge.

(2) Whenever a member of the Idaho national guard transfers or assigns his title or interest to a vehicle especially registered under the provisions of this section, the registration shall expire but the member may hold his national guard license plates which he may have reissued to him upon the payment of the required transfer fees. He may only display the plates after receipt of new registration from the department.

(3) In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the national guard member shall pay the plate fee specified in section 49-450, Idaho Code.

SECTION 2. That Section 49-404A, Idaho Code, be, and the same is hereby amended to read as follows:

49-404A. MEMBERS OF THE ARMED FORCES RESERVE -- SPECIAL PLATES. (1) Any active member of the armed forces reserves of the United States who is the owner of a vehicle ~~required to be~~ registered under section 49-402(1) or section 49-434(1), Idaho Code, may, upon applica-

tion to the department, register not more than two (2) passenger motor vehicles and receive for each vehicle special license plates in lieu of regular numbered plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds. The special license plates shall be designated by the department with the word "RESERVIST" centered along the bottom edge and be numbered in sets of two (2) with a different number following appropriate letters as follows: United States Army Reserve: Army (number); United States Navy Reserve: Navy (number); United States Marine Corps Reserve: USMC (number); United States Air Force Reserve: USAF (number); and United States Coast Guard Reserve: USCG (number). Proof of being an active member in the United States armed forces reserves must be furnished to the department before special plates will be issued. Special license plates issued under this section shall be issued under the staggered registration process provided for in section 49-402(1), Idaho Code, or the annual registration in section 49-434(1), Idaho Code.

(2) Any branch of the armed forces reserves of the United States shall, prior to an individual's discharge from duty in that branch of the armed forces reserve, require that the special armed forces reserve license plates either be turned back to the department or exchanged for other proper license plates as a condition of discharge.

(3) In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402(8), Idaho Code. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program which is provided to the public as a personal alternative to the standard license plate requirement. When a plate holder transfers or assigns his title or interest in the vehicle registered under this section, the registration shall expire, but the special plates may be transferred to another vehicle upon payment of the required transfer fee. Special plates shall only be displayed after receipt of the new registration.

(4) The design and numbering scheme of the military reservist special plate shall be coordinated by the department with representatives of the armed forces reserves. However, the department shall have the final approval of the plate design and numbering scheme to ensure conformity within existing issues of plates and to contain costs within the limit of the fees received from applicants.

SECTION 3. That Section 49-405, Idaho Code, be, and the same is hereby amended to read as follows:

49-405. RADIO AMATEURS -- SPECIAL LICENSE PLATES. (1) In order to enhance visibility and identification of radio amateurs during times of emergency any radio amateur residing in the state of Idaho, may, upon application to the department, register one (1) motor vehicle per radio license issued by the federal government and receive for that vehicle special license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds.

The number on the plates shall be the same combination of figures and letters that make up the radio call sign of the amateur radio operator.

(2) Proof of holding an amateur license from the federal communications commission must be furnished to the department before the plates will be issued. Should the amateur's radio license expire during any given year and not be renewed, the special license plates must be surrendered to the department and regular license plates obtained.

(3) Radio amateurs will notify the department at a time to be set by the department of their intention to procure special license plates under the terms specified in this section. Failure to do so will result in the amateur being required to accept regular license plates should the department be unable to procure the special plates. Special plates may still be procured when available but amateurs will be subject to the usual transfer fee.

(4) Whenever an amateur transfers or assigns his title or interest to a vehicle especially registered the registration shall expire, but the amateur may hold his special license plates which he may have reissued to him upon the payment of the required transfer fees. He may only display the plates after receipt of new registration from the department.

(5) In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the applicant shall pay the plate fee specified in section 49-450, Idaho Code.

SECTION 4. That Section 49-407, Idaho Code, be, and the same is hereby amended to read as follows:

49-407. YEAR OF MANUFACTURE PLATE. Pursuant to rules of the department, any person who is the owner of a motor vehicle thirty (30) years or older which is registered under section 49-402(1) or (2), Idaho Code, or section 49-434(1), Idaho Code, may display on the rear of the vehicle an authentic Idaho plate manufactured in the same year as the vehicle. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds.

In addition to the regular registration fees required in sections 49-402(1) and (2), and 49-434(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402(8), Idaho Code.

SECTION 5. That Section 49-408, Idaho Code, be, and the same is hereby amended to read as follows:

49-408. STREET ROD. (1) Any motor vehicle manufactured prior to the year 1949, or designed and manufactured to resemble such a vehicle and which has been certified as a street rod may be registered as a street rod under the provisions of this section. However, the provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds.

(2) Any street rod shall have all equipment in operating condition which was specifically required by law as a condition for its first sale after manufacture. No law requiring any particular equip-

ment or specifying any standards to be met by motor vehicles shall apply to street rods unless it so specifically states.

(3) Upon receipt of an application on a form prescribed by the department for a special street rod automobile plate, accompanied by other documentation required in this section, the department shall issue to the applicant a special street rod automobile plate which shall be displayed on the rear of the vehicle. The registration certificate need not specify the weight of the street rod, and the plate issued shall bear no date but shall bear the inscription "Street Rod," "Idaho," a picture of a 1929 highway roadster, and the registration number issued for the street rod, and the plate shall be valid upon annual renewal under section 49-402 or 49-434(1), Idaho Code, as long as the vehicle is in existence. The plate will be issued for the applicant's use only for the particular vehicle, and in the event of a transfer of title, the transferor may hold the plate and transfer it to another qualifying street rod.

(4) In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402(8), Idaho Code.

(5) The department has the power to revoke any registration issued under this section for cause shown for failure of the applicant to comply with the provisions of this section.

SECTION 6. That Section 49-409, Idaho Code, be, and the same is hereby amended to read as follows:

49-409. PERSONALIZED LICENSE PLATES. (1) Any person who is the ~~registered~~ owner of a vehicle registered under section 49-402 or 49-434(1), Idaho Code, may apply to the department for personalized license plates in lieu of regular numbered plates except ~~for~~ that this provision shall not apply to a vehicle registered under section 49-434(1), Idaho Code, with a maximum gross weight over sixteen thousand (16,000) pounds or any vehicle registered under section 49-435, Idaho Code. In addition to the regular registration fees required in section 49-402(1), (2), (3) and (4), ~~and~~ section 49-422, and section 49-434(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402(8), Idaho Code. The personalized license plates shall be of the same color and design as other license plates, and shall consist of numbers or letters, or any combination thereof, not exceeding seven (7) positions. No more than one (1) particular combination of letters and numbers shall be in existence at any one (1) time. The form for application of the plates will be as prescribed by the director and, in his discretion, may refuse to issue the plates.

(2) When personalized license plates are issued for a vehicle, the regular license plates for that vehicle belong to the registrant and may be transferred to another vehicle owned by the personalized plate applicant.

SECTION 7. That Section 49-410, Idaho Code, be, and the same is hereby amended to read as follows:

49-410. SPECIAL LICENSE PLATES AND CARDS FOR PERSONS WITH A DISABILITY -- PARKING PRIVILEGES -- CARDS FOR CERTAIN TEMPORARILY DISABLED PERSONS. (1) Any person with a disability as defined in section 49-117, Idaho Code, or any parent or guardian of a dependent child with a disability as defined in section 49-117, Idaho Code, without regard to the age of the dependent child, shall be eligible for the use of special license plates bearing the international accessible symbol, for any vehicle owned by such person or owned by a qualified parent or guardian, ~~provided the vehicle does not weigh in excess of eight~~ but excluding any commercial vehicle with a registered maximum gross weight over sixteen thousand (~~8~~16,000) pounds. ~~and is not used in the furtherance of a business.~~

(2) Registration and license plate fees for vehicles owned by a person with a disability or qualified parent or guardian of a dependent child with a disability, shall be as provided, respectively, in sections 49-402, 49-434(1) and 49-450, Idaho Code~~, for vehicles not in excess of eight thousand (8,000) pounds gross weight, and as provided in section 49-434, Idaho Code, for noncommercial vehicles in excess of eight thousand (8,000) pounds gross weight~~. Nothing in this section shall be construed as abrogating provisions of section 49-445, Idaho Code. The use of the special card issued under the provisions of subsection (4) of this section, shall not exempt the owner of a motor vehicle from otherwise properly registering and licensing the motor vehicle.

(3) Special license plates for persons with a disability and for the parent or guardian of a dependent child with a disability, shall be the same size and color as other license plates, and shall have displayed upon them the registration numbers assigned to the vehicle and to the owner. The plates shall be numbered in a manner prescribed by the department, but the plates shall display the international accessible symbol.

International Accessible Symbol

(4) The department shall issue a special card bearing the international accessible symbol and other information the department may require, to:

(a) Any qualified person with a disability who does not own a motor vehicle;

(b) Any qualified person with a disability who owns a motor vehicle, without regard to weight or use of the vehicle;

(c) Any parent or guardian of a dependent child with a disability who owns a motor vehicle without regard to weight or use of the vehicle;

(d) Any business entity which is engaged in transportation of persons with a disability, which business shall not be required to submit a physician's certification. In addition to other application requirements, a business applicant shall sign a declaration that he is engaged in the transportation of persons with a disability. A business entity may include but not be limited to hospitals, nursing homes, federal, state and local governmental agen-

cies and taxicabs.

(5) The fee for a special accessible card shall be five dollars ($5.00) which shall be deposited in the state highway account established in section 40-702, Idaho Code.

(6) Any person or business issued a special card shall affix the special card to a motor vehicle in a conspicuous place designated by the department. The card shall bear distinguishing marks, letters or numerals indicating the vehicle is utilized by a permanently disabled person. When the card is affixed to a motor vehicle and the motor vehicle is transporting a person with a disability, special parking privileges are granted as provided in subsection (8) of this section.

(7) Application for special license plates, a special card, or both as applicable and at the option of the applicant, shall be made upon a form furnished by the department and shall include a written certification by a licensed physician verifying that the applicant's stated impairment qualifies as a disability according to the provisions of section 49-117, Idaho Code.

(8) Any motor vehicle displaying special license plates for a person with a disability, without regard to the state of residence or displaying the special card provided in subsection (5) and (9) of this section, shall be allowed to park for unlimited periods of time in parking zones or areas which are otherwise restricted as to the length of time parking is permitted, and to park in any public parking space with metered parking without being required to pay any parking meter fee. The provisions of this subsection shall not be applicable to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles.

(9) Any person who shall submit satisfactory proof to the department that he is so temporarily disabled as to be unable to move without the aid of crutches or a wheelchair, shall be entitled to receive for one (1) motor vehicle only, a special card to be affixed to a motor vehicle in a conspicuous place designated by the department, bearing distinguishing marks, letters or numerals indicating that the vehicle is utilized by a temporarily disabled person. This special temporary card shall expire six (6) months from the date of issuance, or sooner as specified by the department on the card. The fee for a temporary card shall be five dollars ($5.00), two dollars ($2.00) of which shall be retained by the county and credited to the county current expense fund, and three dollars ($3.00) of which shall be transmitted to the state treasurer for deposit in the state highway account. When the card is issued by the department the five dollars ($5.00) shall be deposited in the state highway account.

(10) Any unauthorized use of the plate or card shall constitute an infraction punishable by a fine of fifty dollars ($50.00). The second offense shall be punishable by a fine of fifty dollars ($50.00) and loss of parking privileges for the registered owner of the vehicle displaying the plates or for the person to whom the card was issued, for a period of one (1) year.

Law enforcement officials shall enforce the provisions of this section and are empowered, using reasonable discretion, to check personal identification to determine if the user of the plate or placard is authorized to use accessible parking privileges. Any fines col-

lected shall be retained by the city or county whose law enforcement official issued the citation.

SECTION 8. That Section 49-414, Idaho Code, be, and the same is hereby amended to read as follows:

49-414. LEGISLATIVE LICENSE PLATES -- FEES. (1) Special legislative license plates shall be issued by the department upon application and payment of the required fees. Each legislator is eligible ~~for~~ to register and receive special license plates for one (1) vehicle whose registered maximum gross weight does not exceed sixteen thousand (16,000) pounds. The registration period shall be for one (1) year, from January 1 through December 31, and may be renewed, as long as the legislator holds office. The plates shall bear either the inscription "House" or "Senate", shall contain a consecutive numbering from one (1) through the maximum number of members in each body with the numbers to be assigned by the speaker of the house of representatives and the president pro tempore of the senate, and shall otherwise comply with the provisions of section 49-443, Idaho Code.

(2) In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee as specified in section 49-402(8), Idaho Code.

SECTION 9. That Section 49-415, Idaho Code, be, and the same is hereby amended to read as follows:

49-415. FORMER PRISONER OF WAR LICENSE PLATES. (1) Any veteran, who was a prisoner of war (POW) of an armed enemy of the United States during active service in the armed forces of the United States, that service occurring during any portion of a recognized war period enumerated in this section, and who has been released or discharged from the armed forces under other than dishonorable conditions, may upon application to the department, register and receive for not more than two (2) motor vehicles, special former prisoner of war license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds.

(2) In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the applicant shall pay the plate fee required in section 49-450, Idaho Code. Whenever a former prisoner of war transfers or assigns his title or interest to a vehicle registered under this section the registration shall expire, but the former prisoner of war may hold the special plates and may have them transferred to another vehicle upon payment of the required transfer fee provided in section 49-431, Idaho Code. He may only display the plates after receipt of the new registration document from the department.

(3) Former prisoner of war license plates shall bear the words "Former Prisoner of War" and a declaration of the period of service, and shall in all other respects be as provided by law.

(4) Recognized war periods for the purpose of this section shall be any period of war recognized by the United States department of

veterans affairs for the purpose of awarding federal veterans benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11).

SECTION 10. That Section 49-415A, Idaho Code, be, and the same is hereby amended to read as follows:

49-415A. CONGRESSIONAL MEDAL OF HONOR LICENSE PLATES. (1) Congressional medal of honor license plates are available to applicants who furnish proof of entitlement by certification from the United States Veterans Administration attesting to their status as a congressional medal of honor recipient.

(2) The license plates shall be provided free of charge. The applicant shall pay the regular annual registration fees required by section 49-402 or 49-434(1), Idaho Code. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds. If the plate holder transfers his title or interest to a vehicle registered under this section, the plates may be transferred to another vehicle owned by the plate holder. If the plates are unexpired, the plate holder shall be given credit for the unexpired portion of the registration fee against the new registration fee. The transfer fee specified by section 49-431(1), Idaho Code, shall apply.

(3) These provisions shall apply to the vehicle to which the plates were originally issued and to any vehicle subsequently purchased and owned by the medal of honor recipient, except that the privilege shall not extend to more than two (2) vehicles at a time.

SECTION 11. That Section 49-415B, Idaho Code, be, and the same is hereby amended to read as follows:

49-415B. PEARL HARBOR SURVIVOR SPECIAL PLATES. (1) Any veteran who was on active duty in the armed forces of the United States and assigned or stationed at Pearl Harbor, Hawaii, or within three (3) miles of the island of Oahu on December 7, 1941, and who has been released or discharged from the armed forces under other than dishonorable conditions, may upon application to the department, register and receive for not more than two (2) motor vehicles, special Pearl Harbor survivor number plates in lieu of regular number plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds.

(2) In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the applicant shall be charged the plate fee required in section 49-450, Idaho Code. Whenever a qualifying survivor of the Japanese attack on Pearl Harbor on December 7, 1941, transfers or assigns his title or interest to a vehicle especially registered under this section, the registration shall expire, but the Pearl Harbor survivor may hold his special plates which he may have reissued to him upon the payment of the required transfer fees. He may only display those plates after receipt of a new registration from the department.

(3) Pearl Harbor survivor plates shall bear the characters: "Pearl Harbor Survivor" and shall in all other respects be as provided by law.

SECTION 12. That Section 49-416, Idaho Code, be, and the same is hereby amended to read as follows:

49-416. STATEHOOD CENTENNIAL LICENSE PLATES. (1) Statehood centennial license plates are available to owners of motor vehicles required to be registered under section 49-402(1) or section 49-402(3) or section 49-434(1), Idaho Code, upon application at a county assessor's office or at the department. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds. Availability of statehood centennial plates for other classes of vehicle registrations shall be as authorized by rule~~s and regulations~~ of the department. In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee as specified in section 49-402(8), Idaho Code. All revenues from such initial registration and annual renewal fees shall be deposited in the highway distribution account.

(2) The statehood centennial license plates shall be of a color and design approved by the department, utilizing a numbering system approved by the board. The statehood centennial license plates must be surrendered upon failure to pay the annual special fee and renewal fees.

(3) Any person who applies for statehood centennial license plates, may also apply for personalized numbers and/or letters on those plates, as provided for in section 49-409, Idaho Code.

SECTION 13. That Section 49-417, Idaho Code, be, and the same is hereby amended to read as follows:

49-417. IDAHO WILDLIFE SPECIAL PLATES. (1) ~~On and after July 1, 1993, a~~Any person who is the owner of a vehicle registered under the provisions of section 49-402 or 49-434(1), Idaho Code, may apply for Idaho wildlife special license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds.

(2) In addition to the regular operating fee, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of the plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Twenty-five dollars ($25.00) of the initial fee and fifteen dollars ($15.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Ten dollars ($10.00) of each initial fee and ten dollars ($10.00) of each renewal fee shall be deposited by the state treasurer in the fish and game set-aside account pursuant to section 36-111, Idaho Code, for use in the nongame management and protection program.

Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. He may only display the plates after receipt of new registration from the department.

(3) The Idaho wildlife license plate shall be of a color and design acceptable to the board of directors of the Idaho fish and

wildlife foundation and approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program including costs of plate design shall be paid by the board of directors of the Idaho fish and wildlife foundation.

(4) Sample Idaho wildlife plates may be purchased for a fee of thirty dollars ($30.00), twelve dollars ($12.00) of which shall be deposited in the state highway account and eighteen dollars ($18.00) of which shall be deposited in the fish and game set-aside account pursuant to section 36-111, Idaho Code, for use in the nongame management and protection program.

SECTION 14. That Section 49-417A, Idaho Code, be, and the same is hereby amended to read as follows:

49-417A. IDAHO TIMBER SPECIAL PLATES. (1) ~~On and after July 1, 1995,~~ a<u>A</u>ny person who is the owner of a vehicle registered under the provisions of section 49-402 <u>or 49-434(1),</u> Idaho Code, may apply for Idaho timber special license plates. <u>The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds.</u>

(2) In addition to the regular operating fee, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of the plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Twenty-five dollars ($25.00) of the initial fee and fifteen dollars ($15.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Ten dollars ($10.00) of each initial fee and ten dollars ($10.00) of each renewal fee shall be deposited by the state treasurer in the department of lands fund for use in reforestation activities on state lands, provided however, that prior to the beginning of any fiscal year, the state board of land commissioners may agree that funds made available under this section to the department of lands for the coming year would better further reforestation objectives of the management and conservation of forest resources on public and private lands in the state if expended for educational efforts set forth in this section.

Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. He may only display the plates after receipt of new registration from the department.

(3) The Idaho timber license plate shall be of a color and design acceptable to the members of the Idaho forest products commission and approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the director of the department of lands from funds appropriated to that department.

(4) Sample Idaho timber plates may be purchased for a fee of thirty dollars ($30.00), twelve dollars ($12.00) of which shall be deposited in the state highway account and eighteen dollars ($18.00) of which shall be deposited in the department of lands fund for use in reforestation activities or educational efforts as set forth in this section.

(5) Ten dollars ($10.00) of each initial fee and ten dollars ($10.00) of each renewal fee of each timber special license plate, and eighteen dollars ($18.00) for each sample timber special license plate, shall be deposited with the state treasurer and credited to the department of lands. Funds so deposited and subsequently directed by the state board of land commissioners for educational efforts as set forth in this section shall be expended as agreed by the state board of land commissioners upon recommendations developed jointly by the department of lands and the Idaho forest products commission. Such efforts may include signs or other appropriate means designed to help build public understanding of reforestation or the management and conservation of forest resources on public and private lands in Idaho.

SECTION 15. That Section 49-418, Idaho Code, be, and the same is hereby amended to read as follows:

49-418. VETERANS PLATES. (1) ~~On and after January 1, 1997, a~~Any person who is the owner of a vehicle registered under the provisions of section 49-402 or 49-434(1), Idaho Code, may apply for and upon department approval receive special veterans license plates in lieu of regular license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds. Availability of veterans plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) Proof of being a current or former member of the United States armed forces must be furnished to the department before special veterans plates will be issued. Acceptable proof shall be a copy of form DD214 or an equivalent document or statement from the department of veterans affairs.

(3) In addition to the regular registration fees required in section 49-402(1) or 49-434(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402(8), Idaho Code, and the plate fee specified in section 49-450, Idaho Code.

(4) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. The owner may only display the plates on another vehicle upon receipt of the new registration from the department.

(5) The veterans license plate design shall include the colors red, white and blue, shall designate one (1) of the five (5) branches of military service, and display either:

(a) The word "VETERAN" or

(b) The name of a conflict or war period recognized by the United States department of veterans affairs for the purpose of awarding federal veterans benefits as defined in 38 U.S.C. 101(11).

The license plate design shall comply with all applicable rules of the department, and shall include a separate and distinct numbering system. The design, color, and numbering system shall be subject to approval of the department.

SECTION 16. That Section 49-418A, Idaho Code, be, and the same is hereby amended to read as follows:

49-418A. IDAHO PUBLIC COLLEGE AND UNIVERSITY PLATES. (1) ~~On--and after--January-1,-1998,-a~~Any person who is the owner of a vehicle registered under the provisions of section 49-402 or 49-434(1), Idaho Code, may apply for special plates featuring one (1) of Idaho's public colleges or universities. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds. Availability of Idaho public college and university special license plates for other vehicles may be authorized by rule of the board.

(2) In addition to the regular operating fee, the applicant shall be charged a fee of fifty dollars ($50.00) for the initial issuance of the plates, and fifty dollars ($50.00) upon each succeeding annual registration. Twenty-five dollars ($25.00) of the initial fee and fifteen dollars ($15.00) of the renewal fee shall be deposited in the state highway account to be used by the department to fund highway, road and bridge construction projects and to fund the cost of administration of this special license plate program. The department shall transfer twenty-five dollars ($25.00) of the initial fee and thirty-five dollars ($35.00) of the renewal fee for deposit to the institution designated on the license plate.

(3) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. The owner may only display the plates after receipt of new registration from the department.

(4) All special college and university plates shall be of a color and design comparable to the standard issue of license plates with blue numerals on a red, white and blue background and shall indicate the participating institution.

(a) The standard red, white and blue graphic shall be used, except that the word "Idaho" and "Famous Potatoes" shall appear on every plate, the identification of county shall be omitted, and the inscription "Scenic Idaho" may be omitted.

(b) Each public college or university that chooses to participate in this program shall provide that portion of the design which features the particular institution and such design shall be acceptable to the president of the institution and the state board of education and board of regents of the university of Idaho.

Each version of the special public college and university plate featuring the participating public college or university shall be approved by the department, utilizing a numbering system as determined by the department. Initial costs of the plate program, including the cost of plate design, shall be paid by the participating public college or university.

(5) The state board of education and board of regents of the university of Idaho shall adopt rules to account for receipt and distribution of revenues accruing to participating public colleges and universities from the special license plate program. Revenues from the special plate program shall be used to:

(a) Fund scholarships for Idaho residents attending that college

or university.

(b) Match funds contributed in equal amounts from nonstate sources for academic programs, provided that such expenditures shall be subject to prior approval by the state board of education and board of regents of the university of Idaho.

(6) Sample public college and university license plates may be purchased from the department for a fee of thirty-five dollars ($35.00), twelve dollars ($12.00) of which shall be retained by the department for deposit to the state highway account and twenty-three dollars ($23.00) shall be transferred by the department to the college or university designated on the license plate. No additional fee shall be charged for personalizing sample plates.

SECTION 17. This act shall be in full force and effect on and after January 1, 1999.

Approved March 19, 1998.

CHAPTER 114
(H.B. No. 451)

AN ACT

RELATING TO THE UNIFORM ANATOMICAL GIFT ACT; REPEALING SECTION 39-3402, IDAHO CODE.

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

SECTION 1. That Section 39-3402, Idaho Code, be, and the same is hereby repealed.

Approved March 19, 1998.

CHAPTER 115
(H.B. No. 459)

AN ACT

RELATING TO LICENSING OF INSURANCE AGENTS, BROKERS AND CONSULTANTS; AMENDING SECTION 41-1038, IDAHO CODE, TO DELETE THE REQUIREMENT THAT AN APPLICATION FOR EXAMINATION MUST BE FILED TEN DAYS PRIOR TO THE DATE OF EXAMINATION, AND TO ADD THE REQUIREMENT THAT APPLICATION FOR LICENSURE WILL BE DENIED IF NOT RECEIVED WITHIN ONE HUNDRED EIGHTY DAYS OF THE SUCCESSFUL COMPLETION OF THE EXAMINATION.

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

SECTION 1. That Section 41-1038, Idaho Code, be, and the same is hereby amended to read as follows:

41-1038. EXAMINATION FOR LICENSE -- APPLICATION FOR EXAMINATION. (1) Each person who applies for a license shall have taken or will take (unless exempted therefrom under section 41-1039, Idaho Code) a personal written examination as to his competence to act as an agent, broker or consultant.

(2) Examination of an applicant for an agent's license shall cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one (1) or more of the following classifications:

(a) Life insurance and annuity contracts.

(b) Disability insurance.

(c) Credit life and credit disability insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(d) Involuntary unemployment insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(e) Credit property insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(f) Motor vehicle physical damage insurance under a limited license under conditions described in section 41-1045, Idaho Code.

(g) Vehicle insurance as defined in section 41-506(1)(a), Idaho Code.

(h) Property insurance as defined in section 41-504, Idaho Code.

(i) Marine and transportation insurance as defined in section 41-505, Idaho Code.

(j) Casualty insurance as defined in section 41-506, Idaho Code.

(k) Surety insurance as defined in section 41-507, Idaho Code.

(3) An applicant for license as a life broker or life consultant must take and pass an examination as to life insurance, disability insurance, and annuity contracts. An applicant for license as a general lines broker must take and pass an examination as to property, casualty, surety, and marine and transportation insurances, as identified in subsection (2) of this section.

(4) An applicant for license as both a life agent or life broker and a general lines agent or general lines broker shall be separately examined as to life insurance and as to such general lines, and shall pay a separate examination application fee as to each of such two (2) examinations.

(5) If the applicant is a firm or corporation, the examination shall be taken by each individual who is to be named in or registered as to the license, as provided in section 41-1036, Idaho Code.

(6) If the applicant for license as a life agent or life broker is to be authorized also to transact variable annuities or variable life insurance business, the director shall ascertain that the applicant has met all state and federal qualifications as to such variable contracts.

(7) ~~Written a~~Application and payment of fees specified in section 41-401, Idaho Code, for the examination shall be ~~filed with~~ made to the director or his designee by or on behalf of the applicant. ~~not less than ten (10) days prior to the date fixed for the examination, as provided in section 41-1041, Idaho Code, and shall be accompanied by the fee for such application as specified in section 41-401, Idaho Code (fee schedule). This application fee is earned when paid, and is not subject to refund. If the applicant does not take the examination~~

~~within ninety (90) days after applying therefor, a new application and fee shall be required as to a subsequent examination~~ Applications for licensure not received by the department within one hundred eighty (180) days of the successful completion of the examination shall be denied.

Approved March 19, 1998.

CHAPTER 116
(H.B. No. 622)

AN ACT
RELATING TO MILITARY AFFAIRS; AMENDING SECTION 46-113, IDAHO CODE, TO DELETE THE REQUIREMENT THAT THE ASSISTANT ADJUTANT GENERAL APPOINTED FROM THE IDAHO AIR NATIONAL GUARD BE A RATED OFFICER.

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

SECTION 1. That Section 46-113, Idaho Code, be, and the same is hereby amended to read as follows:

46-113. ASSISTANT ADJUTANTS GENERAL. There shall be two (2) assistant adjutants general who shall be appointed by and serve at the pleasure of the adjutant general.

(a) One (1) of the assistant adjutants general shall be appointed from the Idaho army national guard and may be chief of staff to the adjutant general for all the Idaho army national guard forces. He shall perform such duties as are assigned to him by the adjutant general. No person shall be eligible for appointment as assistant adjutant general under this subsection unless he is a member of the Idaho army national guard with at least six (6) years service as commissioned officer therein and has attained the rank of major or above. He shall be a federally recognized officer and may hold the rank of brigadier general or such other rank as may hereafter be authorized by the table of organization for the army national guard.

(b) The other assistant adjutant general shall be appointed from the Idaho air national guard and may be chief of staff to the adjutant general for all the Idaho air national guard forces. He shall perform such duties as are assigned to him by the adjutant general. No person shall be eligible for appointment as assistant adjutant general under this subsection unless he is a member of the Idaho air national guard with at least six (6) years service as a commissioned officer therein and has attained the rank of major or above. He shall be a federally recognized ~~and rated~~ officer and may hold the rank of brigadier general or such other rank as may hereafter be authorized by the tables of organization for the air national guard.

(c) In the event of the absence or inability of the adjutant general to perform his duties, he shall designate one (1) of the assistant adjutants general to perform the duties of his office as acting

adjutant general. If neither assistant adjutant general is available, he may designate any national guard officer to be the acting adjutant general.

Approved March 19, 1998.

CHAPTER 117
(H.B. No. 624)

AN ACT

RELATING TO IMPOSITION OF FEES ON DRY GRAZING LAND; AMENDING SECTION 58-1414A, IDAHO CODE, TO REVISE PROCEDURES ON THE IMPOSITION OF FEES UPON OWNERS OF DRY GRAZING LAND IN IDAHO; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 58-1414A, Idaho Code, be, and the same is hereby amended to read as follows:

58-1414A. IMPOSITION OF FEES. (1) There is hereby imposed, as of January 1, of each year, a fee upon owners of dry grazing land within the state of Idaho for the purpose of funding the activities and obligations of the Idaho rangeland resources commission. The fee shall be in the amount of two cents (2¢) per acre of dry grazing land. "Dry grazing land" is that category of land defined by the state tax commission for property tax purposes. No later than the ~~second~~ third Monday in July, the county assessor shall ~~deliver-to-the-county-treasurer-a-list-of-the-owners-of-dry-grazing--land---in--the--county,--as shown--on-the-records-of-the-county,-together-with-the-number-of-acres owned.-The-county-treasurer-shall-calculate-the-amount-of-the-fee-owed and-shall-cause-the-fee-to-be-shown-on-the-real-property-tax-bill.-The fee-shall-be-collected-in-the-manner-provided-in-section-63-903,-Idaho Code.-From-the-annual-January-remittance,-the-county-shall--retain--an amount--equal-to-the-cost-of-collection-but-not-to-exceed-five-percent (5%)-in-1997-and-two-percent-(2%)-for-each-year-thereafter-of-the--fee collected--which--shall--be--deposited--in-the-county--current-expense fund.--The-county-auditor-shall-remit-monthly-the-balance-of--the--fee collected--to--the--Idaho--rangeland-resources-commission.~~ provide the Idaho rangeland resources commission, via electronic media, an alphabetic list of the owners of dry grazing land in the county, as shown on the records of the county. The information on dry grazing land shall be provided as follows:

(a) Owner name;
(b) Billing address;
(c) County;
(d) Parcel identification number;
(e) Number of acres.

An owner of dry grazing land shall not be assessed the fee contained herein if the owner's or owners' legal representative signs an affidavit attesting under penalties of perjury that the dry grazing land is

not utilized for grazing. The commission shall ~~prescribe~~ provide the form and the affidavit shall be filed with the commission prior to the second Monday in July of the current year. The commission shall file a duplicate copy of any affidavit received with the appropriate county assessor.

(2) In addition to the fees imposed in subsection (1) of this section, there is hereby imposed, as of January 1 of each year a fee of ten cents (10¢) per animal unit month on all domestic cattle and sheep utilizing state grazing lands in the state of Idaho. The Idaho department of lands is hereby directed to collect this fee in conjunction with its annual billing for rental of grazing lands and shall remit such collection to the Idaho rangeland resource committee on a monthly basis.

(3) In addition to the fees imposed in subsections (1) and (2) of this section, there is hereby imposed, as of January 1, of each calendar year, a fee of ten cents (10¢) per animal unit month on all domestic cattle and sheep utilizing United States forest service and bureau of land management lands in the state of Idaho if a joint exercise of powers agreement or memorandum of understanding has been entered into authorizing the collection of such a fee. The federal agencies shall, as part of their billing process, include provisions for the collection of this fee and remittance of the fee to the Idaho rangeland resources commission.

(4) The fee established in subsections (1), (2) and (3) of this section, shall be a debt of the owner(s), lessee(s) or permittee(s) of the dry grazing land obligated to pay the fee and the fee shall be a debt owed the commission and may be collected by the commission using the normal process to recover a debt.

(5) Any person may request from the commission in writing, within thirty (30) calendar days after payment thereof, a refund of all or any portion of an assessment levied hereunder. The commission shall make the refund not later than sixty (60) days after receipt of refund request as long as the commission has received the moneys from the entity collecting the assessment.

(6) The commission may at its discretion, determine by a majority vote of the commission the minimum fees to be assessed as described in this section. Once such minimum fees have been adopted, the commission shall collect no fee owed pursuant to this section which is equal to or less than the minimum set by the commission. Prior to the adoption of minimum fees by the commission as described in this subsection, the minimum fee owed the commission shall be five dollars ($5.00) for the owners of dry grazing land as described in subsection (1) of this section. There shall be no minimum fee for the assessments described in subsections (2) or (3) of this section unless otherwise determined by the commission.

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, 1998.

Approved March 19, 1998.

CHAPTER 118
(H.B. No. 662)

AN ACT

RELATING TO THE IDAHO NURSING PRACTICE ACT; AMENDING SECTION 54-1402, IDAHO CODE, TO PROVIDE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1403, IDAHO CODE, TO PROVIDE MEMBERSHIP OF THE BOARD OF NURSING AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1404, IDAHO CODE, TO PROVIDE POWERS OF THE BOARD OF NURSING; AMENDING SECTION 54-1407, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1408, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 14, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1409, IDAHO CODE, TO PROVIDE FOR LICENSES FOR ADVANCED PRACTICE PROFESSIONAL NURSING AND TO PROVIDE QUALIFICATIONS AND FEES; AMENDING SECTION 54-1409, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1410, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 54-1411, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1412, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1413, IDAHO CODE, TO PROVIDE UNLAWFUL CONDUCT, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1414, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 14, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1417, IDAHO CODE, TO CREATE AN ADVISORY COMMITTEE TO THE BOARD AND TO PROVIDE APPOINTMENT OF MEMBERS AND DUTIES; REPEALING SECTION 54-1415, IDAHO CODE; AND AMENDING SECTION 54-1814, IDAHO CODE, TO REQUIRE SUPERVISION OF CERTIFIED NURSE-MIDWIVES AND CLINICAL NURSE SPECIALISTS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-1402, Idaho Code, be, and the same is hereby amended to read as follows:

54-1402. DEFINITIONS. As used in this act:

(1) "Advanced practice professional nurse" means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a nationally accredited program of study as defined herein and is authorized to perform advanced nursing practice, which may include the prescribing, administering and dispensing of therapeutic pharmacologic agents, as defined by board rules. An advanced practice professional nurse shall perform only those acts as provided herein and for which the individual is educationally prepared. Advanced practice professional nurses shall include certified nurse-midwives, clinical nurse specialists, nurse practitioners, and registered nurse anesthetists as defined in this subsection.

(a) "Certified nurse-midwife" means a licensed professional nurse who has graduated from a nationally accredited nurse-midwifery

program, passed a qualifying examination recognized by the board, and has current initial certification or current recertification from a national organization recognized by the board. Certified nurse-midwives who meet these qualifying requirements and are licensed by the board, may manage women's health care, which may include pharmacologic and nonpharmacologic therapeutic and corrective measures which focus on pregnancy, childbirth, the postpartum period, care of the newborn, reproductive and gynecological needs of well women as defined by the rules of the board. The certified nurse-midwife shall practice with physician supervision, consultation and collaborative management and appropriate referral. The physician shall be licensed pursuant to chapter 18, title 54, Idaho Code.

(b) "Clinical nurse specialist" means a licensed professional nurse who has graduated from a nationally accredited graduate program in nursing with a clinical focus, passed a qualifying examination recognized by the board, and has current initial certification or current recertification from a national group recognized by the board. Clinical nurse specialists who meet these qualifying requirements and are licensed by the board may practice as expert clinicians in a particular specialty or subspecialty of nursing practice. The clinical nurse specialist provides direct client care, which may include assessing, diagnosing, planning, and prescribing pharmacologic and nonpharmacologic therapeutic and corrective measures, health promotion and preventive care within this specialized area of practice, as defined by rules of the board. The clinical nurse specialist shall practice with physician supervision, consultation and collaborative management and appropriate referral. The physician shall be licensed pursuant to chapter 18, title 54, Idaho Code.

(c) "Nurse practitioner" means a licensed professional nurse who has graduated from a nationally accredited nurse practitioner program, passed a qualifying examination recognized by the board, and has current initial certification or current recertification from a national group recognized by the board. Any person authorized by the board to practice nursing as a nurse practitioner in this state as of July 1, 1998, shall be licensed as a nurse practitioner under the provisions of this act and shall be eligible for renewal of such license under the conditions and standards prescribed in this act. Nurse practitioners who meet these qualifying requirements and are licensed by the board may perform comprehensive health assessments, diagnosis, health promotion and the direct management of acute and chronic illness and disease which may include the prescribing of pharmacologic and nonpharmacologic treatments as defined by rules of the board. The nurse practitioner shall practice with physician supervision, consultation and collaborative management and appropriate referral. The physician shall be licensed pursuant to chapter 18, title 54, Idaho Code.

(d) "Registered nurse anesthetist" means a licensed professional nurse who has graduated from a nationally accredited nurse anesthesia program, passed a qualifying examination recognized by the board and, has current initial certification or current recertification from a national group recognized by the board. Registered

nurse anesthetists who meet these qualifying requirements and are licensed by the board, may, in collaboration with a physician, dentist or podiatrist authorized to practice in Idaho, provide anesthesia care services as defined by the rules of the board. The scope of practice for registered nurse anesthetists shall incorporate acts identified in board rules, including selecting, ordering and administering medications appropriate for rendering anesthesia care services.

(~~a~~2) "Board" means the board of nursing.

(3) "Licensed practical nurse" means a person who practices nursing by:

(a) Functioning at the direction of a licensed professional nurse, licensed physician, or licensed dentist;

(b) Contributing to the assessment of the health status of individuals and groups of individuals;

(c) Participating in the development and modification of the strategy of care;

(d) Implementing the appropriate aspects of the strategy of care as defined by the board, including administering medications and treatments as prescribed by those health care providers authorized to prescribe medication;

(e) Maintaining safe and effective nursing care rendered directly or indirectly;

(f) Participating in the evaluation of responses to interventions; and

(g) Delegating nursing interventions that may be performed by others and that do not conflict with this act.

(4) "Licensed professional nurse" means a person who practices nursing by:

(a) Assessing the health status of individuals and groups of individuals;

(b) Identifying health care problems that are amenable to nursing intervention;

(c) Establishing goals to meet identified health care needs;

(d) Planning a strategy of care;

(e) Prescribing nursing interventions to implement the strategy of care;

(f) Implementing the strategy of care, including administering medications and treatments as prescribed by those health care providers authorized to prescribe medication;

(g) Authorizing nursing interventions that may be performed by others and that do not conflict with this act;

(h) Maintaining safe and effective nursing care rendered directly or indirectly;

(i) Evaluating responses to interventions;

(j) Teaching the theory and practice of nursing;

(k) Managing the practice of nursing; and

(l) Collaborating with other health professionals in the management of health care.

(5) "Nursing education program" means a course of instruction offered and conducted to prepare persons for the practice of nursing, or to increase the knowledge and skills of the practicing nurse.

(~~b~~6) "Practice of nursing" means assisting individuals or groups

of individuals to promote, maintain or restore optimal health throughout the life process by assessing and evaluating their health status, planning and implementing a strategy of care to accomplish defined goals, and evaluating responses to care and treatment.

~~(1)--"Licensed--professional--nurse"--means-a-person-who-practices nursing-by:~~

~~a.--Assessing-the-health-status-of-individuals-and-groups--of individuals;~~

~~b.--Identifying--health--care--problems--that-are-amenable-to nursing-intervention;~~

~~c.--Establishing-goals-to-meet-identified-health-care-needs;~~

~~d.--Planning-a-strategy-of-care;~~

~~e.--Prescribing-nursing-interventions-to-implement-the-strategy-of-care;~~

~~f.--Implementing-the-strategy-of-care,-including--administering--medications-and-treatments-as-prescribed-by-those-health care-providers-authorized-to-prescribe-medication;~~

~~g.--Authorizing-nursing-interventions-that-may--be--performed by-others-and-that-do-not-conflict-with-this-act;~~

~~h.--Maintaining--safe--and--effective--nursing--care-rendered directly-or-indirectly;~~

~~i.--Evaluating-responses-to-interventions;~~

~~j.--Teaching-the-theory-and-practice-of-nursing;~~

~~k.--Managing-the-practice-of-nursing;-and~~

~~l.--Collaborating-with-other-health-professionals-in-the-management-of-health-care.~~

~~(2)--"Licensed-practical-nurse"-means-a-person-who-practices-nursing-by:~~

~~a.--Functioning-at-the-direction-of-a--licensed--professional nurse,-licensed-physician,-or-licensed-dentist;~~

~~b.--Contributing--to--the--assessment-of-the-health-status-of individuals-and-groups-of-individuals;~~

~~c.--Participating-in-the-development-and-modification-of--the strategy-of-care;~~

~~d.--Implementing--the--appropriate-aspects-of-the-strategy-of care--as--defined--by--the--board,--including---administering medications-and-treatments-as-prescribed-by-those-health-care providers-authorized-to-prescribe-medication;~~

~~e.--Maintaining--safe--and--effective--nursing--care-rendered directly-or-indirectly;~~

~~f.--Participating--in--the---evaluation---of---responses---to interventions;-and~~

~~g.--Delegating-nursing-interventions-that-may-be-performed-by others-and-that-do-not-conflict-with-this-act.~~

~~(c)--"Nursing--education--program"--means--a-course-of-instruction offered-and-conducted-to-prepare-persons-for-the-practice-of--nursing, or-to-increase-the-knowledge-and-skills-of-the-practicing-nurse.~~

~~(d)--"Nurse-practitioner"-means-a-licensed-professional-nurse-having--specialized-skill,-knowledge-and-experience--authorized,-by-rules jointly-promulgated-by-the-Idaho-state-board-of-medicine-and-the-Idaho board-of-nursing-and-implemented-by-the-Idaho--board--of--nursing,--to perform--designated-acts-of-medical-diagnosis,-prescription-of-medical therapeutic-and-corrective-measures-and-delivery-of-medications.~~

~~(e)--"Registered-nurse-anesthetist"-means-a-licensed--professional nurse--who-has-graduated-from-a-nationally-accredited-nurse-anesthesia program,-passed-a-qualifying-examination-recognized-by-the-Idaho-board of-nursing-and,-has-current-initial-certification--or--current--active recertification-from-a-national-group-recognized-by-the-board-of-nursing.--Registered-nurse-anesthetists-who-meet-these-qualifying-requirements-and-are-registered-by-the-board,-may,-in--collaboration--with--a physician,-dentist-or-podiatrist-authorized-to-practice-in-Idaho,-provide--anesthesia--care-services-as-defined-by-the-rules-promulgated-by the-board-of-nursing.-The-scope-of-practice-for-registered-nurse-anesthetists-shall-incorporate-acts-identified-in-board-of-nursing--rules, including-selecting,-ordering-and-administering-medications,-appropriate-for-rendering-anesthesia-care-services.~~

SECTION 2. That Section 54-1403, Idaho Code, be, and the same is hereby amended to read as follows:

54-1403. BOARD OF NURSING. (~~a~~1) Appointment, Removal and Term of Office. There is hereby created within the department of self-governing agencies the board of nursing for the state of Idaho composed of ~~seven~~ nine (~~7~~9) members appointed by the governor. Membership of the board shall consist of the following:

(a) ~~four~~ five (~~4~~5) persons licensed to practice professional nursing in Idaho, of whom three (3) shall be educated at the associate degree level provided that one (1) of these may be a diploma nurse, and two (2) of whom shall be educated at the baccalaureate, master's or doctoral level;

(b) two (2) persons licensed to practice practical nursing in Idaho;

(c) one (1) person licensed as an advanced practice nurse; and

(d) one (1) person who is a lay person to health care occupations.

In making appointments to the board, consideration shall be given to the board's responsibility in areas of education and practice. Members of the board of nursing and of the advisory council for licensed practical nurses holding office under prior law on the effective date of this act shall serve as members of the board created herein until expiration of their respective terms and, as those terms expire or become vacant, the governor shall appoint such other persons as will constitute a complete board as herein prescribed. The two (2) members appointed to reach the full membership provided herein shall be persons licensed to practice professional nursing educated at the associate degree level. Persons may be reappointed to the board so long as they meet the qualifications of the position to which they were originally appointed. In the event that a member has attained an additional degree of education, they may not be reappointed to represent the board position designated for another specific degree of education. Upon expiration of any term or creation of any vacancy, the board shall notify the governor thereof, who then shall make such appointment or fill such vacancy within sixty (60) days. Appointments shall be for terms of three (3) years except appointments to vacancies which shall be for the unexpired term being filled. No member shall be appointed for more than two (2) terms. The governor may remove any

member from the board for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

(~~b~~2) Qualifications of members. No person is qualified for appointment hereunder unless that person is a citizen of the United States and a resident of the state of Idaho. Members required to be licensed hereunder shall not be qualified for appointment to the board unless actively engaged in some field of nursing in Idaho at the time of appointment. No person is qualified for appointment as the lay member of the board if the person or his spouse is licensed in any health occupation; is an employee, officer or agent of or has any financial interest in any health care facility, institution, or association or any insurance company authorized to underwrite health care insurance; or is engaged in the governance and administration of any health care facility, institution or association.

(~~c~~3) Conduct of business. The board shall meet at such times as required to conduct the business of the board and shall annually elect from its members a chairman, vice chairman and such other officers as may be desirable. ~~Four~~ Five (~~4~~5) members shall constitute a quorum and the vote of a majority of members present at a meeting wherein a quorum is present shall determine the action of the board. Each member of the board shall be compensated as provided by section 59-509(g), Idaho Code.

SECTION 3. That Section 54-1404, Idaho Code, be, and the same is hereby amended to read as follows:

54-1404. BOARD OF NURSING -- POWERS AND DUTIES. The board shall have all powers and duties necessary and incident to regulation of nursing and to enforcement of this act, including but not limited to, the power and duty:

(1) ~~t~~To license qualified persons for practice of nursing in Idaho; to renew licenses; to limit, restrict, amend, deny, suspend or revoke licenses; and to accept the voluntary surrender of a license;

(2) ~~t~~To establish standards, criteria, conditions and requirements for licensure and to investigate and determine eligibility and qualifications for licensure, and to administer examinations for licensure;

(3) ~~t~~To establish standards of conduct and practice and to regulate the use of titles, abbreviations and designations for the practice of nursing;

(4) ~~t~~To establish standards, criteria, and requirements for curricula for nursing education programs and to evaluate, survey, review and approve nursing education programs subject to the provisions of section 54-1406, Idaho Code;

(5) ~~t~~To evaluate continuing competency of persons licensed pursuant to this act and to develop standards which will advance the competency of licensees in accordance with developing scientific understanding and methods relating to the practice of nursing;

(6) ~~t~~To receive and collect license and renewal fees assessed pursuant to this act and to assess, receive and collect additional reasonable fees for ~~approval of nurse practitioners,~~ the administration of examinations, investigations and evaluations of applicants, issuance of temporary licenses, duplication and verification of

records, surveying and evaluating nursing education programs, and administrative fines not to exceed one hundred dollars ($100) for each count or separate offense of practicing nursing without current licensure, to be deposited in the state board of nursing account in the manner provided by this act;

(7) ~~t~~To employ personnel necessary to administer this act and rules promulgated pursuant to this act and perform such other duties as the board may require. Such personnel shall include an executive director, who shall be currently licensed to practice professional nursing in Idaho and who shall not be a member of the board;

(8) ~~t~~To maintain a record of board proceedings, annually report to the governor and maintain a public register of names and addresses of licensed nurses;

(9) ~~t~~To make, adopt and publish rules pursuant to chapter 52, title 67, Idaho Code, as may be necessary or appropriate to carry out the provisions and purposes of this act.

SECTION 4. That Section 54-1407, Idaho Code, be, and the same is hereby amended to read as follows:

54-140~~7~~8. LICENSE FOR PROFESSIONAL NURSING. (~~a~~1) Qualifications. To qualify for a license to practice professional nursing, a person must:

(~~1~~a) ~~h~~Have successfully completed the basic ~~professional~~ curriculum of an approved professional nursing education program; and

(~~2~~b) ~~p~~Pass an examination adopted and used by the board to measure knowledge and judgment essential for safe practice of professional nursing or have a professional or registered nurse license in good standing, without restriction or limitation, issued upon successful similar examination, approved by the board, conducted in another state, territory or foreign country; and

(~~3~~c) ~~b~~Be of sufficiently sound physical and mental health as will not impair or interfere with the ability to practice nursing.

(~~b~~2) Fees. A qualified applicant shall be entitled to a license to practice professional nursing upon payment of a license fee to the board in an amount designated by the board not less than forty-five dollars ($45.00) nor more than ninety dollars ($90.00).

SECTION 5. That Section 54-1408, Idaho Code, be, and the same is hereby amended to read as follows:

54-1408~~7~~. LICENSE FOR PRACTICAL NURSING. (~~a~~1) Qualifications. To qualify for a license to practice practical nursing a person must:

(~~1~~a) ~~h~~Have successfully completed the basic curriculum of an approved eleven (11) month practical nursing education program or its equivalent; and

(~~2~~b) ~~p~~Pass an examination adopted and used by the board to measure knowledge and judgment essential for safe practice of practical nursing or have a practical nursing license in good standing, without restriction or limitation, issued upon successful similar examination, approved by the board, conducted in another state, territory or foreign ~~county~~ country; and

(~~3~~c) ~~b~~Be of sufficiently sound physical and mental health as will

not impair or interfere with the ability to practice nursing.

(~~b~~2) Fees. A qualified applicant shall be entitled to a license to practice practical nursing upon payment of a license fee to the board in an amount designated by the board not less than forty dollars ($40.00) nor more than eighty-five dollars ($85.00).

SECTION 6. That Chapter 14, 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 54-1409, Idaho Code, and to read as follows:

54-1409. LICENSE FOR ADVANCED PRACTICE PROFESSIONAL NURSING. (1) Qualifications. To qualify for a license to practice advanced practice professional nursing, a person must:

(a) Be currently licensed as a professional nurse in Idaho; and

(b) Have successfully completed an approved advanced practice professional nursing education program that meets the board requirements for the category of advanced nursing practice for which the applicant is seeking licensure; and

(c) Have passed a qualifying examination recognized by the board and have current initial certification or current recertification from a national group recognized by the board; and

(d) Be of sufficiently sound physical and mental health as will not impair or interfere with the ability to practice nursing.

(2) Fees. A qualified applicant shall be entitled to a license to practice advanced practice professional nursing upon payment of a license fee to the board in an amount designated by the board not less than forty-five dollars ($45.00) nor more than ninety dollars ($90.00).

SECTION 7. That Section 54-1409, Idaho Code, be, and the same is hereby amended to read as follows:

54-140~~9~~10. TEMPORARY LICENSE. (1) The board may issue temporary licenses to:

(~~1~~a) ~~g~~Graduates of approved nursing education programs seeking to qualify for licensure by this act; or

(~~2~~b) ~~p~~Persons who have not actively engaged in the practice of nursing in any state for more than three (3) years immediately prior to application for licensure.

(2) Temporary licenses shall be issued upon such terms and conditions as the board may determine necessary to insure safe and qualified performance of nursing functions. The board shall define the nature, the scope and period of practice permissible under the temporary license.

SECTION 8. That Section 54-1410, Idaho Code, be, and the same is hereby amended to read as follows:

54-141~~0~~1. RENEWAL OF LICENSE. Each license issued pursuant to this act shall be valid from the date of its issue until the first renewal date thereafter. No license shall be valid unless renewed each and every two (2) years on the renewal dates fixed by the board.

The board may impose a renewal fee in an amount not less than twenty-five dollars ($25.00) nor more than fifty dollars ($50.00).

SECTION 9. That Section 54-1411, Idaho Code, be, and the same is hereby amended to read as follows:

54-141~~1~~2. EXCEPTIONS TO LICENSE REQUIREMENTS. This act shall not be construed to require licensure or to prohibit the practice of nursing by persons assisting in an emergency, students enrolled in approved nursing education programs performing functions incident to formal instruction, nurses licensed by another state, territory or country and employed by the United States government performing official duties, persons rendering nursing services or care of the sick when done in connection with the practice of the religious tenets of any church by adherents thereof, and by such other persons as may be exempt from licensure by rules ~~and regulations~~ of the board. Nothing shall be construed as prohibiting the use of medical attendants by the department of correction at its correctional institutions.

SECTION 10. That Section 54-1412, Idaho Code, be, and the same is hereby amended to read as follows:

54-141~~2~~3. DISCIPLINARY ACTION. (~~a~~1) Grounds for discipline. The board shall have the power to deny any application for or renewal of license, to revoke, suspend or amend any license issued pursuant to this act and to limit or restrict the practice of any licensee, upon a determination by the board that the person:

(~~1~~a) ~~m~~Made, or caused to be made, a false, fraudulent or forged statement or representation in procuring or attempting to procure a license to practice nursing; or

(~~2~~b) ~~p~~Practiced nursing under a false or assumed name; or

(~~3~~c) ~~i~~Is convicted of a felony or of any offense involving moral turpitude; or

(~~4~~d) ~~i~~Is or has been grossly negligent or reckless in performing nursing functions; or

(~~5~~e) ~~h~~Habitually uses alcoholic beverages or narcotic, hypnotic or hallucinogenic drugs; or

(~~6~~f) ~~i~~Is physically or mentally unfit to practice nursing; or

(~~7~~g) ~~v~~Violates the provisions of this act or rules ~~and regulations~~ and standards of conduct and practice as may be adopted by the board; or

(~~8~~h) ~~o~~Otherwise engages in conduct of a character likely to deceive, defraud or endanger patients or the public; or

(~~9~~i) ~~h~~Has had a license to practice nursing suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(~~b~~2) (a) Proceedings. The executive director shall conduct such investigations and initiate such proceedings as necessary to insure compliance with this section. The board may accept the voluntary surrender of a license from any nurse under investigation and accordingly enter an order revoking or suspending such license and/or imposing such conditions, limitations, or restrictions on

the practice of any such nurse as may be appropriate in the discretion of the board. Otherwise, every person subject to disciplinary proceedings shall be afforded an opportunity for hearing after reasonable notice. All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code.

(b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence. The board and any person duly appointed by the board to conduct hearings shall have all powers as are necessary and incident to orderly and effective receipt of evidence including, but not limited to, the power to administer oaths, and to compel by subpoena attendance of witnesses and production of books, records and things at the hearing or at a deposition taken by a party in accordance with the Idaho rules of civil procedure. Any party shall be entitled to the use of subpoena upon application therefor.

(c) In the event any person fails to comply with a subpoena personally served upon him or refuses to testify to any matter regarding which he may be lawfully interrogated, the board shall petition the district court in the county where such failure or refusal occurred or where such person resides, to enforce such subpoena or compel such testimony. Proceedings before the district court shall be for contempt in the same nature as contempt of court for failure or refusal to comply with an order of the court and the court shall have the same powers to secure compliance with subpoena and testimony or to impose penalties as in contempt of court proceedings.

(~~c~~3) Probation/Subsequent review. Any order of the board entered under this section may be withheld or suspended for a probationary period to be fixed by the board upon such terms and conditions as may be appropriate in order to regulate, monitor and/or supervise the practice of nursing by the licensee subject to such order for the prescribed probationary period. Any order of the board entered under this section may be withdrawn, reversed, modified or amended upon a showing by the person subject to the order that the grounds for discipline no longer exist or that he is rehabilitated, qualified and competent to practice nursing and that he is not likely to violate this act or rules ~~and regulations~~ adopted hereunder in the future. The board may, as a condition to withdrawal, reversal, modification or amendment of the order, require the person to pay all or part of the costs incurred by the board in proceedings upon which the order was entered.

SECTION 11. That Section 54-1413, Idaho Code, be, and the same is hereby amended to read as follows:

54-141~~3~~4. UNLAWFUL CONDUCT -- PENALTIES. (~~a~~1) It shall be unlawful for any person, corporation, association or other legal entity to:

(~~1~~a) Practice nursing in this state without a current license unless exempt from licensure by this act; or

(~~2~~b) Falsify or forge any application for licensure, license, renewal of license or certification required by this act; or

(~~3~~c) Falsely represent by use of any designation, title, or statement, that he is licensed pursuant to this act; or

(~~4~~d) Falsely represent, by use of any designation, title or statement, that a school or course is approved pursuant to this act; or

(~~5~~e) Employ unlicensed persons to practice nursing in this state unless the person is exempt from licensure by this act; or

(~~6~~f) Aid, assist or encourage any person to violate this act~~;~~ or. ~~(7) Fail to report semiannually upon request, the names of professional and practical nurses employed.~~

(~~b~~2) Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by fine not to exceed three hundred dollars ($300) or by imprisonment not to exceed six (6) months or both such fine and imprisonment.

SECTION 12. That Section 54-1414, Idaho Code, be, and the same is hereby amended to read as follows:

54-1414~~5~~. EXISTING LICENSES. Any person holding a license to practice nursing in this state on ~~the date this act becomes effective~~ March 23, 1977, shall be recognized as licensed hereunder and shall be subject to all provisions of this act. The rules ~~and regulations~~ of the board in effect at the time of enactment of this act, and the fees fixed by the statute repealed by this act shall remain in full force and effect until the board has adopted supplemental rules ~~and regulations~~ pursuant to this act.

SECTION 13. That Chapter 14, 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 54-1417, Idaho Code, and to read as follows:

54-1417. ADVISORY COMMITTEE TO THE BOARD. There is hereby created and established an advisory committee to the board on issues related to the advanced practice of nursing of certified nurse midwives, clinical nurse specialists and nurse practitioners.

(1) The committee shall consist of five (5) members: two (2) persons licensed to practice advanced practice nursing in the state of Idaho appointed by the board of nursing; two (2) persons licensed to practice medicine in the state of Idaho appointed by the board of nursing from a list of nominees supplied by the board of medicine; and one (1) person licensed to practice pharmacy in the state of Idaho appointed by the board of nursing from a list of nominees supplied by the board of pharmacy. Each member shall serve a term of two (2) years to expire on June 30 in the last year of the member's term, provided that the board may appoint three (3) of the original committee members, one (1) advance practice nurse, one (1) physician and one (1) pharmacist to a one (1) time three (3) year term.

(2) The committee shall meet quarterly or at such times as may be determined by the committee or the board to be necessary.

(3) The committee shall (a) respond to questions posed by the board or board staff regarding advanced practice nursing; (b) consider nonroutine applications for advanced practice nursing licenses and make recommendations to the board; (c) review complaints against advanced practice nurses and make recommendations to the board; (d)

consider applications for prescriptive authority and make recommendations to the board; and (e) recommend to the board the scope of practice of advanced practice nurses, using national standards as a guideline.

(4) The committee's recommendations, using national standards as a guideline, may be adopted, rejected or modified by the board, provided that the board shall not expand the scope of practice or prescriptive authority of an advanced practice nurse beyond that recommended by the advisory committee.

SECTION 14. That Section 54-1415, Idaho Code, be, and the same is hereby repealed.

SECTION 15. That Section 54-1814, Idaho Code, be, and the same is hereby amended to read as follows:

54-1814. GROUNDS FOR MEDICAL DISCIPLINE. Every person licensed to practice medicine or registered as an extern, intern, resident or physician's assistant in this state is subject to discipline by the board pursuant to the procedures and powers set forth in section 54-1806A, Idaho Code, upon any of the following grounds:

(1) Conviction of a felony, or a crime involving moral turpitude, or the entering of a plea of guilty or the finding of guilt by a jury or court of commission of a felony or a crime involving moral turpitude.

(2) Use of false, fraudulent or forged statements or documents, diplomas or credentials in connection with any licensing or other requirements of this act.

(3) Practicing medicine under a false or assumed name in this or any other state.

(4) Advertising the practice of medicine in any unethical or unprofessional manner.

(5) Knowingly aiding or abetting any person to practice medicine who is not authorized to practice medicine as provided in this chapter.

(6) Performing or procuring an unlawful abortion or aiding or abetting the performing or procuring of an unlawful abortion.

(7) The provision of health care which fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public.

(8) Division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for referral.

(9) Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.

(10) Inability to obtain or renew a license to practice medicine, or revocation of, or suspension of a license to practice medicine by any other state, territory, district of the United States or Canada, unless it can be shown that such action was not related to the competence of the person to practice medicine or to any conduct designated herein.

(11) Prescribing or furnishing narcotic or hallucinogenic drugs to addicted persons to maintain their addictions and level of usage without attempting to treat the primary condition requiring the use of narcotics.

(12) Prescribing or furnishing narcotic, hypnotic, hallucinogenic, stimulating or dangerous drugs for other than treatment of any disease, injury or medical condition.

(13) Failure to safeguard the confidentiality of medical records or other medical information pertaining to identifiable patients, except as required or authorized by law.

(14) The direct promotion by a physician of the sale of drugs, devices, appliances or goods to a patient that are unnecessary and not medically indicated.

(15) Abandonment of a patient.

(16) Wilfully and intentionally representing that a manifestly incurable disease or injury or other manifestly incurable condition can be permanently cured.

(17) Failure to supervise the activities of externs, interns, residents, nurse practitioners, certified nurse-midwives, clinical nurse specialists, or physician's assistants. ~~as required by the registration documentation of this chapter.~~

(18) Practicing medicine when a license pursuant to this chapter is suspended, revoked or inactive.

(19) Practicing medicine in violation of a voluntary restriction or terms of probation pursuant to this chapter.

(20) Refusing to divulge to the board upon demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment, or infirmity.

(21) Commission of any act constituting a felony or commission of any act constituting a crime involving moral turpitude.

(22) Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.

Approved March 19, 1998.

CHAPTER 119
(H.B. No. 654)

AN ACT

ELATING TO IMPURITIES IN DRINKING WATER; AMENDING SECTION 37-2102, IDAHO CODE, TO REVISE NOTIFICATION PROCEDURES WHEN CONTAMINANTS SEEP INTO DRINKING WATER SYSTEMS AND TO DEFINE A TERM.

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

SECTION 1. That Section 37-2102, Idaho Code, be, and the same is hereby amended to read as follows:

37-2102. DOMESTIC WATER TO BE PROTECTED. Any person or persons, corporation or corporations, or officers of a municipality, owning or

maintaining any plant or public water system as defined in rules of the department, for the supply to the inhabitants of this state, or any part thereof, of water for domestic purposes shall protect the same and keep it free from all impurities and all other foreign substances which tend to injure the health of the ultimate consumers of such water, whether such impurities or foreign substances are chemical or bacterial. It shall be the duty of any of the persons or corporations owning or maintaining such a plant or public water system to provide notices to the radio and television station serving the area served by the public water system or by direct mail to those persons consuming such water of any ~~variations~~ acute violations from the standards established by the United States environmental protection agency~~.--The-standards-for-protection-from-impurities-and-the-standards for--chemical-and-bacterial-purity-in-the-state-of-Idaho-shall-be-promulgated-as-rules-by-the-state-board-of-health-and-welfare--and--shall be-consistent-with-this-section-of-the-drinking-water-standards-of-the United--States--environmental--protection--agency,-which-standards-are suitable-for-use-in-evaluating-the-quality-and--safety--of--water--and water--supply--systems.--The--director-of-the-department-of-health-and welfare-may-in-his-discretion-issue--reports--and--post--public--signs indicating--noncompliance-with-these-standards~~ as soon as possible but in no case later than seventy-two (72) hours. An acute health violation is defined as: (i) any violations specified by the state as posing an acute risk to human health; (ii) violation of the maximum contaminant level for nitrate or nitrite as established by federal regulation; (iii) violation of the maximum contaminant level for total coliforms, when fecal coliforms of E. coli are present in the water distribution system; or (iv) occurrence of a waterborne disease outbreak as defined by federal regulation. For purposes of this section, maximum contaminant level shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

Approved March 19, 1998.

CHAPTER 120
(H.B. No. 655)

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-103, IDAHO CODE, TO AUTHORIZE THE DIRECTOR TO APPOINT COMMITTEES TO ADVISE THE DIRECTOR AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 22-103, Idaho Code, be, and the same is hereby amended to read as follows:

22-103. DUTIES OF DIRECTOR. The director of the department of agriculture shall execute the powers and discharge the duties vested by law in him or in the department, including, but not limited to, the

following:

(1) Pursuant to chapter 53, title 67, Idaho Code, hire, assign duties and evaluate the performance of all employees of the department.

(2) Designate employees for special assignment, office or function as the needs of the department may require.

(3) Acquire, generate, develop and disseminate information and data concerning agricultural pursuits, productivity and product quality.

(4) Encourage and promote in every practical manner, the interests of agriculture, horticulture, apiculture, aquaculture, the livestock industries, poultry and fowl raising, wool and fur-bearing animals and their allied industries.

(5) Assist, encourage and promote the organization of farmers' institutes, agricultural, horticultural, management or cooperative societies and organizations for the benefit of agricultural pursuits in this state.

(6) Promote improved methods of production, storage, sales and marketing of agricultural industries.

(7) Establish and promulgate standards of construction, use and sanitation of open and closed receptacles for farm products, and standards for grade or other classification of farm products.

(8) Prescribe and promulgate rules governing marks, brands and labels, and the registration thereof, for use upon receptacles for farm products.

(9) Promote, in the interest of the public, economical and efficient use of products and commodities used in the production of agricultural, horticultural, meats and other products and farm commodities and their distribution.

(10) Cooperate with producers, processors and consumers in devising and maintaining economical and efficient systems of distribution, and to assist in the reduction of waste and expense incidental to the marketing of agricultural products.

(11) Gather and diffuse timely information and statistics concerning supply, demand, prevailing prices and commercial movement of agricultural products.

(12) Maintain a market news service, including information concerning crops, freight rates, commission rates and such other information as may be of service to producers and consumers, and to act as a clearinghouse for information between producers and consumers.

(13) Cooperate with the secretary, colleges and universities, experiment stations, and other agencies which cooperate in devising, research and development and utilization of improved agricultural production and other activities.

(14) Investigate the practices, methods of factors, management techniques of commission merchants, track buyers and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grains, eggs, livestock, vegetables or other products used as human foods, to the end that distribution of such commodities through such factors, commission merchants, track buyers and others be efficiently and economically accomplished without hardship, waste or fraud.

(15) Enter and inspect any right-of-way of any irrigation canal,

railway, public highway, field, orchard, nursery, fruit or vegetable packing house, store room, sales room, storage facility, depot or other place where fruits and vegetables are grown or stored and to inspect fruits, trees, plants, vines, shrubs or other articles within the state, and if such places or articles are infested with pests, insects or their eggs or larvae, or with any contagious or transmittable diseases injurious to plant life, to abate or eradicate the same as a nuisance.

(16) Provide treatment for and prevent the spread of infectious or communicable diseases among bees, livestock, fur-bearing animals or domestic animals through the systematic and periodic inspection, testing or treatment of such bees and animals at the expense of the owner thereof.

(17) Protect the livestock interests of the state from losses due to disease or hazards to animal health and communicable to humans through agricultural products.

(18) Maintain recording of earmarks, eartags or other identifying marks not covered under any other provisions of law.

(19) Purchase, lease, hold, sell, and dispose of real and personal property of the department when, in the judgment of the director, such transactions promote the purposes for which the department is established.

(20) Contract with any state agency, federal agency or agency of another state concerning any matter, program or cooperative effort within the scope and jurisdiction of its authority pursuant to law.

(21) Assist in the improvement of country life, farm occupations and to cooperate in effectuating equality of opportunity of those employed in agricultural pursuits in the state of Idaho.

(22) Investigate diseases, contamination of livestock and poultry, agricultural, horticultural, and farm products, suspected to be infected or contaminated by bacterial, viral, protozoal, parasitic, chemical, nuclear, botanical or other disease-producing agents, or carrying a residue of any such disease-producing agent or chemical in excess of any tolerance established by federal or state law or regulation and to examine, conduct tests, and issue "hold orders" on any livestock, poultry, agricultural, horticultural or farm products as deemed necessary to effectuate a diagnosis of disease, contamination or chemical level to safeguard and protect animal and man. And additionally, authorize and implement a predator control program on state and private lands using any kind of toxic material or substance suitable for such purpose. Any toxic material or substance shall be approved for use by the director. In order to carry out the provisions of this subsection (22), the director shall prescribe and promulgate rules pursuant to chapter 52, title 67, Idaho Code.

(23) Prescribe by rule an interest charge which may be assessed on all accounts which are thirty (30) days past due from the initial billing date or the assessment due date. The interest rate charged shall not exceed twelve ~~per cent~~ percent (12%) per annum.

(24) To take all steps that are deemed necessary to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds, including threatened or endangered wildlife within the state of Idaho as are established by federal or state law, federal or state regulation, or

county ordinance, that are injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health and safety.

(25) To administer oaths, certify to all official acts and subpoena any person in this state as a witness; to compel through subpoena the production of books, papers, and records; and to take the testimony of any person on deposition in the same manner as prescribed by law in the procedure before the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so. All powers of the director enumerated in this subsection (25) with respect to administering oaths, power of subpoena, and other powers in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance or renewal of licenses.

(26) To appoint, as necessary, committees for the purpose of advising the director on any and all matters relating to agricultural programs within the Idaho department of agriculture.

Approved March 19, 1998.

CHAPTER 121
(H.B. No. 696)

AN ACT

RELATING TO THE ALFALFA SEED INDUSTRY ACT; AMENDING SECTION 22-4204, IDAHO CODE, TO CHANGE THE RATE OF COMPENSATION ALLOWED; AMENDING SECTION 22-4205, IDAHO CODE, TO CHANGE THE NOMINATION AND ELECTION PROCESS, TO DELETE THE PROVISION RELATING TO ALTERNATES, TO CHANGE THE DATE OF THE ANNUAL MEETING TO A TIME DESIGNATED BY THE ALFALFA SEED GROWERS ASSOCIATION, TO CHANGE THE GENERAL MEETING FROM THE IDAHO ALFALFA SEED DEALERS TO THE IDAHO EASTERN OREGON SEED ASSOCIATION AND TO CHANGE THE DATE FOR APPOINTMENT OF DEALERS; AMENDING SECTION 22-4215, IDAHO CODE, TO CLARIFY HANDLING OF MONEYS RECEIVED BY THE COMMISSION, TO PROVIDE THAT AUDITS SHALL BE PERFORMED EVERY SECOND YEAR BUT SHALL ADDRESS EACH YEAR SEPARATELY AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 22-4204, Idaho Code, be, and the same is hereby amended to read as follows:

22-4204. CREATION OF COMMISSION -- MEMBERS -- QUALIFICATIONS -- COMPENSATION. There is hereby created an alfalfa seed commission within the department of agriculture, to be thus known and designated. The commission shall be composed of six (6) practical alfalfa seed growers and one (1) practical alfalfa seed dealer.

The six (6) grower members shall be citizens and residents of the state of Idaho, each of whom is and has been actively engaged in the growing and producing of alfalfa seed within the state of Idaho, and a substantial portion of whose income has been derived from growing alfalfa seed.

The one (1) dealer member shall be a person who, individually or as executive officer of a corporation, firm, partnership, association or cooperative organization, is and has been actively engaged as a dealer in alfalfa seed within the state of Idaho, is a citizen and resident of this state, and a substantial portion of his income shall have been derived from handling, packing, shipping, buying and selling alfalfa seed, or acting as sales or purchasing agent, broker or factor of alfalfa seed.

The qualifications of members of the commission as herein set forth must continue during their term of office. Each member of the commission shall be compensated as provided by section 59-509(~~d~~n), Idaho Code.

SECTION 2. That Section 22-4205, Idaho Code, be, and the same is hereby amended to read as follows:

22-4205. APPOINTMENT OF NOMINATING COMMITTEE -- PRESENTATION OF NOMINEES TO ANNUAL MEETING -- TIME AND PLACE OF ANNUAL MEETING. (1) The director of the department of agriculture shall appoint a grower nominating committee of three (3) growers from each district, whose responsibility shall be to select a slate of nominees for vacancies occurring on the commission either by expiration of term or for other reasons a vacancy may occur. Two (2) grower members shall be nominated by the nominating committee for each vacancy occurring on the commission membership. The nominations of the nominating committee shall be presented to the annual meeting of alfalfa seed growers for concurrence in the list of nominees, or for such substitutions to the list as the annual meeting may make by majority vote. Each member nominated for the commission shall be a resident citizen of the state of Idaho for a period of four (4) years prior to his election or selection, shall have active experience in growing alfalfa seed and shall be now actually engaged in growing alfalfa seed in Idaho and shall derive a substantial portion of his income from growing alfalfa seed or be the directing or managing head of a corporation, firm, partnership, or other business unit which derives a substantial portion of its income from growing alfalfa seed. To continue holding office, each member must remain qualified. The governor may remove any member who becomes disqualified during his term of office or who is unable to carry out his duties. The term of office of each member of the commission shall terminate on the last day of June of the year in which the term for which the member was elected ends, but each member of the commission shall serve until his respective successor is elected and has qualified. From such list of nominees, the governor shall designate and appoint one (1) as a member of the commission~~, and the other nominee shall be designated as the alternate for his district~~. Said annual meeting shall be held ~~on the second Tuesday of February of each year in Caldwell, Idaho. For the purpose of initial appointments to the commission, the governor shall appoint the first six (6) grower members for a term of one (1) year, commencing July 1, 1974, upon the nomination of the director of the department of agriculture~~ at a time and place designated by the alfalfa seed growers association with notification mailed to all alfalfa seed growers in Idaho.

(2) A general meeting of the Idaho ~~alfalfa seed dealers~~ Eastern

Oregon Seed Association shall nominate two (2) dealers, one (1) of whom shall be appointed as provided for in this act by ~~March 31~~ June 30 of each year, and one (1) of whom shall be designated as alternate. ~~For the purpose of an initial appointment, the governor shall appoint a dealer member, upon the nomination of the director of the department of agriculture, for a term of one (1) year, commencing July 1, 1974.~~

SECTION 3. That Section 22-4215, Idaho Code, be, and the same is hereby amended to read as follows:

22-4215. DEPOSIT OF ASSESSMENTS -- WITHDRAWAL METHOD -- EXPENSES -- BOND REQUIRED -- AUDIT. (1) ~~As soon as possible after receipt~~ All receipts for the commission will be deposited within five (5) working days of being received, all moneys received by the commission from the assessment levied under section 22-4210, Idaho Code, and all other moneys received by the commission shall be deposited 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 at such banks or trust companies.

(2) (a) No money shall be withdrawn 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 each check or other order, shall be kept.

(b) All moneys referred to in subsection (1) of this section shall be used by the commission only for the payment of expenses of the commission in carrying out the powers conferred on the commission.

(c) The commission may require any commission member or agent or employee appointed by the commission to give a bond payable to the commission in the amount and with the security and containing the terms and conditions the commission may prescribe. The cost of such bond is an administrative cost under this act.

(3) All moneys received or expended by the commission shall be audited every second year, but shall address each year separately, by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year. The right is reserved to the state of Idaho to audit all funds of the commission at any time.

Approved March 19, 1998.

CHAPTER 122
(H.B. No. 703)

AN ACT

RELATING TO THE CHERRY COMMISSION; AMENDING SECTION 22-3704, IDAHO CODE, TO PROVIDE THAT DEALERS APPOINTED TO THE CHERRY COMMISSION MAY BE FROM EITHER DISTRICT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-3710, IDAHO CODE, TO PROVIDE AN ASSESSMENT OF TWENTY DOLLARS A TON; AND AMENDING SECTION 22-3713, IDAHO CODE, TO ALLOW AN ASSESSMENT INCREASE TO TWENTY-FIVE DOLLARS A TON AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 22-3704, Idaho Code, be, and the same is hereby amended to read as follows:

22-3704. COMMISSION MEMBERS -- NOMINATION AND APPOINTMENT. Grower and dealer members of the commission shall be selected as follows:

(a) Two (2) grower members shall be nominated for each grower vacancy that occurs from which the governor shall appoint one (1). The first nominees shall be nominated in the following manner: The cherry committee of the Idaho Horticultural Society shall conduct meetings in each of the two (2) districts referred to in section 22-3703, Idaho Code, and at such meetings the growers shall nominate two (2) growers for each district and one (1) additional grower at large. The cherry committee of the Idaho Horticultural Society shall call a general meeting of the Idaho cherry dealers at such time and place as shall be decided by the committee for the purpose of nominating four (4) dealers, representative of the two (2) districts defined in subparagraphs (6) and (7) of section 22-3703, Idaho Code. Notice of the meetings for the nominations of growers shall be by publication in one (1) newspaper published in the major cherry producing county of the district in which said nominations are to be made, and the notice shall be published in two (2) issues of such newspapers, the first approximately thirty (30) days and the second approximately ten (10) days before said meeting. The notice shall state the purpose, time and place of said meeting. All meetings held for the selection of nominees shall be held prior to March 31 of the year the appointment or appointments are to be made.

(b) After the original appointments to the commission all subsequent appointments shall be conducted in the same manner, except that the meetings shall be called and conducted by the commission.

(c) The governor shall select from the nominees for each district and the nominees at large one (1) grower member and from the four (4) nominees for dealers, two (2) members at large, as required by this act.

(d) The governor shall appoint five (5) persons to the commission based upon the nominating petitions. Three (3) shall be growers and two (2) shall be dealers~~, but each dealer nominee must be from a different district~~. The appointed dealers may be from either district.

The first members of the commission shall draw lots to determine their respective terms of office. Two (2) of the original members shall serve for one (1) year; two (2) of the original members shall serve for two (2) years; and one (1) of the original members shall serve for three (3) years. The term of office of members of the commission thereafter shall be three (3) years. Provided, however, that both dealer members of the commission's terms of office shall not expire during the same year.

Members of the commission may not serve more than two (2) consecutive terms. Upon serving two (2) consecutive terms and the lapse of one (1) full term, such member may again be nominated and appointed to the commission.

In the event there are vacancies in the commission through death, resignation or removal, it shall be the duty of the growers and dealers as provided in section 22-3704, Idaho Code, to submit to the governor at least two (2) qualified names for each grower vacancy and two (2) qualified names for each dealer vacancy for the district in which the vacancy occurred. The governor shall make the appointment or appointments to fill the vacancy.

SECTION 2. That Section 22-3710, Idaho Code, be, and the same is hereby amended to read as follows:

22-3710. ASSESSMENT. There is hereby levied upon all cherries grown annually in this state and all cherries packed as Idaho cherries an assessment of twenty dollars ($520.00) a ton. Provided, however, this section shall not apply to cherries shipped to a processing plant for processing, nor shall it apply to any person, dealer or grower who sells less than one thousand (1000) pounds of cherries in any marketing year. Provided, however, the exemption for shipment or sales to a processing plant for processing may be eliminated by a referendum mail ballot vote conducted by the commission among the cherry growers of this state, and provided further, the vote is approved by a two-thirds (2/3) vote of the growers of fifty percent (50%) or more of the acreage represented in the voting. All moneys collected hereunder shall be expended to effectuate the purposes and object of this act.

SECTION 3. That Section 22-3713, Idaho Code, be, and the same is hereby amended to read as follows:

22-3713. ASSESSMENT -- INCREASE. If it appears from an investigation that the revenue from the assessment levied hereunder is inadequate to accomplish the purposes of this act, the commission shall file with the director of the department of agriculture a report showing the necessity of the industry, extent and probable costs of the required research, market promotion and advertising, extent of public convenience, interest and necessity, and probable revenue from the assessment desired to be levied. It shall thereupon increase the assessment to a sum not to exceed twenty-five dollars ($205.00) a ton; but no increase in such assessment shall become effective unless the same shall first be referred by the commission on a referendum mail

ballot to the cherry growers of this state, and be approved by two-thirds (2/3) vote of the growers of fifty ~~per cent~~ percent (50%) or more of the acreage represented in the voting.

Approved March 19, 1998.

CHAPTER 123
(H.B. No. 428)

AN ACT

RELATING TO THE IDAHO DNA AND GENETIC MARKER DATABASE ACT OF 1996; AMENDING THE CHAPTER HEADING OF CHAPTER 55, TITLE 19, IDAHO CODE, TO DELETE "GENETIC MARKER"; AMENDING SECTION 19-5505, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 19-5507, IDAHO CODE, TO DELETE INCORRECT TERMINOLOGY AND REFERENCES; AMENDING SECTION 19-5509, IDAHO CODE, TO PROVIDE FOR GENETIC TESTING OF SAMPLES IN ADDITION TO BLOOD AND TO ELIMINATE REFERENCES TO THE ANALYSIS OF SAMPLES FOR GENETIC MARKERS; AMENDING SECTION 19-5511, IDAHO CODE, TO PROVIDE FOR FORWARDING AND WITHDRAWAL OF DNA SAMPLES IN ACCORDANCE WITH RULES ADOPTED BY THE BUREAU OF FORENSIC SERVICES AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 19-5514, IDAHO CODE, TO DELETE TERMINOLOGY, TO DELETE OBSOLETE REQUIREMENTS FOR PUBLIC DISCLOSURE OF METHODOLOGY PRIOR TO THE COMMENCEMENT OF DNA TESTING AND CONSIDERATION OF PEER REVIEW AND VALIDATION STUDIES AND TO CORRECT A CODE CITATION; AND AMENDING SECTION 19-5517, IDAHO CODE, TO DELETE INCORRECT TERMINOLOGY.

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

SECTION 1. That the heading of Chapter 55, Title 19, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 55
THE IDAHO DNA ~~AND GENETIC MARKER~~ DATABASE ACT OF 1996

SECTION 2. That Section 19-5505, Idaho Code, be, and the same is hereby amended to read as follows:

19-5505. USE OF THE STATE DATABANK AND DATABASE -- DUTIES OF BUREAU OF FORENSIC SERVICES. (1) The bureau of forensic services shall perform or contract for DNA analysis ~~and other genetic typing analysis~~ for law enforcement purposes.

(2) The bureau of forensic services shall serve as a repository for DNA samples collected and shall analyze samples, or contract for analysis, and shall store, compile, correlate, maintain and use DNA ~~and genetic marker~~ profiles and records related to:

(a) Forensic casework;
(b) Offenders required to provide samples under this chapter;
(c) The identification and location of missing persons; and
(d) Anonymous DNA records used for research or quality control.

(3) A match between evidence DNA samples from a criminal investi-

gation and DNA samples from a state or federal database may be used to sustain probable cause for the arrest of a suspect upon application for a warrant.

(4) The ~~genetic-markers~~ DNA profile may also be used at trial as evidence, provided that the evidence is otherwise admissible at trial. The ~~genetic-markers~~ DNA profile may also be used in developing statistical calculations of populations frequencies.

SECTION 3. That Section 19-5507, Idaho Code, be, and the same is hereby amended to read as follows:

19-5507. RESPONSIBILITY FOR SAMPLE COLLECTION -- TIMING OF SAMPLE COLLECTION -- SITE FOR SAMPLE COLLECTION. (1) A court shall order a DNA sample and thumbprint impression to be taken after conviction and before sentencing of any person upon application by the prosecuting attorney, the attorney general, or the department of law enforcement upon a showing that early collection of such samples will be in the best interest of justice. The DNA samples shall be collected in accordance with procedures established by the bureau of forensic services. The director may designate a state or county correctional facility for sample collection.

(2) Any person, including any juvenile tried as an adult, who comes within the terms of this chapter, and who is granted probation or who serves an entire term of confinement in a state or county facility, or who otherwise bypasses a prison inmate reception center shall, prior to physical release from custody, be required to provide a DNA sample and thumbprint impression at a department of law enforcement designated sample collection location. If the person is not incarcerated at the time of sentencing, the court shall order the person to report within ten (10) working days to the facilities designated for the collection of such specimens.

(3) The chief administrative officer of any state or local detention facility, jail or other facility shall cause a DNA sample and thumbprint impression to be collected from the person subject to this chapter during the intake process at the facility, or immediately thereafter at another facility designated for such collection, if DNA samples previously have not been taken pursuant to this chapter.

(4) The director of the department of correction shall cause a DNA sample and thumbprint impression to be collected from any person subject to the terms of this chapter who has been sentenced to serve a term of imprisonment in a state correctional institution and who has not had a ~~complete set of~~ DNA samples taken after conviction and before sentencing. The DNA sample and thumbprint impression shall be collected from the person during the intake process at the reception center designated by the director of the department of correction as soon as possible.

(5) Any person subject to the terms of this chapter who is serving a term of imprisonment or confinement, and who did not, for any reason, provide a DNA sample or thumbprint impression for analysis by the bureau of forensic services, shall submit to such tests as soon as practicable, but in any event prior to final discharge, parole, or release from imprisonment or confinement. A person who was convicted prior to the effective date of this chapter is not exempt from these

requirements.

(6) As a condition of probation or parole, any person subject to the terms of this chapter and who has not previously submitted a DNA sample and thumbprint impression, shall upon notice by a law enforcement agency or an agent of the department of correction, be required to provide a DNA sample and thumbprint impression if it has been determined that such sample and thumbprint impression are not in the possession of the bureau of forensic services. That person is required to have the sample and impression taken within ten (10) working days at the designated county or state facility.

(7) When the state accepts an offender from another state under any interstate compact, or under any other reciprocal agreement with any county, state or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance is conditional on the offender providing a DNA sample and thumbprint impression if the offender was convicted of an offense which would qualify as a crime described in section 19-5506, Idaho Code, if committed in this state, or if the person was convicted of an equivalent offense in any other jurisdiction. If the offender from another state is not confined, the samples and impression required by this chapter must be provided within ten (10) working days after the offender reports to the supervising agent or within ten (10) working days of notice to the offender, whichever occurs first. The person shall report to the ~~department of law enforcement's~~ designated sample collection facility or facilities to have the sample and impression taken. If the offender from another state is confined, he or she shall provide the DNA sample and thumbprint impression as soon as practicable after receipt in a state or county correctional facility or other facility, and, in any event, before completion of the person's term of imprisonment, if that person is to be discharged.

(8) Any inmate serving a term of incarceration for committing an offense listed in section 19-5506, Idaho Code, who is released on parole, furlough, or other release, and is returned to a state or local correctional institution for a violation of a condition of that release, and that inmate has not previously provided a DNA sample and thumbprint impression, shall provide a sample and impression upon returning to the state correctional institution.

SECTION 4. That Section 19-5509, Idaho Code, be, and the same is hereby amended to read as follows:

19-5509. GENETIC TESTING OF ~~BLOOD~~ SAMPLES GIVEN FOR ANOTHER PURPOSE. If a person has been convicted of a crime as provided by this chapter and has given a DNA sample or samples to law enforcement for any purpose, the bureau of forensic services is authorized to analyze such ~~sample or~~ samples ~~for genetic markers, including~~ for DNA, ~~markers,~~ and ~~including~~ include the ~~genetic~~ DNA profiles from such samples in the state's convicted felon DNA databank and databases. This provision applies whether the DNA sample originally collected was from a sexual or violent offender pursuant to the databank and database program, and whether the crime committed predated the effective date of this chapter, or any amendments thereto. This provision does not relieve a person subject to the terms of this chapter from giving a

DNA sample and thumbprint impression for the DNA databank and database.

SECTION 5. That Section 19-5511, Idaho Code, be, and the same is hereby amended to read as follows:

19-5511. COLLECTION AND FORWARDING OF SAMPLES -- LIABILITY -- USE OF FORCE. (1) The director of the department of correction or the chief administrative officer of the detention facility, jail, other facility at which the DNA sample and thumbprint impression were collected shall forward the samples and impressions to the bureau of forensic services ~~no later than ten (10) working days after the date of collection~~ according to requirements set forth in the bureau of forensic services rules.

(2) The bureau of forensic services shall provide all specimen ~~vials~~ collection materials, thumbprint cards, mailing tubes, envelopes, labels and instructions for the collection of the samples and thumbprint impressions. The DNA samples and thumbprint impressions shall thereafter be forwarded to the bureau of forensic services for analysis of DNA. ~~and other genetic typing.~~

(3) ~~The withdrawal of DNA samples shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist, clinical laboratory bioanalyst or trained phlebotomist may withdraw the DNA samples~~ The bureau of forensic services shall adopt rules specifying how DNA samples are to be taken.

~~(4)~~ The right thumbprint impression shall be taken on a form prescribed by the department of law enforcement.

(~~5~~4) No person or governmental agency shall be subject to civil or criminal liability for ~~withdrawing blood~~ obtaining DNA samples or obtaining thumbprint impressions absent a showing of reckless disregard for medically accepted practices or a showing of malice.

(~~6~~5) Duly authorized law enforcement and correction personnel shall employ reasonable force in cases where an individual who is incarcerated refuses or resists submission to procedures for collecting a DNA sample or thumbprint impression authorized by this chapter, and no employee shall be subject to criminal or civil liability for the reasonable use of force absent a showing of malice.

SECTION 6. That Section 19-5514, Idaho Code, be, and the same is hereby amended to read as follows:

19-5514. LIMITATIONS ON DISCLOSURE OF INFORMATION. (1) All DNA profiles retained by the bureau of forensic services pursuant to this chapter shall be treated as confidential as provided by section 9-340~~(47)~~, Idaho Code.

(2) The DNA ~~and other genetic typing~~ information shall be filed with the offender's file maintained by the department of law enforcement.

(3) The DNA ~~and other genetic typing~~ information shall not be included in the state summary criminal history information.

(4) The DNA ~~and other genetic typing~~ information, and thumbprint impressions, shall be released only to law enforcement agencies,

including, but not limited to, parole officers of the department of correction, hearing officers of the parole authority, and prosecuting attorneys' offices, at the request of the agency, except as specified in this chapter. Dissemination of this information to law enforcement agencies and prosecuting attorneys' offices outside the state shall be done in conformity with the provisions of this chapter.

(5) Any person who, by virtue of employment or official position, or any person contracting to carry out any function under this chapter, including any officers, employees and agents of such contractor who has possession of or access to individual identifiable DNA information contained in the state DNA database or databank and who willfully discloses such information in any manner to any person or agency not entitled to receive it is guilty of a misdemeanor.

(6) Furnishing DNA ~~or other genetic typing~~ information or thumbprint comparison results to defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(7) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized databank system, or any of the bureau of forensic services' databases provided that the subject of the file is not identified and cannot be identified from the information disclosed. It is also not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding or in any other public record when the inclusion of the information in the public record is authorized by a court, statute or case law.

~~(8) The bureau of forensic services shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The department of law enforcement shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the bureau of forensic services by members of the relevant scientific community experienced in the use of DNA technology.~~

SECTION 7. That Section 19-5517, Idaho Code, be, and the same is hereby amended to read as follows:

19-5517. OPERATION WITH EXISTING LAW -- AUTHORITY OF LAW ENFORCEMENT OFFICERS. Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store and use DNA ~~or other genetic markers~~ <u>information</u> or thumbprint impressions for law enforcement purposes.

Approved March 19, 1998.

CHAPTER 124
(H.B. No. 709)

AN ACT

RELATING TO BONDED WAREHOUSES; AMENDING SECTION 69-261, IDAHO CODE, TO INCREASE THE NUMBER OF MEMBERS ON THE COMMODITY INDEMNITY ACCOUNT ADVISORY COMMITTEE AND TO PROVIDE THAT THE COMMITTEE SHALL BE COM-

POSED OF SIX PRODUCERS PRIMARILY ENGAGED IN THE PRODUCTION OF COMMODITIES AND THREE LICENSED BONDED WAREHOUSEMEN OR LICENSED COMMODITY DEALERS.

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

SECTION 1. That Section 69-261, Idaho Code, be, and the same is hereby amended to read as follows:

69-261. ADVISORY COMMITTEE -- TERMS -- COMPENSATION. (1) There is hereby created a commodity indemnity account advisory committee consisting of ~~five (5)~~ nine (9) members to be appointed by the director. ~~The director shall make appointments to the committee no later than the effective date of the program. Of the initial appointments, two (2) shall be for two (2) year terms and three (3) shall be for three (3) year terms. Thereafter, a~~Appointments shall be for three (3) year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of ~~three (3)~~ six (6) producers primarily engaged in the production of commodities, and ~~two (2)~~ three (3) licensed ~~commodity~~ bonded warehousemen or licensed commodity dealers.

(3) The committee shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it, provided, it shall meet not less than once per year. Each committee member shall be compensated in accordance with section 59-509(g), Idaho Code, for travel and subsistence expense. The expenses of the committee and its operation shall be paid from the commodity indemnity account.

(4) The committee shall have the power and duty to advise the director concerning assessments, administration of the commodity indemnity account, and payment of claims from the account.

Approved March 19, 1998.

CHAPTER 125
(H.B. No. 733)

AN ACT

RELATING TO PUBLIC WRITINGS AND ENVIRONMENTAL PROTECTION; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-342A, IDAHO CODE, TO PROVIDE FOR ACCESS TO AIR QUALITY AND HAZARDOUS WASTE RECORDS AND TO PROVIDE FOR PROTECTION OF TRADE SECRETS; AMENDING SECTION 39-111, IDAHO CODE, TO PROVIDE FOR AVAILABILITY OF RECORDS; AMENDING SECTION 39-117, IDAHO CODE, TO CLARIFY THAT FINES CAN BE IMPOSED PER DAY PER VIOLATION; AMENDING SECTION 39-4411, IDAHO CODE, TO PROVIDE FOR AVAILABILITY OF RECORDS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 3, 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 9-342A, Idaho Code, and to read as follows:

9-342A. ACCESS TO AIR QUALITY AND HAZARDOUS WASTE RECORDS; PROTECTION OF TRADE SECRETS. (1) To the extent required by the federal clean air act and the resource conservation and recovery act for state primacy over any delegated or authorized programs, even if the record is otherwise exempt from disclosure under section 9-340, Idaho Code, any person may inspect and copy:

(a) Air pollution emission data;

(b) The content of any title V operating permit;

(c) The name and address of any applicant or permittee for a hazardous waste treatment, storage, or disposal facility permit pursuant to chapter 44, title 39, Idaho Code; and

(d) Any other record required to be provided to or obtained by the department of health and welfare, division of environmental quality pursuant to the federal clean air act and the resource conservation and recovery act, and the implementing state statutes, federal regulations and state rules, unless the record is a trade secret.

(2) For purposes of this section, a record, or a portion of the record, is a "trade secret" if the information contained in the record is a trade secret within the meaning of the Idaho trade secrets act, sections 48-801, et seq., Idaho Code, including commercial or financial information which, if disclosed, could cause substantial competitive harm to the person from whom the record was obtained.

(3) Any record, or portion of a record, provided to or obtained by the department of health and welfare, division of environmental quality and identified by the person providing the record as a trade secret shall not be disclosed to the public and shall be kept confidential according to the procedures established in this section.

(4) Nothing in this section shall be construed as limiting the disclosure of a trade secret by the department of health and welfare, division of environmental quality:

(a) To any officer, employee, or authorized representative of the state or the United States, under a continuing claim of confidentiality, as necessary to carry out the provisions of state or federal law, or when relevant to any proceeding thereunder;

(b) As determined necessary by the administrator of the division of environmental quality (under a continuing confidentiality claim) to protect the public health and safety from imminent and substantial endangerment;

(c) As required by state or federal law, including section 9-343(3), Idaho Code, under a continuing claim of confidentiality and subsection (1), of this section; or,

(d) With the consent of the person from whom the record is obtained.

(5) It shall be the responsibility of any person providing a record to the department of health and welfare, division of environ-

mental quality to give notice of the existence of a trade secret on each page or other portion of information at the time of submittal and such person shall have the burden of demonstrating that the information is a trade secret.

(6) Notwithstanding the time frames set forth in section 9-339(1), Idaho Code, when a request is made to the department of health and welfare, division of environmental quality pursuant to the provisions of this chapter for the disclosure of information for which a trade secret claim has been made, and the information has not been demonstrated to be a trade secret to the satisfaction of the administrator of the division of environmental quality, within three (3) working days of receipt of the request for the disclosure of the information the division of environmental quality shall provide a written request for substantiation to the person making the confidentiality claim. A response shall be submitted to the division of environmental quality by the person claiming the trade secret protection within ten (10) working days after receipt of the request for substantiation or the information subject to the claim shall be disclosed without further notice. Upon receipt of a timely response to the request for substantiation, the administrator of the division of environmental quality shall determine whether the information is a trade secret subject to protection.

(a) If it is determined that the information, or any portion of the information, is a trade secret, within three (3) working days after receipt of the response, the administrator of the division of environmental quality shall notify the person requesting the information that the request is denied pursuant to sections 9-339(3) and (4), Idaho Code.

(b) If it is determined that the information, or any portion of the information, is not a trade secret and is, therefore, subject to disclosure, within three (3) working days after receipt of the response, the administrator of the division of environmental quality shall inform the person making the confidentiality claim of the determination. The decision shall be a final agency action directly appealable, de novo, to district court of the county where the records or some part thereof are located. An appeal contesting the decision of the administrator of the division of environmental quality to release information claimed to be a trade secret shall be filed within ten (10) working days from the date of receipt of the written notice of decision. The information claimed to be a trade secret shall not be disclosed until the period for appeal has expired with no appeal being taken, or a court order has been issued finding that the information is not a trade secret and all appeals of that order have been exhausted.

(7) In any appeal taken pursuant to this section, the court may award reasonable costs and attorney's fees to the prevailing party if it finds the claim of confidentiality or the decision of the administrator of the division of environmental quality to provide records was frivolously pursued.

(8) By December 31, 1998, the department of health and welfare shall adopt rules which include:

(a) Appropriate measures to safeguard and protect against improper disclosure of trade secrets, including procedures to

train all employees on the proper handling of trade secrets; and

(b) Any other provisions necessary to carry out this section.

(9) As it relates to the department of health and welfare, division of environmental quality, or to agents, contractors, or other representatives of the division, the immunity created in section 9-346, Idaho Code, shall apply only when disclosure of a trade secret is made consistent with this section.

SECTION 2. That Section 39-111, Idaho Code, be, and the same is hereby amended to read as follows:

39-111. ~~REPORTS--CONTAINING--INFORMATION--WHICH--ADVERSELY-AFFECT COMPETITIVE-POSITIONS-TO-BE-HELD-CONFIDENTIAL~~ AVAILABILITY OF RECORDS. Any records or other information furnished to the ~~board,-director-or-a designated-hearing-officer-concerning-one-or-more-air-or-water--pollution--sources,-which-records-or-information,-as-certified-by-the-owner or-operator,-relate-to-production-or-sales-figures-or-to-processes--or production--unique--to--the--owner-or-operator-or-which-tend-to-affect adversely-the-competitive-position-of-such-owner-or-operator,-shall-be only-for-the-confidential-use-of-the-board,-director-and-hearing-officer-in-the-administration-of-this-act,~~ department or to agents, contractors, or other representatives of the department under any provisions of this chapter shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

SECTION 3. That Section 39-117, Idaho Code, be, and the same is hereby amended to read as follows:

39-117. CRIMINAL VIOLATION -- PENALTY. (1) Any person who wilfully or negligently violates any of the provisions of the non-air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard, rule or regulation issued pursuant thereto, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars ($10,000) for each separate violation or one thousand dollars ($1,000) per day for continuing violations, whichever is greater.

(2) Any person who knowingly violates any of the provisions of the air quality public health or environmental protection laws or the terms of any lawful notice, order, permit, standard or rule issued pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars ($10,000) ~~for--each--separate-violation-or-for-each-day-of-a continuing~~ per day per violation. In addition, any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of the federal clean air act 42 USC 7412, or any extremely hazardous substance listed pursuant to 42 USC 11002(a)(2) that is not listed under section 112, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than two hundred fifty thousand dollars ($250,000) per day, or by imprisonment of not more than fifteen (15) years or both such fine and imprisonment. Any person committing such violation which is an organization, shall, upon conviction under this subsection, be

subject to a fine of not more than one million dollars ($1,000,000) for each violation. For any air pollutant for which the environmental protection agency or the board of health and welfare has set an emissions standard or for any source for which a permit has been issued under title V of the clean air act amendments of 1990, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of the provisions of this subsection.

SECTION 4. That Section 39-4411, Idaho Code, be, and the same is hereby amended to read as follows:

39-4411. RECORDS -- REPORTING -- MONITORING. (1) Pursuant to the provisions of section 39-4405, Idaho Code, the board shall adopt, and amend as necessary, such rules relating to records, reporting, and monitoring as may be needed to achieve the purposes of this chapter. These rules may include, but shall not be limited to, prescribing procedures and requirements for:

(a) The establishment, maintenance, and format of records and reports;

(b) The submittal of records and reports;

(c) The taking of samples and the performing of tests and of analyses;

(d) The use of approved monitoring methods and techniques;

(e) The installation, calibration, use, and maintenance of monitoring equipment; and

(f) The provision of relevant information to the department.

(2) Sixty (60) days after promulgation of the criteria and lists specified under section 39-4407, Idaho Code, and the rules required under section 39-4405, Idaho Code, and subsection (1) of this section, the generation, transportation, treatment, storage, or disposal of a hazardous waste in this state by any person without reporting such activity to the department as required by the rules issued pursuant to subsection (1) of this section shall be unlawful.

(3) Information obtained by the department or by agents, contractors, or other representatives of the department, under any provisions of this chapter, ~~shall be available to the public, unless the information, or parts thereof, if made public, would divulge methods, processes, or activities constituting trade secrets, in which case the information~~ shall be subject to disclosure according to chapter 3, title 9, Idaho Code. ~~Nothing in this subsection shall be construed as limiting the disclosure of information by the department to any officer, employee, or authorized representative of the state or the United States, as necessary to carry out the provisions of this chapter or the provisions of RCRA. The provisions of this section shall not limit the department's authority to release confidential information during an emergency involving hazardous waste, if the director determines that release of the information is necessary to safeguard the public health and safety.~~

(4) Effective January 1, 1996, each generator shall, at the discretion of the director, no later than thirty (30) days after the end of each calendar year submit a written annual report to the department including the following information:

(a) The types and quantities of hazardous wastes generated;

(b) The types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal;

(c) The types and quantities of such wastes remaining in storage at the end of the reporting period;

(d) Whether such wastes are destined for disposal or treatment in this state or whether such wastes are destined for disposal or treatment outside this state.

(5) Effective January 1, 1996, the operator of each commercial hazardous waste disposal facility or site in the state shall, no later than thirty (30) days after the end of each calendar year, submit a written annual report to the department providing information on the types and quantities of wastes received which were generated in Idaho, and information on the types and quantities of wastes received which were generated in other states.

(6) Prior to March 1 of each year the department shall submit a report to the governor and the legislature detailing the types and quantities of hazardous wastes generated in this state, the types and quantities of such wastes shipped for treatment and disposal by landfilling or other means of disposal, the types and quantities of such wastes remaining in storage at the end of the most recent reporting period and the types and quantities of hazardous waste generated outside this state and shipped into this state for storage or disposal.

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 19, 1998.

CHAPTER 126
(H.B. No. 678)

AN ACT

RELATING TO THE RETIREMENT OF SUPREME COURT JUSTICES, COURT OF APPEALS JUDGES AND DISTRICT JUDGES; AMENDING SECTION 1-2001, IDAHO CODE, TO INCLUDE JUDGES OF THE COURT OF APPEALS WITHIN THE APPLICATION OF THE SECTION, TO PROVIDE THAT JUDGES MAKING AN ELECTION TO REMAIN IN THE PUBLIC EMPLOYEE RETIREMENT SYSTEM SHALL NOT PARTICIPATE IN THE JUDGES RETIREMENT FUND AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 1-2005, IDAHO CODE, TO PROVIDE FOR APPLICATION OF THE SECTION TO JUSTICES AND JUDGES UNDER THE PUBLIC EMPLOYEE RETIREMENT SYSTEM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 20, TITLE 1, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 1-2011, IDAHO CODE, TO PROVIDE THAT A VESTED MEMBER OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM MAY WITHIN THIRTY DAYS OF BECOMING A JUSTICE OF THE SUPREME COURT, COURT OF APPEALS JUDGE OR DISTRICT JUDGE MAKE A ONE-TIME IRREVOCABLE ELECTION TO CONTINUE PARTICIPATION IN THE PUBLIC EMPLOYEE RETIREMENT SYSTEM IN LIEU OF PARTICIPATION IN THE JUDGES RETIREMENT FUND; AMENDING SECTION 1-2404, IDAHO CODE, TO PROVIDE FOR COURT OF APPEALS JUDGES WHO

HAVE ELECTED TO REMAIN IN THE PUBLIC EMPLOYEE RETIREMENT SYSTEM AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 59-1303, IDAHO CODE, TO PROVIDE THAT JUSTICES OF THE SUPREME COURT, JUDGES OF THE COURT OF APPEALS AND DISTRICT JUDGES WHO HAVE ELECTED TO REMAIN IN THE PUBLIC EMPLOYEE RETIREMENT SYSTEM SHALL HAVE POLICE OFFICER MEMBERSHIP STATUS FOR RETIREMENT PURPOSES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 1-2001, Idaho Code, be, and the same is hereby amended to read as follows:

1-2001. SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES -- AGE OF RETIREMENT -- COMPENSATION ON RETIREMENT. (1) Every person who served as a justice of the ~~S~~supreme ~~C~~court or judge of the district court prior to June 30, 1983, and established a right to benefits from the judges' retirement fund for such service, and who is not an actively serving justice or judge on July 1, 1983, shall be entitled to benefits from the fund according to the formula for calculating such benefits as such formula existed on June 30, 1983.

(2) On and after July 1, 1983, any person who is now serving or who shall hereafter serve as a justice of the ~~S~~supreme ~~C~~court, judge of the court of appeals, or a judge of a district court of this state upon attaining the age of sixty-five (65) years, and having a minimum service of four (4) years in either or both of said offices, may retire or resign from office and be entitled to receive and to have paid to him from the date of his retirement or resignation until his death, an annual retirement compensation equal to four ~~per-cent~~ percent (4%) of the current annual compensation of the office from which he retired or resigned, multiplied by the number of years he has served as either, or both justice or judge for the first ten (10) years of service, and equal to two and one-half ~~per-cent~~ percent (2 1/2%) of the current annual compensation of the office from which he retired or resigned, multiplied by the remaining number of years he has served as both justice or judge, but such amount of annual retirement compensation shall not exceed sixty-two and one-half ~~per-cent~~ percent (62 1/2%) of the current annual compensation of the office from which he retired or resigned, payable in monthly ~~instalments~~ installments on the first day of each month.

(3) On and after July 1, 1983, each person who is now serving or who shall hereafter serve who shall retire or resign as justice of the ~~S~~supreme ~~C~~court, judge of the court of appeals, or district judge in the state of Idaho who has served for an aggregate period of twenty (20) years or more, continuous or otherwise, in either or both of such offices shall be entitled to receive and to have paid to him from the date of his retirement or resignation until his death, an annual retirement or resignation compensation equal to four ~~per-cent~~ percent (4%) of the current annual compensation of the office from which he retired or resigned, multiplied by the number of years he has served as either, or both justice or judge for the first ten (10) years of service, and equal to two and one-half ~~per-cent~~ percent (2 1/2%) of the current annual compensation of the office from which he retired or

resigned, multiplied by the remaining number of years he has served as both justice or judge, but such amount of annual retirement compensation shall not exceed sixty-two and one-half ~~per--cent~~ percent (62 1/2%) of the current annual compensation of the office from which he retired or resigned, payable in monthly ~~instalments~~ installments on the first day of each calendar month.

(4) On and after July 1, 1983, each justice or judge who is now serving or who shall hereafter be appointed or elected and who shall retire by reason of disability preventing him from further performance of the duties of his office, after a service in either or both of said courts of four (4) years or more, shall upon retirement, be entitled to receive and to have paid to him until his death an annual retirement compensation equal to four ~~per-cent~~ percent (4%) of the current annual compensation of the office from which he retired or resigned, multiplied by the number of years he has served as either or both justice or judge for the first ten (10) years of service, and equal to two and one-half ~~per-cent~~ percent (2 1/2%) of the current annual compensation of the office from which he retired or resigned, multiplied by the remaining number of years he has served as both justice or judge, but such amount of annual retirement compensation shall not exceed sixty-two and one-half ~~per-cent~~ percent (62 1/2%) of the current annual compensation of the office from which he retired or resigned, payable in monthly ~~instalments~~ installments on the first day of each month.

(5) All retirement compensation shall be paid out of the judges' retirement fund, provided, however, that a justice or judge who has served less than four (4) years shall be entitled to have refunded to him all contributions made by him to the judges' retirement fund, with six and one-half ~~per-cent~~ percent (6 1/2%) interest computed annually but shall not be entitled to any other compensation from the fund.

(6) Notwithstanding any other provision of this section, any person who makes an election to remain in the public employee retirement system of Idaho as provided in section 1-2011, Idaho Code, shall not participate in the judges' retirement fund established in this chapter, but shall continue to participate in the public employee retirement system of Idaho and be governed under the provisions of that system, except as provided in section 1-2005, Idaho Code.

SECTION 2. That Section 1-2005, Idaho Code, be, and the same is hereby amended to read as follows:

1-2005. SERVICES REQUIRED OF RETIRED SUPREME COURT JUSTICES, COURT OF APPEALS JUDGES AND DISTRICT JUDGES. Any retired justice or judge, while he remains capable, upon compliance with title 59, chapter 4, Idaho Code, may sit as a judge of the district court or as a magistrate in any county upon the request and order of the chief justice, and when any such request is made or approved by the chief justice, it shall be his duty to do so.

Any retired justice or judge, while he remains capable, upon compliance with title 59, chapter 4, Idaho Code, may sit with the ~~S~~supreme ~~C~~court and exercise the authority of a member thereof in any cause in which he is requested by that court so to do, and when requested by the chief justice shall perform such other duties per-

taining to the judicial department of government as directed.

During the period that any such retired ~~S~~supreme ~~C~~court justice, court of appeals judge or district judge is serving and holding court pursuant to this section, he shall be entitled to receive all of his retirement benefits under the judges' retirement fund or the public employee retirement system of Idaho together with an additional sum as compensation for his services sufficient to amount to an aggregate sum of retirement benefits and additional compensation so as to be equal to the current salary of the judicial office from which such ~~S~~supreme ~~C~~court justice, court of appeals judge or district judge has retired. Such additional compensation, above the retirement benefits accruing to such retired justice or judge, shall be paid from the general fund as provided by the legislature.

When so serving outside of his county of residence, any such retired justice or judge shall receive and have paid to him his necessary traveling and subsistence expenses.

Any period of service so rendered by any retired justice or judge shall not in ~~anyway~~ any way be computed for additional retirement benefits, and the state controller shall not receive or deduct any sum from the salary of any such retired justice or judge for such services, for transfer to the judges' retirement fund or to the public employee retirement system of Idaho.

Any justice or judge who voluntarily leaves full-time judicial employment prior to eligibility for retirement under section 1-2001, Idaho Code, or the public employee retirement system of Idaho, may, while he remains capable, upon compliance with chapter 4, title 59, Idaho Code, sit with the ~~S~~supreme ~~C~~court and exercise the authority of a member thereof in any cause in which he is requested by that court to do so or sit as a judge of the court of appeals, district court or as a magistrate in any county upon the request and order of the chief justice. When so serving, any justice or judge not eligible for retirement under section 1-2001, Idaho Code, or the public employee retirement system of Idaho, shall receive and have paid to him such compensation and expenses as may be authorized by the ~~S~~supreme ~~C~~court; provided, however, that such compensation shall not exceed the current salary of the judicial office vacated by such ~~S~~supreme ~~C~~court justice, court of appeals judge or district judge. Any period of service so rendered by any justice or judge not eligible for retirement under section 1-2001, Idaho Code, or the public employee retirement system of Idaho, shall not in ~~anyway~~ any way be computed for additional retirement benefits, and the state controller shall not receive or deduct any sum from the salary of any such justice or judge for such services, for transfer to the judges' retirement fund or to the public employee retirement system of Idaho.

SECTION 3. That Chapter 20, Title 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 1-2011, Idaho Code, and to read as follows:

1-2011. ELECTION TO CONTINUE PARTICIPATION IN THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO. On and after July 1, 1998, any vested member of the public employee retirement system of Idaho may, within

thirty (30) days of becoming a justice of the supreme court, judge of the court of appeals or district judge in the state of Idaho, make a one-time irrevocable election to continue participation as an active member of that system in lieu of participation in the judges' retirement fund established in this chapter and the justice, judge or spouse shall not be entitled to any compensation, benefits or allowances under any provision of this chapter. An election must be in writing and must be provided to both the supreme court and the public employee retirement system of Idaho. Once an election is made, all service as justice or judge, including noncontinuous service, shall be accrued to the public employee retirement system of Idaho, and shall be governed under the provisions of that system, except as provided in section 1-2005, Idaho Code.

SECTION 4. That Section 1-2404, Idaho Code, be, and the same is hereby amended to read as follows:

1-2404. NUMBER OF JUDGES -- QUALIFICATIONS -- CONDUCT AND DISCIPLINE -- TERM -- SELECTION -- ELECTION -- COMPENSATION. (1) The court of appeals shall consist of three (3) judges, and shall sit in panels of not less than three (3) judges each.

(2) No person shall be appointed or elected to the office of judge of the court of appeals unless he has attained the age of thirty (30) years at the time of his appointment or election, is a citizen of the United States, shall have been admitted to the practice of law for at least ten (10) years prior to taking office, and is admitted to practice law in the state of Idaho, and has resided within this state two (2) years next preceding his appointment or election.

(3) A judge of the court of appeals shall be governed by the code of judicial conduct as promulgated by the Idaho supreme court, and shall be subject to removal, discipline, or retirement pursuant to section 1-2103, Idaho Code.

(4) (a) Judges of the court of appeals shall be appointed by the governor effective the first Monday of January, 1982, for the following initial terms: one (1) judge shall be appointed for a term to expire on the first Monday of January, 1985, one (1) judge shall be appointed for a term expiring two (2) years later, and one (1) judge shall be appointed for a term expiring two (2) further years later. Thereafter, the term of office of a judge of the court of appeals shall be six (6) years, except that no judge of the court of appeals shall serve beyond the limits set forth in section 1-2007, Idaho Code.

(b) Vacancies in the office of judge of the court of appeals shall be filled in the same manner as vacancies in the office of supreme court justice or district judge.

(c) The positions of judges of the Idaho court of appeals shall first be filled as vacancies. The judicial council shall submit to the governor its recommendations for the offices at the earliest practicable time after the effective date of this act. The governor may make the appointment at any time thereafter, to be effective the first Monday of January, 1982, for the terms set forth in section 1-2404(4)(a), Idaho Code.

(d) In making its nominations for the initial vacancies to be

created by this act, the Idaho judicial council shall submit the names of not less than six (6) nor more than nine (9) qualified persons for the initial three (3) vacancies to be created by this act. Otherwise, the judicial council shall submit the names of not less than two (2) nor more than four (4) persons for each vacancy. The governor shall appoint the judges, identifying each appointment by the length of the term of appointment.

(e) Nominations and appointments to fill initial or subsequent vacancies shall be made with due regard for balanced geographical membership of the court of appeals.

(f) Subsequent terms of office of a judge who has been appointed to the court of appeals shall be subject to a statewide nonpartisan election to be held in the primary election next preceding the expiration of an appointed term in the same method and manner as a justice of the supreme court.

(5) Judges of the court of appeals shall receive an annual salary in an amount of one thousand dollars ($1,000) less than the annual salary of a supreme court justice and except for judges who have made an election to remain in the public employee retirement system of Idaho pursuant to section 1-2011, Idaho Code, shall receive compensation upon retirement as provided in chapter 20, title 1, Idaho Code.

SECTION 5. That Section 59-1303, Idaho Code, be, and the same is hereby amended to read as follows:

59-1303. ADDITIONAL DEFINITIONS FOR POLICE OFFICER STATUS. (1) As used in this chapter, 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) Police officer membership status for retirement purposes may be fixed only by law, or by order of the retirement board.

(3) Members holding or filling the following positions or offices are designated by law as police officer members for retirement purposes during the time of their appointment to that position or during their term of office:

(a) (i) The director and deputy director of the department of law enforcement, the administrator of the Idaho state police division and the assistant director of the police services division.

(ii) Commissioned personnel of the state police division, police services division and alcohol beverage control division holding positions which involve active law enforcement services, for which current POST certification is required to continue in employment in the position, POST instructors, and department of law enforcement training instructors.

(iii) Brand inspectors and brand inspector supervisors.

(iv) Employees of the department of law enforcement serving in positions of personnel management, accounting, data processing, clerical services and in like general classifications found in departments throughout state government and not within the scope of active law enforcement service are not eligible for police officer member status.

(b) (i) County sheriffs;

(ii) Deputy county sheriffs holding positions for which current POST certification is necessary to continue in employment in the position, the principal duties of which are active law enforcement service; deputy county sheriffs holding positions which require accountability for the safety and safekeeping of persons confined in a city or county confinement facility or whose duties require active participation in county law enforcement activities pertaining to crime prevention or reduction; deputy sheriffs, even though POST certified or required to be POST certified, holding positions whose principal full-time duties are those of a telephone operator, clerk, stenographer, animal control officer, records specialist, or duties not within the scope of active law enforcement service are not eligible for police officer member status.

(c) (i) City police chiefs;

(ii) City police officers holding positions for which current POST certification is necessary to continue in employment in the position, the principal duties of which are active law enforcement service; city police officers holding positions which require accountability for the safety and safekeeping of persons confined in a city or county confinement facility or whose duties require active participation in city law enforcement activities pertaining to crime prevention or reduction; police officers, even though POST certified or required to be POST certified, holding positions whose principal full-time duties are those of a telephone operator, clerk, stenographer, animal control officer, records specialist, or duties not within the scope of active law enforcement service are not eligible for police officer member status.

(d) Employees of the department of fish and game serving in a conservation officer position for which current POST certification is necessary to continue in employment in that position and which position has as its primary accountability the enforcement of wildlife protection laws and regulations.

(e) (i) The director of the department of correction, the deputy director for probation and parole, and wardens of institutions;

(ii) Employees of the department of correction accountable for the custody, safety, safekeeping or supervision of persons confined in a department confinement facility and whose work station is located within the confinement facility;

(iii) Probation and parole supervisors, probation and parole investigators, and probation and parole officers;

(iv) Correctional peace officer training instructors;

(v) Employees of the department of correction serving in positions of personnel management, accounting, data processing, clerical services and in like general classifications found in departments throughout state government and not within the scope of active law enforcement service are not eligible for police officer member status.

(f) Employees of the adjutant general and military division of

the state where military membership is a condition of employment.

(g) Magistrates of the district court~~,~~; justices of the supreme court, judges of the court of appeals, and district judges who have made an election under section 1-2011, Idaho Code; and court employees designated by court order to have primary responsibility for court security or transportation of prisoners.

(h) Paramedics and paramedic trainees.

(i) Criminal investigators of the attorney general's office, and criminal investigators of a prosecuting attorney's office.

(j) The director of security and the criminal investigators of the Idaho state lottery.

(4) A member may be designated by the retirement board as a police officer member for retirement purposes if the position held is one in which the principal duties involve hazardous law enforcement duties.

(a) For purposes of this section, "hazardous law enforcement duties" means principal duties which:

(i) Will reasonably expect to increase the probability of early superannuation;

(ii) Is associated with life-threatening risk or presents a position of peril either to the member or to others, or which can place the public safety in jeopardy; and

(iii) Either compels others to observe the law, pertains to crime prevention, or pertains to crime reduction, including police, courts, prosecution, correction, or rehabilitation.

(b) If continued employment in a position is conditioned on maintaining current POST certification, such condition shall be evidence to be considered that the employee is a police officer member for retirement purposes.

(i) After July 1, 1985, a requirement for POST certification for classified state employees may be made only by the personnel commission.

(c) Occasional assignments to hazardous law enforcement duties ~~does~~ do not create a condition for designation as a police officer member for retirement purposes.

(5) Any employer or agency that believes that any employee, not specifically designated as a police officer by law, is incorrectly classified as a nonpolice officer member, may petition the retirement board for inclusion of that employee's position as one to be filled by a police officer member for retirement purposes. The petition shall be in writing and shall explain in detail the principal duties of the position and include written evidence which establishes that the criteria of subsection (4) are met. The board shall review the petition and evidence, together with such information and evidence as may be presented by the staff of the retirement system. The board may decide the matter based upon the information supplied, may request additional information, or may request an oral presentation before the board. The decision of the board shall be final, but a similar petition may be resubmitted after six (6) months.

(6) On and after July 1, 1985, no active member shall be classified as a police officer for retirement purposes unless the employer shall have certified to the board, on a form provided by the board, that such member is an employee whose primary position with the

employer is one designated as such within the meaning of this chapter, and the board shall have accepted such certification. Acceptance by the board of an employer's certification shall in no way limit the board's right to review and reclassify the position for retirement purposes based upon an audit or other relevant information presented to the board.

(7) An active member classified as a police officer for retirement purposes whose position is reclassified to that of a general member for retirement purposes as a result of a determination that the position does not meet the requirements of this chapter for police officer status for retirement purposes shall become a general member but shall not lose retirement benefits earned and accrued prior to the reclassification. If that member continues to be employed in that same position until retired, that member then will be deemed to be a police officer member for the purposes of retirement eligibility.

Approved March 19, 1998.

CHAPTER 127
(H.B. No. 492)

AN ACT

RELATING TO HORSE RACING; AMENDING SECTION 54-2513, IDAHO CODE, TO PROVIDE FOR APPROPRIATION, DEPOSIT AND DISTRIBUTION OF MONEYS DERIVED FROM HORSE RACING.

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

SECTION 1. That Section 54-2513, Idaho Code, be, and the same is hereby amended to read as follows:

54-2513. HORSE RACING -- DISTRIBUTIONS OF DEPOSITS -- BREAKAGE. (A) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle in excess of one hundred thousand dollars ($100,000) shall distribute all sums deposited in any pool as follows:

(1) Eighty-two per cent (82%) of any win, place or show pool to the winner thereof, and eighteen per cent (18%) to the licensee;

(2) Seventy-seven and one-quarter per cent (77.25%) of all two (2) horse exotic wagers including, but not limited to, daily doubles and quinellas to the winner thereof, three-quarters of one per cent (.75%) to the racing commission for deposit in the racing commission account, and twenty-two per cent (22%) to the licensee;

(3) Seventy-five and one-quarter per cent (75.25%) of all three (3) or more horse exotic wagers including, but not limited to, trifecta and twin-trifecta to the winner thereof, three-quarters of one per cent (.75%) to the racing commission for deposit in the racing commission account, and twenty-four per cent (24%) to the licensee.

(B) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle in excess of one

hundred thousand dollars ($100,000) shall retain the sums deposited in any pool as required in subsection (A) of this section, for distribution and payment based upon gross daily receipts as follows:

(1) One and one-quarter per cent (1.25%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission, for deposit in the racing commission account, which is hereby created in the ~~dedicated~~ state regulatory fund.

(2) One-half of one per cent (.50%) of gross daily receipts from horse races, separately stated, shall be paid to the Idaho state racing commission for deposit in the track distribution account, which is hereby created in the ~~dedicated~~ pari-mutuel distribution fund, for further distribution to certain Idaho horse race tracks, defined as follows:

a. Recipient horse racing tracks shall be those which, during the race meet year of distribution, have an average daily handle of less than sixty thousand dollars ($60,000);

b. Distributions to recipient horse racing tracks shall be weighted proportionately on the number of days raced during the year of distribution.

All moneys in the track distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to horse racing tracks shall be made annually but not later than December 15.

(3) One-half of one per cent (.50%) of gross daily receipts from horse races, separately stated shall be paid by the licensee to the commission for deposit in the breed distribution account, which is hereby created in the ~~dedicated~~ pari-mutuel distribution fund, for payment by the commission in proportion to the handle generated by each horse breed, to lawfully constituted representatives of each horse breed, to benefit owners and/or breeders of Idaho bred racing thoroughbreds, racing quarter horses, racing Appaloosas, racing paints and racing Arabians, subject to the approval of the commission. Moneys in the breed distribution account on December 31 of each year which have not been distributed by the commission shall be paid to the public school income fund.

All moneys in the breed distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to representatives shall be made quarterly.

(4) From the balance of gross daily receipts remaining with the licensee after the distributions required in subsection (B)(1), (2), and (3) of this section from horse races, the following amounts shall be paid or retained:

a. From the first $20,000 of gross daily receipts, the licensee shall retain the entire amount;

b. From the next $10,000 of gross daily receipts (gross daily receipts between $20,000 and $30,000), the public school income fund and the equine education account shall each receive one-eighth of one per cent (.125%), and the licensee shall retain the balance;

c. From the next $10,000 of gross daily receipts (gross daily receipts between $30,000 and $40,000), the public

school income fund and the equine education account shall each receive sixty-two and one-half hundredths per cent (.625%), and the licensee shall retain the balance;

d. From all amounts of over $40,000 of gross daily receipts, the public school income fund and the equine education account shall each receive one and one-eighth per cent (1.125%), and the licensee shall retain the balance.

The public schools' and the equine education account's share shall be paid by the licensee to the racing commission for deposit in the public school income fund or the equine education account as appropriate. The licensee's percentage shall be retained by the licensee.

(C) Each licensee conducting the pari-mutuel system for live and simulcast horse races having an average daily handle of one hundred thousand dollars ($100,000) or less shall distribute all sums deposited in any pool as follows:

(1) Seventy-seven per cent (77%) of any win, place or show pool to the winner thereof, and twenty-three per cent (23%) to the licensee;

(2) Seventy-six and one-quarter per cent (76.25%) of all other pools to the winner thereof, three-quarters of one per cent (.75%) to the racing commission for deposit in the racing account, and twenty-three per cent (23%) to the licensee.

(D) Each licensee conducting the pari-mutuel system for live and simulcast horse races shall retain twenty-three per cent (23%) of all sums deposited in any pool, for distribution and payment based upon gross daily receipts as follows:

(1) One and one-quarter per cent (1.25%) of gross daily receipts, separately stated, shall be paid to the Idaho state racing commission, for deposit in the racing commission account.

(2) One-half of one per cent (.50%) of gross daily receipts from horse races, separately stated, shall be paid to the Idaho state racing commission for deposit in the track distribution account, for further distribution to certain Idaho horse race tracks, defined as follows:

a. Recipient horse racing tracks shall be those which, during the race meet year of distribution, have an average daily handle of less than sixty thousand dollars ($60,000);

b. Distributions to recipient horse racing tracks shall be weighted proportionately on the number of days raced during the year of distribution.

All moneys in the track distribution account are hereby <u>continuously</u> appropriated to the commission for payment as required by this section. Payments to horse racing tracks shall be made annually but not later than December 15.

(3) One-half of one per cent (.50%) of gross daily receipts from horse races, separately stated shall be paid by the licensee to the commission for deposit in the breed distribution account, for payment by the commission in proportion to the handle generated by each horse breed, to lawfully constituted representatives of each horse breed, to benefit owners and/or breeders of Idaho bred racing thoroughbreds, racing quarter horses, racing Appaloosas, racing paints and racing Arabians, subject to the approval of the

commission. Moneys in the breed distribution account on December 31 of each year which have not been distributed by the commission shall be paid to the public school income fund. All moneys in the breed distribution account are hereby continuously appropriated to the commission for payment as required by this section. Payments to representatives shall be made quarterly.

(4) Twenty and three-quarters per cent (20.75%) of gross daily receipts from horse races shall be paid or retained as follows:

a. From the first $20,000 of gross daily receipts, the licensee shall retain twenty and three-quarters per cent (20.75%);

b. From the next $10,000 of gross daily receipts (gross daily receipts between $20,000 and $30,000), the public school income fund and the equine education account shall each receive one-eighth of one per cent (.125%), and the licensee shall retain twenty and one-half per cent (20.50%);

c. From the next $10,000 of gross daily receipts (gross daily receipts between $30,000 and $40,000), the public school income fund and the equine education account shall each receive sixty-two and one-half hundredths per cent (.625%), and the licensee shall retain nineteen and one-half per cent (19.50%);

d. From all amounts of over $40,000 of gross daily receipts, the public school income fund and the equine education account shall each receive one and one-eighth per cent (1.125%), and the licensee shall retain eighteen and one-half per cent (18.50%).

The public schools' share and the equine education account's share shall be paid by the licensee to the racing commission for deposit in the public school income fund or the equine education account as appropriate. The licensee's percentage shall be retained by the licensee.

(E) Each licensee may retain the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of ten (10), known as breakage, and the total amount of unclaimed tickets at the termination of the time allowed by rule of the commission.

(F) If the fiscal year-end balance in the racing commission ~~free fund~~ account exceeds $400,000, the excess shall be ~~distributed~~ transferred by the office of the state controller to the pari-mutuel distribution fund, which is hereby created, for further distribution as follows:

(1) Sixty per cent (60%) shall be ~~paid for--owner-breeder--awards~~ deposited in the Idaho horse owner/breeder award account, which is hereby created in the pari-mutuel distribution fund, and shall be distributed by the racing commission annually, but not later than December 15 of each year as follows:

a. Fifty per cent (50%) ~~of this amount shall be deposited in the Idaho horse breeders' and owners' award account and shall be distributed by the racing commission annually, but not later than December 15 of each year,~~ to the breeders of Idaho bred winners based on the number of live races by each breed for the current calendar year; and

b. Fifty per cent (50%) ~~of all moneys deposited in the Idaho horse--breeders'--and owners' award account shall be distributed by the racing commission annually, but not later than December 15 of each year,~~ in equal amounts to owners of Idaho bred horse race winners.

c. All moneys in the Idaho owner/breeder award account are hereby continuously appropriated to the commission for payment as required in this section.

(2) Forty per cent (40%) shall be deposited in the track purse enhancement account, which is hereby created, and paid to all Idaho licensed horse racetracks for the purpose of purse enhancement~~. Purse enhancement funds shall be disbursed~~ based on the number of live race dates held the preceding calendar year. Track purse enhancement moneys shall be disbursed no later than thirty (30) days after Idaho state racing commission approval of live race meet license applications for the forthcoming calendar year. All moneys in the track purse enhancement account are hereby continuously appropriated to the commission for payment as required by this section.

Approved March 19, 1998.

CHAPTER 128
(S.B. No. 1373)

AN ACT

RELATING TO THE MOBILE HOME REHABILITATION ACT; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 25, TITLE 44, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT, TO REQUIRE REHABILITATION OF CERTAIN MOBILE HOMES AND THE ISSUANCE OF A CERTIFICATE OF COMPLIANCE BY THE DIVISION OF BUILDING SAFETY OF THE STATE OF IDAHO BEFORE A LOCAL JURISDICTION MAY ISSUE A PERMIT FOR THE INSTALLATION OF THE MOBILE HOME, TO PROVIDE REHABILITATION REQUIREMENTS, TO PROVIDE FOR A REHABILITATION FORM AND CHECKLIST, TO AUTHORIZE AN ADMINISTRATIVE FEE AND TO PROVIDE FOR PROMULGATION OF RULES TO IMPLEMENT THE CHAPTER.

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

SECTION 1. That Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 25, Title 44, Idaho Code, and to read as follows:

CHAPTER 25
MOBILE HOME REHABILITATION

44-2501. LEGISLATIVE INTENT. In order to ensure a continued supply of safe, affordable housing, the state of Idaho hereby adopts a rehabilitation program for existing mobile homes constructed prior to June 15, 1976, the effective date of the federal manufactured housing and safety standards act (HUD code), that are currently sited within

Idaho or that may be brought into the state after the effective date of this act. It is legislative intent that the relocation and installation of these homes be approved when the rehabilitation on the home has been completed as required in this chapter and proof of compliance has been issued by the administrator of the division of building safety of the state of Idaho.

44-2502. APPLICATION OF CHAPTER -- REHABILITATION REQUIRED -- CERTIFICATE OF COMPLIANCE. (1) This chapter shall apply to the installation of mobile homes constructed prior to June 15, 1976, within the jurisdiction of a city or county requiring an installation permit pursuant to section 44-2202, Idaho Code.

(2) Before a permit for the installation of the mobile home may be issued, the home must meet the rehabilitation requirements specified in this chapter and receive a certificate of compliance from the administrator of the division of building safety of the state of Idaho.

(3) Upon submission of the rehabilitation form required pursuant to section 44-2504, Idaho Code, and any other information required by the administrator to establish compliance with this chapter, the administrator shall issue a certificate of compliance to the homeowner. The certificate of compliance must be presented to the local jurisdiction before a permit for the installation of the home may be issued.

(4) Upon receipt of the certificate of compliance, the local jurisdiction shall issue the installation permit in the same manner as the permit would be issued with respect to a mobile/manufactured home for which rehabilitation is not required. No zoning or other ordinance or policy of the local jurisdiction prohibiting relocation or installation of a mobile home to which this chapter applies shall be effective to prohibit the relocation or installation of a mobile home for which a certificate of compliance has been issued in accordance with this chapter.

44-2503. REHABILITATION REQUIREMENTS. The mobile home shall meet the following rehabilitation requirements:

(1) A smoke detector (which may be a single station alarm device) shall be installed on any wall in a hallway or space communicating with each bedroom area and the living area on the living area side and, when located in a hallway, the detector shall be between the return air intake and the living area. Each smoke detector shall be installed in accordance with its listing and the top of the detector shall be located on a wall four (4) inches to twelve (12) inches below the ceiling. The detector may be battery-powered or may be connected to an electrical outlet box by a permanent wiring method into a general electrical branch circuit, without any switch between the over current protection device protecting the branch circuit and the detector.

(2) The walls, ceilings and doors of each compartment containing a gas-fired furnace or water heater shall be lined with five-sixteenth (5/16) inch gypsum board, unless the door opens to the exterior of the home, in which case, the door may be all metal construction. All exterior compartments shall seal to the interior of the mobile home.

(3) Each room designated expressly for sleeping purposes shall have an exterior exit door or at least one (1) outside egress window or other approved exit device with a minimum clear dimension of twenty-two (22) inches and a minimum clear opening of five (5) square feet. The bottom of the exit shall not be more than thirty-six (36) inches above the floor.

(4) All electrical systems shall be tested for continuity to assure that metallic parts are properly bonded, tested for operation to demonstrate that all equipment is connected and in working order, and given a polarity check to determine that connections are proper. The electrical system shall be properly protected for the required amperage load. If the unit wiring is of aluminum conductors, all receptacles and switches rated twenty (20) amperes or less directly connected to the aluminum conductors shall be marked CO/ALR. Exterior receptacles other than heat tape receptacles shall be of the ground fault circuit interrupter (GFI) type. Conductors of dissimilar metals (copper/aluminum or copper clad aluminum) must be connected in accordance with section 110-14 of the national electrical code.

(5) The mobile home's gas piping shall be tested with the appliance valves removed from the piping system and piping capped at those areas. The piping system shall withstand a pressure of at least six (6) inch mercury or three (3) psi gauge for a period of not less than ten (10) minutes without showing any drop in pressure. Pressure shall be measured with a mercury manometer or a slope gauge calibrated so as to read in increments of not greater than one-tenth (1/10) pound or an equivalent device. The source of normal operating pressure shall be isolated before the pressure test is made. After the appliance connections are reinstalled, the piping system and connections shall be tested with line pressure of not less than ten (10) inches nor more than fourteen (14) inches water column air pressure. The appliance connections shall be tested for leakage with soapy water or a bubble solution. All gas furnaces and water heaters shall be vented to the exterior in accordance with chapter 9 of the uniform mechanical code.

(6) A full water or air pressure test will be performed on the mobile home's water and sewer system.

(a) Water piping shall be tested and proven tight under a water pressure not less than the working pressure under which it is to be used. The water used for tests shall be obtained from a potable source of supply. A fifty (50) pound per square inch (344.5kPa) air pressure may be substituted for the water test. In either method of test, the piping shall withstand a test without leaking for a period of not less than fifteen (15) minutes.

(b) A water test shall be applied to the drainage and vent system either in its entirety or in sections. If applied to the entire system, all openings in the piping shall be tightly closed, except at the highest opening, and the system filled with water to the point of overflow. If the system is tested in sections, each opening shall be tightly plugged except the highest opening of the section under the test and each section shall be filled with water, but no section shall be tested with less than a ten (10) foot (3m) head of water. In testing successive sections, at least the upper ten (10) feet (3m) of the next preceding section shall be tested, so that no joint or pipe in the structure, except the

uppermost ten (10) feet (3m) of the system, shall have been submitted to a test of less than a ten (10) foot (3m) head of water. The water shall be kept in the system or in the portion under testing for at least fifteen (15) minutes before inspection starts. The system shall be tight at all points.

(7) All repairs or other work necessary to bring the mobile home into compliance with the requirements of this section shall be completed before a certificate of compliance may be issued.

44-2504. REHABILITATION FORM AND CHECKLIST -- ADMINISTRATIVE FEE -- RULES. (1) The administrator of the division of building safety shall, by rule, establish a mobile home rehabilitation form and check-off list. The form shall be completed and signed by an authorized representative of an Idaho licensed manufactured home service company or installer or dealer holding an installer's license. Electrical, gas, water and sewer inspections and any necessary repairs must be performed by a person or company properly licensed and authorized to perform the work under Idaho law, with the person or company performing the inspections and repairs to be noted on the rehabilitation form. A properly completed rehabilitation form shall be presented to the division of building safety before a certificate of compliance may be issued.

(2) The administrator of the division of building safety may, by rule, establish an administrative fee to cover the costs of administering the provisions of this chapter.

(3) In addition to the rulemaking authority provided in this section, the administrator of the division of building safety may promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, deemed necessary to implement the provisions of this chapter.

Approved March 20, 1998.

CHAPTER 129
(H.B. No. 581)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-419, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-419, IDAHO CODE, TO ESTABLISH AN IDAHO SNOWSKIER LICENSE PLATE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-419, Idaho Code, be, and the same is hereby amended to read as follows:

49-4219. REGISTRATION CARDS. (1) Upon the registration of a vehicle, the registering agency shall issue to the owner, as defined in section 49-116(3), Idaho Code, a registration card which shall contain

the date issued, the registration number assigned the owner and to the vehicle, the name and address of the owner, a description of the registered vehicle, identification number and any other information the department may require.

(2) The owner, upon receiving the registration card, shall sign in the space provided upon the card as proof of compliance with the insurance requirements of section 49-1229, Idaho Code.

(3) Upon a change of address the registrant shall report such change to the county assessor or the department within ten (10) days following the change of address.

SECTION 2. That Chapter 4, 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 49-419, Idaho Code, and to read as follows:

49-419. IDAHO SNOWSKIER PLATES. (1) On and after January 1, 1999, any person who is the owner of a vehicle registered under the provisions of section 49-402, Idaho Code, or registered under any other section of law for which the purchase of special plates is allowed, may apply for and upon department approval receive special Idaho snowskier license plates in lieu of regular license plates. Availability of Idaho snowskier license plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fee required in chapter 4, title 49, Idaho Code, the applicant shall be charged a fee of thirty-five dollars ($35.00) for the initial issuance of the plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Twenty-five dollars ($25.00) of the initial fee and fifteen dollars ($15.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Ten dollars ($10.00) of each initial fee and ten dollars ($10.00) of each renewal fee shall be deposited by the state treasurer in the division of tourism fund within the department of commerce for use in the 2002 Olympic winter games strategy program and for general promotion of Idaho's ski industry.

(3) Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the owner may transfer the special plates to another vehicle upon payment of the required transfer fees. The owner may only display the plates on another vehicle upon receipt of the new registration from the department.

(4) The Idaho snowskier license plate shall be of a color and design comparable to the standard issue of license plates with blue numerals on a red, white and blue background, except that the word "Idaho" shall appear on each plate and the county designator shall be omitted to provide for distinguishing designs and slogans, acceptable to the Idaho ski areas association, to be added to the plate. The design shall be approved by the department and shall utilize a numbering system as determined by the department. Initial costs of the plate program, including costs of plate design, shall be paid by the Idaho ski areas association.

(5) Sample Idaho snowskier license plates may be purchased for a fee of thirty dollars ($30.00), twelve dollars ($12.00) of which shall be deposited in the state highway account and eighteen dollars ($18.00) of which shall be deposited in the division of tourism fund within the department of commerce for use in the 2002 Olympic winter games strategy program and for general promotion of Idaho's ski industry. No additional fee shall be charged for personalizing sample plates.

SECTION 3. This act shall be in full force and effect on and after January 1, 1999.

Approved March 20, 1998.

CHAPTER 130
(H.B. No. 618)

AN ACT

RELATING TO SALES TAX EXEMPTIONS; AMENDING SECTION 63-3622N, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM SALES TAX FOR DENTAL PROSTHESES AND OTHER ORTHODONTIC APPLIANCES, BUT NOT INCLUDING FILLINGS.

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

SECTION 1. That Section 63-3622N, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622N. PRESCRIPTIONS. (a) There are exempted from the taxes imposed by this chapter the following when administered or distributed by a practitioner licensed by the state under title 54, Idaho Code, to administer or distribute such items or when purchased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner licensed by the state under title 54, Idaho Code, to prescribe such items:

(1) Drugs, hypodermic syringes, insulin, insulin syringes, artificial eyes, hearing aids, and hearing aid parts and accessories;

(2) Drugs and supplies used in hemodialysis and peritoneal dialysis;

(3) Braces and other orthopedic appliances;

(4) Dental prostheses and other orthodontic appliances, but not including fillings;

(5) Catheters, urinary accessories, colostomy supplies, and other prosthetic devices which shall include, but is not limited to, enteral and parenteral feeding equipment and supplies, (tubing, pumps, containers) catheter devices and supplies, but not including eyeglasses and contact lenses;

(56) Equipment and devices or chemical reagents which are used to test or monitor blood or urine of a diabetic;

(67) Other durable medical equipment and devices and related parts and supplies specifically designed for those products which shall include, but is not limited to: oxygen equipment, oxygen

cylinders, cylinder transport devices (sheaths, carts), cylinder stands, support devices, regulators, flowmeters, tank wrench, oxygen concentrators, liquid oxygen base dispenser, liquid oxygen portable dispenser, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, oxygen fittings and accessories, respiratory therapy equipment, room humidifiers, aspirators, aerosol compressors (stationary and portable), ultrasonic nebulizers, volume ventilators, respirators and related device supplies, percussors, vibrators, IPPB, circuits, devices and supplies, air oxygen mixers, manual resuscitators, nebulizers, tubing, emergency oxygen delivery units, patient care equipment, physical and occupational therapy items, hospital beds, trapeze bars and bar stand, bed rails, geriatric chairs, lift recliners, bedside commodes, overbed tables, patient lifts, patient lift slings, traction stands and pulleys, shower seating, shower grip bars, raised toilet seats, toilet safety frames, walking canes, quad canes and accessories, walkers, wheeled walkers, walker accessories, I.V. stands, crawlers, posture back supports for seating, posture back supports, wheelchairs, crutches, crutch pads, tips, grips, restraints, standing frame devices and accessories, hand exercise equipment and putty, specially designed hand utensils, leg weights, paraffin baths, hydrocollators, hydrotherm heating pads, communication aids for physically impaired, specialized seating, desks, work stations, foam wedges, writing and speech aids for the impaired, dressing aids, button loops and zipper aids, grooming aids, dental aids, eating and drinking aids, splints, holders, household aids for the impaired, shampoo trays, reaching aids, foam seating pads, decubitus seating pads, bed pads, fitted stroller, alternating pressure pads and pumps, stethoscope, sphygmomanometers, otoscopes, sitting and sleeping cushions, patient transport devices, boards, stairglides, lifts in home, transcutaneous nerve stimulators, muscle stimulators, bone fracture therapy devices.

(b) The term "practitioner" means a physician, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, or hearing aid dealer or fitter.

(c) The term "drug" means a drug which is:

(1) Defined in section 54-1705, Idaho Code, and

(2) Either:

(i) listed in a drug compendia which the state board of pharmacy requires to be maintained by Idaho licensed pharmacies, or

(ii) the use of which requires a prescription under state or federal law. The term shall not include articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man.

(d) The term "durable medical equipment" means equipment which:

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to a person in the absence of illness or injury; and

(4) Is appropriate for use in the home.

(e) The term "prosthetic device" means a device which replaces a missing part or function of the human body and shall include any supplies physically connected to such devices~~,-but-shall-not-include-dentures,-dental-bridgework-and-other-dental-or-orthodontic-appliances.~~

~~(f)--The-sale-of-dentures,--dental--bridgework,--other--dental--or orthodontic--appliances--and--related--parts-for-such-appliances,-by-a practitioner-to-his-patient-is-incidental-to-the-professional-services provided-and-is-a-sale-of-services.-The-practitioner-is--the--consumer of-the-dentures,-dental-bridgework,-other-dental-or-orthodontic-appliances--and--related--parts--used-by-him,-and-the-sale-to-or-use-by-the practitioner-of-such-tangible-personal-property-is-taxable.~~

Approved March 20, 1998.

CHAPTER 131
(H.B. No. 732)

AN ACT

RELATING TO INCOME TAX CREDIT; AMENDING SECTION 63-3029C, IDAHO CODE, TO PROVIDE INCOME TAX CREDITS FOR CHARITABLE CONTRIBUTIONS MADE TO THE CHILDREN'S HOME SOCIETY OF IDAHO, INC. AND TO MAKE A TECHNICAL CORRECTION; DECLARING AN EMERGENCY AND PROVIDING APPLICATION.

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

SECTION 1. That Section 63-3029C, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029C. INCOME TAX CREDIT FOR REHABILITATION FACILITIES -- LIMITATION. At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to the anchor house, to the children's home society of Idaho, inc., to the Idaho youth ranch, to the north Idaho children's home, or to a nonprofit rehabilitation facility located within the state of Idaho.

(1) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer's total income tax liability imposed by section 63-3024, Idaho Code, for the year, or one hundred dollars ($100), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or five hundred dollars ($500), whichever is less.

For the purposes of this section, "nonprofit rehabilitation facility" means only a facility that is accredited by the commission on accreditation of rehabilitation facilities.

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 shall apply to contributions made during and after tax year 1998.

Approved March 20, 1998.

CHAPTER 132
(H.B. No. 686)

AN ACT

RELATING TO TAXATION OF NATURAL GAS COOPERATIVE ASSOCIATIONS; AMENDING SECTION 63-3501, IDAHO CODE, TO ADD DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-3502, IDAHO CODE, TO PROVIDE A REFERENCE TO ANNUAL GROSS ELECTRICAL EARNINGS AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 35, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3502A, IDAHO CODE, TO PROVIDE FOR A TAX LEVY ON ANNUAL GROSS NATURAL GAS EARNINGS; AMENDING SECTION 63-3503, IDAHO CODE, TO PROVIDE A REFERENCE TO ELECTRICAL ASSOCIATIONS; AMENDING CHAPTER 35, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3503A, IDAHO CODE, TO PROVIDE FOR FILING AN OPERATOR'S STATEMENT AND FOR ALLOTMENT AND APPORTIONMENT OF TAX DUE FROM NATURAL GAS ASSOCIATIONS BY THE STATE TAX COMMISSION; AMENDING SECTION 63-3504, IDAHO CODE, TO PROVIDE FOR NOTIFICATION BY THE COUNTY TREASURER TO EACH NATURAL GAS COOPERATIVE OF TAXES OWED AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3505, IDAHO CODE, TO PROVIDE THAT TAXES DUE AND PAYABLE ARE LIENS ON THE ELECTRICAL OR NATURAL GAS ASSOCIATION OWING THE TAX; AMENDING SECTION 63-3506, IDAHO CODE, TO PROVIDE THAT NONOPERATING PROPERTY OF A NATURAL GAS ASSOCIATION SHALL BE ASSESSED BY THE COUNTY ASSESSOR; AND TO PROVIDE AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-3501, Idaho Code, be, and the same is hereby amended to read as follows:

63-3501. DEFINITIONS. For the purposes of this act:

(a) The term "cooperative electrical association" means any nonprofit, cooperative association organized and maintained by its members, whether incorporated or unincorporated, for the purpose of transmitting, distributing or delivering electric power to its members.

(b) The term "cooperative natural gas association" means any nonprofit cooperative association organized and maintained by its members, whether incorporated or unincorporated, for the purpose of transmitting, distributing or delivering natural gas to its members.

(c) The term "cost of power" means the cost of power purchases and generation included in reports to, and in accordance with applicable requirements of, the rural electrification administration, United States department of agriculture, by cooperative electrical associa-

tions which are borrowers from the rural electrification administration, and for cooperative electrical associations which are not borrowers from the rural electrification administration, such costs which could have been included by such cooperative electrical associations using equivalent reporting and accounting requirements. The state tax commission shall prescribe necessary rules and regulations for the purpose of providing a uniform method of reporting cost of power purchases and generation by cooperative electrical associations, consistent with the reporting and accounting requirements of the rural electrification administration.

(d) The term "cost of gas" means the cost of natural gas purchased by cooperative natural gas associations from wholesale or other suppliers of natural gas for delivery to members of the cooperative natural gas association.

(~~c~~e) The term "gross electrical earnings" means the gross receipts of a cooperative electrical association from the distribution, delivery and sale of electric power within the state of Idaho, but shall not include any earnings or receipts from the distribution, delivery or sale of electric power consumed in pumping water for irrigation or drainage purposes within the state of Idaho, upon the land of such consumer and for the use and benefit of his own land, and where such consumer has received from the association a refund, rebate, or credit of three and one-half ~~per cent~~ percent (3 1/2%) of the cost to him of the electric power so used and consumed.

(f) The term "gross natural gas earnings" means the gross receipts of a cooperative natural gas association from the distribution, delivery and sale of natural gas within the state of Idaho.

(~~d~~g) The term "operating property" means and includes all real estate, fixtures or personal property owned, controlled, operated or managed by such electrical or natural gas association in connection with or to facilitate the generation, transmission, distribution, delivery, or measuring of electric power or natural gas, and all conduits, ducts, or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission, distribution and delivery of electric power and natural gas, including construction tools, materials and supplies.

(~~e~~h) The term "nonoperating property" means all other property, real or personal, owned, controlled or managed by such electrical or natural gas association.

(~~f~~i) The term "taxing unit" shall include the separate taxing districts of the county as well as the county itself.

(~~g~~j) The term "tax levy" means the total tax levies fixed by each taxing district, as defined herein, in the year next preceding.

(~~h~~k) The term "WPPSS 4 and 5 costs" means, for a cooperative electrical association which is a participant under the Washington public power supply system nuclear projects numbers 4 and 5 participants' agreement, dated July 14, 1976, all of its costs in connection with Washington public power supply system nuclear projects numbers 4 and 5.

(~~i~~l) The term "weighted wire mileage factor" means a figure which is arrived at by multiplying the tax levy of each taxing unit by the number of wire miles of transmission and distribution lines of such cooperative electrical association situated in such taxing unit.

(m) The term "gas line mileage factor" means a figure which is arrived at by multiplying the tax levy of each taxing unit by the number of miles of natural gas transmission and distribution lines of such cooperative natural gas association situated in such taxing unit.

SECTION 2. That Section 63-3502, Idaho Code, be, and the same is hereby amended to read as follows:

63-3502. LEVY OF TAX ON ANNUAL GROSS ELECTRICAL EARNINGS. There shall be levied against every cooperative electrical association in this state a tax of three and one-half ~~per cent~~ percent (3 1/2%) of its annual gross earnings, after first reducing such gross earnings by its cost of power and WPPSS 4 and 5 costs in such sum as the amount of its gross earnings bear to its gross receipts from the distribution, delivery and sale of electric power within the state of Idaho. This tax shall be in lieu of all other taxes on the operating property of such association for the tax year next preceding the filing of the statement hereinafter provided for, and which shall be paid in the manner and at the time prescribed herein.

SECTION 3. That Chapter 35, 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 63-3502A, Idaho Code, and to read as follows:

63-3502A. LEVY OF TAX ON ANNUAL GROSS NATURAL GAS EARNINGS. There shall be levied against every cooperative natural gas association in this state a tax of three and one-half percent (3 1/2%) of its annual gross earnings, after first reducing such gross earnings by its cost of natural gas. This tax shall be in lieu of all other taxes on the operating property of such association of the tax year next preceding the filing of the statement hereinafter provided for, and which shall be paid in the manner and at the time prescribed herein.

SECTION 4. That Section 63-3503, Idaho Code, be, and the same is hereby amended to read as follows:

63-3503. FILING OPERATORS' STATEMENT -- ALLOTMENT AND APPORTIONMENT OF TAX DUE FROM ELECTRICAL ASSOCIATIONS BY STATE TAX COMMISSION. Every cooperative electrical association in this state shall file with the state tax commission of the state of Idaho the operators' statement provided for in section 63-404, Idaho Code, and shall include thereon a statement of the amount of its gross earnings for the calendar year next preceding. Upon examining and verifying said statement the state tax commission shall compute the amount of the tax measured by the gross earnings and shall allot to each county in which the operating property of such association is situate that proportion of the total tax of such association shown to be due as the number of wire miles of transmission and distribution lines of such association situate in such county bears to the total wire miles of transmission and distribution lines of such association. The state tax commission shall then, for each county, apportion the tax so allotted to the county among the several taxing units thereof within which any operat-

ing property of such association is situate, by apportioning to each such taxing unit that proportion of the tax so allotted to the county as the weighted wire mileage factor for each such taxing unit bears to the total of the weighted wire mileage factors of all such taxing units in the county, and shall immediately notify the state superintendent of public instruction and the county treasurer of such allotment and apportionment and the amounts thereof.

SECTION 5. That Chapter 35, 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 63-3503A, Idaho Code, and to read as follows:

63-3503A. FILING OPERATORS' STATEMENT -- ALLOTMENT AND APPORTIONMENT OF TAX DUE FROM NATURAL GAS ASSOCIATIONS BY STATE TAX COMMISSION. Every cooperative natural gas association in this state shall file with the state tax commission of the state of Idaho the operators' statement provided for in section 63-404, Idaho Code, and shall include thereon a statement of the amount of its gross earnings for the calendar year next preceding. Upon examining and verifying said statement the state tax commission shall compute the amount of the tax measured by the gross earnings and shall allot to each county in which the operating property of such association is situate that proportion of the total tax of such association shown to be due as the number of gas line miles of transmission and distribution lines of such association situate in such county bears to the total wire miles of transmission and distribution lines of such association. The state tax commission shall then, for each county, apportion the tax so allotted to the county among the several taxing units thereof within which any operating property of such association is situate, by apportioning to each such taxing unit that proportion of the tax so allotted to the county as the gas line mileage factor for each such taxing unit bears to the total of the gas line mileage factors of all such taxing units in the county, and shall immediately notify the state superintendent of public instruction and the county treasurer of such allotment and apportionment and the amounts thereof.

SECTION 6. That Section 63-3504, Idaho Code, be, and the same is hereby amended to read as follows:

63-3504. COLLECTION BY COUNTY TREASURER -- PENALTY AND INTEREST IMPOSED WHEN DELINQUENT. Upon receipt of the notification of the allotment and apportionment of such taxes by the state tax commission by the county treasurer, said county treasurer shall, not later than June 15th of each year, notify each cooperative electrical association and each natural gas cooperative of the amount of taxes owed, and the apportionment thereof to the county and to the several taxing districts in the county and such tax shall be due and payable not later than July 1, following and, upon the payment thereof, the county treasurer shall pay over to each taxing district its apportionment as herein determined. Any such taxes not paid by July 1, as aforesaid, shall become delinquent and a penalty of five ~~per cent~~ percent (5%) thereof shall be imposed, together with interest at the rate of one

~~per-cent~~ percent (1%) per month from July 1 until paid.

SECTION 7. That Section 63-3505, Idaho Code, be, and the same is hereby amended to read as follows:

63-3505. TAXES A LIEN ON PROPERTY OF ASSOCIATION UNTIL PAID. All taxes due and payable under this act shall be a lien on all property, real and personal, of the electrical or natural gas association owing the same, as of June 15th of each year and shall be discharged only by the payment thereof. In any action to enforce payment of any delinquent taxes due under this act, the county prosecuting such action shall be entitled to a judgment for the reasonable costs of prosecuting such action, as well as for the delinquent taxes, penalty and interest.

SECTION 8. That Section 63-3506, Idaho Code, be, and the same is hereby amended to read as follows:

63-3506. ASSESSMENT OF NONOPERATING PROPERTY BY ASSESSOR. The nonoperating property of any cooperative electrical or natural gas association shall be assessed by the county assessor of the county wherein such property is situate, and taxes levied against the same shall be a lien, and shall be due and payable, in the same manner as are any other taxes on property.

SECTION 9. This act shall be in full force and effect on and after January 1, 1999.

Approved March 20, 1998.

CHAPTER 133
(H.B. No. 642)

AN ACT

RELATING TO INCOME TAX; AMENDING SECTION 63-3029C, IDAHO CODE, TO PROVIDE A TAX CREDIT FOR CONTRIBUTIONS MADE TO A CENTER FOR INDEPENDENT LIVING LOCATED WITHIN THE STATE.

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

SECTION 1. That Section 63-3029C, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029C. INCOME TAX CREDIT FOR REHABILITATION FACILITIES -- LIMITATION. At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to the anchor house, to the Idaho youth ranch, to the north Idaho childrens' home, to a center for independent living located within the state of

Idaho, or to a nonprofit rehabilitation facility located within the state of Idaho.

(1) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer's total income tax liability imposed by section 63-3024, Idaho Code, for the year, or one hundred dollars ($100), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or five hundred dollars ($500), whichever is less.

(3) For the purposes of this section, "center for independent living" shall mean a private, nonprofit, nonresidential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

(a) Is designed and operated within a local community by individuals with disabilities;

(b) Provides an array of independent living services and programs; and

(c) Is cross-disability.

(4) For the purposes of this section, "nonprofit rehabilitation facility" means only a facility that is accredited by the commission on accreditation of rehabilitation facilities.

Approved March 20, 1998.

CHAPTER 134
(H.B. No. 551, As Amended in the Senate)

AN ACT

RELATING TO WEIGHTS AND MEASURES; AMENDING SECTION 71-236, IDAHO CODE, TO REQUIRE THAT BREAD SHALL BE SOLD BY WEIGHT UNLESS SPECIFICALLY EXEMPTED BY RULES PROMULGATED BY THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 71-237, IDAHO CODE, TO REQUIRE THAT BUTTER, OLEOMARGARINE, MARGARINE, BUTTER-LIKE AND MARGARINE-LIKE SPREADS SHALL BE SOLD BY WEIGHT; AMENDING SECTION 71-238, IDAHO CODE, TO REQUIRE THAT FLUID DAIRY AND MILK PRODUCTS SHALL BE SOLD IN UNITS OF FLUID VOLUME AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 71-239, IDAHO CODE, TO REQUIRE THAT FLOUR, HOMINY GRITS AND CORN MEAL SHALL BE SOLD BY WEIGHT.

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

SECTION 1. That Section 71-236, Idaho Code, be, and the same is hereby amended to read as follows:

71-236. SIZES OF LOAVES OF BREAD PERMITTED. Each loaf of bread ~~and each unit of a twin or multiple loaf of bread made or procured for~~

~~sale,~~ kept, offered, or exposed for sale, or sold, whether or not the bread is ~~wrapped~~ packaged or sliced, shall ~~weigh one-half (1/2) pound, one (1) pound, one-and-one-half (1-1/2) pounds, or a multiple of one (1) pound, avoirdupois weight, within the reasonable variations or tolerances that shall be promulgated by regulation by the director: provided, that the provisions of this section shall not apply to biscuits, buns, or rolls weighing four (4) ounces or less, or to "stale bread" sold and expressly represented at the time of sale as such, and that the marking provisions and regulations of section 71-233 shall not apply to unwrapped loaves of bread~~ be sold by weight unless specifically exempted by rules promulgated by the director.

SECTION 2. That Section 71-237, Idaho Code, be, and the same is hereby amended to read as follows:

71-237. BUTTER, ~~AND~~ OLEOMARGARINE, ~~UNITS OF WEIGHT PERMITTED~~ MARGARINE, BUTTER-LIKE AND MARGARINE-LIKE SPREADS. Butter, oleomargarine, ~~and~~ margarine, butter-like and margarine-like spreads shall be offered and exposed for sale and sold by weight~~, and only in units of one-quarter (1/4) pound, one-half (1/2) pound, one (1) pound or multiples of one (1) pound, avoirdupois weight; provided, that butter in random weight packages shall be sold only on the premises where it is produced~~. Butter-like and margarine-like spreads are those products that meet the federal standard of identity for butter or margarine and oleomargarine except that they contain less than eighty percent (80%) fat and may contain other safe and suitable ingredients.

SECTION 3. That Section 71-238, Idaho Code, be, and the same is hereby amended to read as follows:

71-238. FLUID DAIRY AND MILK PRODUCTS ~~UNITS OF MEASURE PERMITTED~~. All fluid dairy and milk products~~,~~ including, but not limited to, whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk, shall be ~~packaged for retail sale only in units of one (1) gill, one-half (1/2) liquid pint, ten (10) fluid ounces, one (1) liquid pint, one (1) liquid quart, one-half (1/2) gallon, three-fourths (3/4) gallon, one (1) gallon, one-and-one-half (1-1/2) gallons, two (2) gallons, two-and-one-half (2-1/2) gallons, or multiples of one (1) gallon: provided, that packages in units of less than one (1) gill shall be permitted~~ sold in units of fluid volume.

SECTION 4. That Section 71-239, Idaho Code, be, and the same is hereby amended to read as follows:

71-239. FLOUR, HOMINY GRITS AND CORN MEAL ~~PERMITTED UNITS OF WEIGHT~~. When in package form and when packed, kept, offered, or exposed for sale or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour and enriched self-rising flour, enriched bromated flour, corn flour, corn meal, and hominy grits, whether enriched or not, shall be ~~packaged only in units of two (2), five (5), ten (10), twenty-five (25), fifty (50) or one hundred (100) pounds,~~

~~avoirdupois--weight;-provided,-that-packages-in-units-of-less-than-two (2)-pounds-or-more-than-one-hundred-(100)-pounds--shall--be--permitted~~ sold by weight.

Approved March 20, 1998.

CHAPTER 135
(S.B. No. 1543)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF WATER RESOURCES FOR FISCAL YEAR 1999; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AND TRANSFERRING CERTAIN FUNDS TO THE WATER CLAIMS ADJUDICATION FUND.

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

SECTION 1. There is hereby appropriated to the Department of Water Resources the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT SERVICES:					
FROM:					
General Fund	$ 760,000	$ 959,400	$330,900		$ 2,050,300
State Regulatory Fund	32,000	20,800			52,800
Indirect Cost Recovery Fund	212,900	45,300			258,200
TOTAL	$1,004,900	$1,025,500	$330,900		$ 2,361,300
II. PLANNING AND POLICY DIVISION:					
FROM:					
General Fund	$1,692,400	$ 567,200	$ 50,900	$ 856,300	$ 3,166,800
Federal Grant Fund	403,400	666,400			1,069,800
Indirect Cost Recovery Fund	53,600	4,400			58,000
Miscellaneous Revenue Fund	16,300	367,800			384,100
TOTAL	$2,165,700	$1,605,800	$ 50,900	$ 856,300	$ 4,678,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
III. ENERGY RESOURCES DIVISION:					
FROM:					
General Fund	$ 29,000	$ 2,900			$ 31,900
Petroleum Price Violation Fund	391,400	1,582,600			1,974,000
Federal Grant Fund	405,300	585,500			990,800
Indirect Cost Recovery Fund	40,600	112,900			153,500
Miscellaneous Revenue Fund	231,100	20,500	$ 2,500		254,100
TOTAL	$1,097,400	$2,304,400	$ 2,500		$ 3,404,300
IV. WATER MANAGEMENT DIVISION:					
A. SNAKE RIVER BASIN ADJUDICATION:					
FROM:					
General Fund	$1,587,000	$ 762,500	$ 35,400	$ 89,800	$ 2,474,700
Water Claims Adjudication Fund				410,200	410,200
TOTAL	$1,587,000	$ 762,500	$ 35,400	$ 500,000	$ 2,884,900
B. WATER MANAGEMENT:					
FROM:					
General Fund	$2,495,100	$ 495,400	$139,200		$ 3,129,700
State Regulatory Fund	479,800	95,900			575,700
Federal Grant Fund	96,600	186,800			283,400
Indirect Cost Recovery Fund	40,700	3,200			43,900
Miscellaneous Revenue Fund	466,400	105,600			572,000
TOTAL	$3,578,600	$ 886,900	$139,200		$ 4,604,700
GRAND TOTAL	$9,433,600	$6,585,100	$558,900	$1,356,300	$17,933,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Water Resources is authorized no more than one hundred eighty-one (181) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs spec-

ified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. On or after July 1, 1998, the State Controller shall transfer $135,800 from the General Fund to the Water Claims Adjudication Fund.

Approved March 20, 1998.

CHAPTER 136
(S.B. No. 1540)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF PARKS AND RECREATION FOR FISCAL YEAR 1999; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS; APPROPRIATING AND TRANSFERRING CERTAIN MONEYS TO THE PARKS AND RECREATION FUND; REAPPROPRIATING CERTAIN FUNDS FOR CAPITAL OUTLAY; AUTHORIZING THE CONTINUOUS APPROPRIATION OF CERTAIN FUNDS TO OPERATE THE DEPARTMENT'S ENTREPRENEURIAL BUDGET SYSTEM; AUTHORIZING THE TRANSFER OF CERTAIN FUNDS INTO THE PARK LAND TRUST FUND; APPROPRIATING MONEYS TO THE LAVA HOT SPRINGS FOUNDATION FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Parks and Recreation the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
General Fund	$1,045,400	$ 707,600	$ 59,600		$ 1,812,600
Parks and Recreation Fund	491,500	514,200	70,100		1,075,800
Recreational Fuels Fund		33,400	5,000		38,400
Parks and Recreation Registration Fund		34,900			34,900
Federal Grant Fund	14,800	3,200		$ 36,400	54,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Indirect Cost Recovery Fund	49,800	7,700			57,500
Miscellaneous Revenue Fund	4,300	17,300			21,600
TOTAL	$1,605,800	$1,318,300	$ 134,700	$ 36,400	$ 3,095,200
II. PARK OPERATIONS:					
FROM:					
General Fund	$3,643,400	$ 798,000	$ 75,000		$ 4,516,400
Parks and Recreation Fund	985,800	764,700	26,000		1,776,500
Recreational Fuels Fund	5,000	6,000	574,400		585,400
Public Recreation Enterprise Fund	180,600	556,400	312,100		1,049,100
Parks and Recreation Expendable Trust Fund	51,100	101,100			152,200
Federal Grant Fund	691,600	168,900			860,500
Miscellaneous Revenue Fund		56,400			56,400
TOTAL	$5,557,500	$2,451,500	$ 987,500		$ 8,996,500
III. PARK DEVELOPMENT:					
FROM:					
General Fund	$ 234,600	$ 6,600	$ 122,500	$ 1,000,000	$ 1,363,700
Parks and Recreation Fund	92,600	48,300			140,900
Recreational Fuels Fund	141,300		862,500		1,003,800
Parks and Recreation Expendable Trust Fund			90,000		90,000
TOTAL	$ 468,500	$ 54,900	$1,075,000	$ 1,000,000	$ 2,598,400
IV. RECREATION RESOURCES:					
FROM:					
General Fund	$ 83,700	$ 27,900	$ 39,000		$ 150,600
Recreational Fuels Fund	354,200	122,700	851,000	$ 2,018,700	3,346,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Parks and Recreation Registration Fund	191,900	281,800	112,000	5,788,700	6,374,400
Petroleum Price Violation Fund				1,500,000	1,500,000
Federal Grant Fund	101,900	128,700	35,000	810,000	1,075,600
Indirect Cost Recovery Fund	91,500	11,800	1,000		104,300
TOTAL	$ 823,200	$ 572,900	$1,038,000	$10,117,400	$12,551,500
GRAND TOTAL	$8,455,000	$4,397,600	$3,235,200	$11,153,800	$27,241,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Parks and Recreation is authorized no more than one hundred forty-seven and twenty-five one-hundredths (147.25) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. There is hereby appropriated and transferred to the Parks and Recreation Fund the following amounts: $25,000 from the Tourism and Promotion Fund; $25,000 from the State Highway Fund; and $25,000 from the Recreational Vehicle Fund. These appropriations will provide the matching fund support of the Gateway Visitor Centers in the Administration Program in Section 1 of this act.

SECTION 4. There is hereby reappropriated to the Department of Parks and Recreation the unexpended and unencumbered balances of the funds appropriated for Capital Outlay in the Park Development Program for fiscal year 1998, to be used for the Park Development Program for the period July 1, 1998, through June 30, 1999.

SECTION 5. All revenue generated from the operation of an Entrepreneurial Budget System (EBS) shall be deposited in the department's special revenue funds and are hereby continuously appropriated to the department to cover expenses directly related to EBS activities. The department shall promulgate internal policies and procedures that clearly define EBS activities and services, and shall prepare fiscal year annual reports for the Joint Finance-Appropriations Committee showing receipts and expenditures.

SECTION 6. Upon the request of the director of the Department of

Parks and Recreation, the State Controller shall transfer $1,000,000 to the Park Land Trust Fund from the General Funds appropriated in Section 1 of this act for trustee benefit payments in the Park Development Program. All moneys provided to the Park Land Trust Fund for the acquisition of state lands at Ponderosa State Park are hereby continuously appropriated.

SECTION 7. There is hereby appropriated to the Lava Hot Springs Foundation the following amounts, to be expended according to the designated standard classifications from the listed fund for the period July 1, 1998, through June 30, 1999:

LAVA HOT SPRINGS FOUNDATION:

FOR:	
Personnel Costs	$475,400
Operating Expenditures	447,900
Capital Outlay	50,800
TOTAL	$974,100

SECTION 8. In accordance with Section 67-3519, Idaho Code, the Lava Hot Springs Foundation is authorized no more than ten (10) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the program specified in Section 6 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 20, 1998.

CHAPTER 137
(S.B. No. 1542)

AN ACT

APPROPRIATING MONEYS FOR THE MILITARY DIVISION FOR FISCAL YEAR 1999; GRANTING A CONTINUOUS APPROPRIATION IN THE BUREAU OF HAZARDOUS MATERIALS' MISCELLANEOUS REVENUE FUND FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Military Division, the following amounts to be expended for the listed programs according to the standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MILITARY MANAGEMENT:					
FROM:					
General Fund	$1,143,700	$ 775,200	$ 22,100		$ 1,941,000
Federal Grant Fund		3,361,700			3,361,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund	16,600	21,100			37,700
TOTAL	$1,160,300	$4,158,000	$ 22,100		$ 5,340,400
II. FEDERAL AND STATE CONTRACTS:					
FROM:					
General Fund	$ 492,300	$ 332,200	$ 7,400		$ 831,900
Federal Grant Fund	4,137,400	4,111,400	12,600		8,261,400
Professional Services Fund	475,000				475,000
TOTAL	$5,104,700	$4,443,600	$ 20,000		$ 9,568,300
III. DISASTER SERVICES:					
FROM:					
General Fund	$ 526,800	$ 79,100	$ 50,500		$ 656,400
Federal Grant Fund	725,500	210,000		$718,200	1,653,700
Indirect Cost Recovery Fund	56,200	8,600			64,800
TOTAL	$1,308,500	$ 297,700	$ 50,500	$718,200	$ 2,374,900
IV. BUREAU OF HAZARDOUS MATERIALS:					
FROM:					
General Fund	$ 152,800	$ 135,600			$ 288,400
Federal Grant Fund		185,700		$ 76,500	262,200
TOTAL	$ 152,800	$ 321,300		$ 76,500	$ 550,600
GRAND TOTAL	$7,726,300	$9,220,600	$92,600	$794,700	$17,834,200

SECTION 2. The Military Division is hereby granted continuous appropriation authority for the Bureau of Hazardous Materials' Miscellaneous Revenue Fund for the period July 1, 1998, through June 30, 1999.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Military Division is authorized no more than one hundred seventy-two and eighty hundredths (172.80) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 20, 1998.

CHAPTER 138
(S.B. No. 1541)

AN ACT
APPROPRIATING MONEYS FOR THE COMMISSION ON AGING FOR FISCAL YEAR 1999; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; APPROPRIATING ADDITIONAL MONEYS FOR THE COMMISSION ON AGING FOR FISCAL YEAR 1998; AND DECLARING AN EMERGENCY FOR SECTION 3 OF THIS ACT.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Commission on Aging the following amounts, to be expended according to the designated standard classifications from the listed funds, for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
COMMISSION ON AGING:					
FROM:					
General Fund	$386,700	$104,200	$38,800	$3,280,500	$3,810,200
Federal Grant Fund	341,200	111,400		5,120,900	5,573,500
Miscellaneous Revenue Fund		18,700			18,700
TOTAL	$727,900	$234,300	$38,800	$8,401,400	$9,402,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on Aging is authorized no more than thirteen and seventy-four hundredths (13.74) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. In addition to the appropriation made in Section 1, Chapter 182, Laws of 1997, there is hereby appropriated to the Office of the Governor for the Commission on Aging, the following amounts to be expended for the designated program according to the designated standard classifications from the listed fund for the period July 1, 1997, through June 30, 1998:

COMMISSION ON AGING:	
FOR:	
Operating Expenditures	$ 9,000
Capital Outlay	8,800
TOTAL	$17,800
FROM:	
General Fund	$17,800

SECTION 4. An emergency existing therefor, which emergency is

hereby declared to exist, Section 3 of this act shall be in full force and effect on and after its passage and approval.

Approved March 20, 1998.

CHAPTER 139
(S.B. No. 1539)

AN ACT
APPROPRIATING MONEYS TO THE SELF-GOVERNING AGENCIES FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Self-Governing Agencies the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ATHLETIC COMMISSION:					
FROM:					
State Regulatory Fund	$ 48,600	$ 20,600			$ 69,200
II. BOARD OF PHARMACY:					
FROM:					
State Regulatory Fund	$ 374,200	$ 185,000	$ 23,800		$ 583,000
III. BOARD OF ACCOUNTANCY:					
FROM:					
State Regulatory Fund	$ 202,500	$ 204,700	$ 5,500		$ 412,700
IV. BOARD OF DENTISTRY:					
FROM:					
State Regulatory Fund	$ 138,800	$ 66,300	$ 6,500		$ 211,600
V. BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS:					
FROM:					
State Regulatory Fund	$ 161,600	$ 149,100	$ 5,900		$ 316,600
VI. BOARD OF MEDICINE:					
FROM:					
State Regulatory Fund	$ 376,600	$ 438,200	$23,200		$ 838,000
VII. BOARD OF NURSING:					
FROM:					
State Regulatory Fund	$ 306,500	$ 233,600	$26,600		$ 566,700

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
VIII. BUREAU OF OCCUPATIONAL LICENSES:					
FROM:					
State Regulatory Fund	$ 661,500	$ 498,200	$13,000	$ 50,000	$1,222,700
IX. PUBLIC WORKS CONTRACTORS LICENSE BOARD:					
FROM:					
State Regulatory Fund	$ 207,900	$ 97,300	$ 5,000		$ 310,200
X. REAL ESTATE COMMISSION:					
FROM:					
State Regulatory Fund	$ 653,400	$ 313,800	$30,200		$ 997,400
XI. BOARD OF PROFESSIONAL GEOLOGISTS:					
FROM:					
State Regulatory Fund	$ 24,700	$ 20,300	$ 2,500		$ 47,500
XII. BOARD OF OPTOMETRY:					
FROM:					
State Regulatory Fund	$ 2,500	$ 13,700			$ 16,200
XIII. CERTIFIED SHORTHAND REPORTERS BOARD:					
FROM:					
State Regulatory Fund	$ 10,300	$ 12,500	$ 1,000		$ 23,800
XIV. OUTFITTERS AND GUIDES BOARD:					
FROM:					
State Regulatory Fund	$ 213,700	$ 165,800	$ 8,400		$ 387,900
XV. BOARD OF VETERINARY MEDICINE:					
FROM:					
State Regulatory Fund	$ 74,800	$ 88,200			$ 163,000
XVI. COMMISSION ON HISPANIC AFFAIRS:					
FROM:					
General Fund	$ 76,800	$ 28,200			$ 105,000
Federal Grant Fund	53,200	48,700		$15,400	117,300
Miscellaneous Revenue Fund	79,500	77,100			156,600
TOTAL	$ 209,500	$ 154,000		$15,400	$ 378,900
XVII. BOARD OF EXAMINERS:					
FROM:					
General Fund				$ 16,900	$ 16,900
GRAND TOTAL	$3,667,100	$2,661,300	$151,600	$82,300	$6,562,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, each of the programs in the Department of Self-Governing Agencies listed below is authorized no more than the number of full-time equivalent positions shown at any point during the period July 1, 1998, through June 30, 1999, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

State Athletic Commission ..... Zero (0)
Board of Pharmacy ..... Eight and seventy-five hundredths (8.75)
Board of Accountancy ..... Five (5)
Board of Dentistry ..... Two and fifty hundredths (2.50)
Board of Professional Engineers and Land Surveyors ..... Three (3)
Board of Medicine ..... Nine (9)
Board of Nursing ..... Seven (7)
Bureau of Occupational Licenses ..... Seventeen (17)
Public Works Contractors State Licensing Board ..... Five (5)
Idaho Real Estate Commission ..... Sixteen (16)
Professional Geologists Board ..... Sixty-two hundredths (.62)
Board of Optometry ..... Zero (0)
Idaho Certified Shorthand Reporters Board
..... Twenty-five hundredths (.25)
Outfitters and Guides Board ..... Four and fifty hundredths (4.50)
Board of Veterinary Medicine ..... Two (2)
Commission on Hispanic Affairs ..... Four (4)
Board of Examiners ..... Zero (0)

Approved March 20, 1998.

CHAPTER 140
(S.B. No. 1538)

AN ACT
APPROPRIATING MONEYS FOR THE STATE LIQUOR DISPENSARY FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the State Liquor Dispensary the following amounts, to be expended according to designated standard classifications from the listed fund for the period July 1, 1998, through June 30, 1999:

FOR:	
Personnel Costs	$5,647,000
Operating Expenditures	2,324,500
Capital Outlay	808,100
TOTAL	$8,779,600
FROM:	
Liquor Control Fund	$8,779,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the

State Liquor Dispensary is authorized no more than one hundred thirty-eight (138) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 20, 1998.

CHAPTER 141
(S.B. No. 1460)

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-1032, IDAHO CODE, TO PROVIDE A LIMITED EXCEPTION FROM LICENSING REQUIREMENTS FOR MOTOR VEHICLE RENTAL COMPANIES.

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

SECTION 1. That Section 41-1032, Idaho Code, be, and the same is hereby amended to read as follows:

41-1032. EXCEPTIONS TO LICENSE REQUIREMENT. Sections 41-1030 and 41-1031, Idaho Code, shall not apply as to:

(1) Salaried home office or branch office employees of insurers, or salaried employees in the offices of managing general agents, who perform administrative, clerical, or technical services in such offices and do not solicit insurance business from insureds or prospective insureds.

(2) The regular salaried employee in the office of a general lines agent or general lines broker, which employee devotes full time to clerical and administrative services, with incidental taking of insurance applications and receiving premiums in the office of the agent or broker, if the employee does not receive any commissions on such applications and his compensation is not varied by the volume of such applications, insurance or premiums; or the regular salaried employee in the office of the life or disability agent or life broker, and who does not solicit or accept from the public applications for life insurance, disability insurance, or annuity contracts.

(3) Service representatives, i.e. officers and traveling representatives, compensated by salary only, of insurers or of managing general agents, who work with or through resident agents or brokers in the solicitation, negotiation, or effectuation of insurance or annuity contracts.

(4) Officers and regular representatives, compensated by salary only, of special lines insurers which do not solicit insurance from the general public and do not use resident agents generally in the solicitation of insurance business.

(5) Officers and regular salaried representatives of domestic reciprocal insurers writing only workmen's compensation coverages for employers commonly known as self-insurers.

(6) A person who, in the performance of ministerial duties, secures and forwards information for the purpose of group insurance or group annuity coverage or for enrolling individuals under such group coverages or issuing certificates thereunder, where no commission is paid for such services.

(7) A person who, concurrent with the rental of a motor vehicle, provides contract options to the standard rental agreement which provide auto and travel related coverages through authorized insurers during a rental period not to exceed ninety (90) days.

Approved March 20, 1998.

CHAPTER 142
(S.B. No. 1459)

AN ACT

RELATING TO HEALTH MAINTENANCE ORGANIZATIONS; AMENDING SECTION 41-3903, IDAHO CODE, TO INCLUDE HOSPITAL-BASED REHABILITATION TREATMENT IN THE DEFINITION OF BASIC HEALTH CARE SERVICES.

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

SECTION 1. That Section 41-3903, Idaho Code, be, and the same is hereby amended to read as follows:

41-3903. DEFINITIONS. (1) "Basic health care services" means the following services: preventive care, emergency care, inpatient and outpatient hospital and physician care, hospital-based rehabilitation treatment, diagnostic laboratory and diagnostic and therapeutic radiological services. It does not include mental health services or services for alcohol or drug abuse, dental or vision services or long-term rehabilitation treatment.

(2) "Coinsurance" means a percentage amount a member is responsible to pay out-of-pocket for health care services after satisfaction of any applicable deductibles or copayments, or both.

(3) "Copayment" means an amount a member must pay to a provider in payment for a specific health care service which is not fully prepaid.

(4) "Deductible" means the amount of expense a member must first incur before the managed care organization begins payment for covered services.

(5) "Director" means the director of the department of insurance of the state of Idaho.

(6) "Emergency facility" means any hospital or other facility where emergency services are provided to a member including, but not limited to, a physician's office.

(7) "Emergency services" means those health care services that are provided in a hospital or other emergency facility after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity including, but not limited to, severe pain, that the absence of immediate medical attention could reasonably be

expected by a prudent person who possesses an average knowledge of health and medicine, to result in:

(a) Placing the patient's health in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of any bodily organ or part.

(8) "Employer" means any person, firm, corporation, partnership or association.

(9) "Enrollee" means a person who either individually or through a group has entered into a contract for services under a managed care plan.

(10) "General managed care plan" means a managed care plan which provides directly or arranges to provide, at a minimum, basic health care services. A general managed care plan shall include basic health care services.

(11) "Health care contract" means a contract entered into by a managed care organization and an enrollee.

(12) "Health care services" means those services offered or provided by health care facilities and health care providers relating to the prevention, cure or treatment of illness, injury or disease.

(13) "Limited managed care plan" means a managed care plan which provides dental care services, vision care services, mental health services, substance abuse services, pharmaceutical services, podiatric care services or such other services as the director may establish by rule to be limited health care services. Limited health care services shall not include hospital, medical, surgical or emergency services except as those services are provided incident to limited health care services.

(14) "Managed care organization" means a public or private person or organization which offers a managed care plan. Unless otherwise specifically stated, the provisions of this chapter shall apply to any person or organization offering a managed care plan, whether or not a certificate of authority to offer the plan is required under this chapter.

(15) "Managed care plan" means a contract of coverage given to an individual, family or group of covered individuals pursuant to which a member is entitled to receive a defined set of health care benefits through an organized system of health care providers in exchange for defined consideration and which requires the member to use, or creates financial incentives for the member to use, health care providers owned, managed, employed by or under contract with the managed care organization.

(16) "Member" means a policyholder, enrollee or other individual participating in a managed care plan.

(17) "Person" means any natural or artificial person including, but not limited to, individuals, partnerships, associations, corporations or other legally recognized entities.

(18) "Provider" means any physician, hospital, or other person licensed or otherwise authorized to furnish health care services.

(19) "Utilization management program" means a system of reviewing the medical necessity, appropriateness, or quality of health care services and supplies provided under a managed care plan using specified guidelines. Such a system may include, but is not limited to, preadmission certification, the application of practice guidelines,

continued stay review, discharge planning, preauthorization of ambulatory procedures and retrospective review.

Approved March 20, 1998.

CHAPTER 143
(S.B. No. 1454)

AN ACT

RELATING TO THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT; AMENDING SECTION 41-4703, IDAHO CODE, TO ADD A DEFINITION OF "PLAN YEAR" AND TO AMEND THE DEFINITION OF "SMALL EMPLOYER"; AMENDING SECTION 41-4707, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 41-4708, IDAHO CODE, TO PROVIDE A CROSS-REFERENCE TO THE DEFINITION OF SMALL EMPLOYER AND TO PROVIDE CORRECT CODE REFERENCES.

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

SECTION 1. That Section 41-4703, Idaho Code, be, and the same is hereby amended to read as follows:

41-4703. DEFINITIONS. As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the director that a small employer carrier is in compliance with the provisions of section 41-4706, Idaho Code, based upon the person's examination and including a review of the appropriate records and the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one (1) or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Agent" means an agent as defined in section 41-1021, Idaho Code, or a broker as defined in section 41-1024, Idaho Code.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to section 41-4712, Idaho Code.

(6) "Board" means the board of directors of the program established pursuant to section 41-4711, Idaho Code.

(7) "Carrier" means any entity that provides health insurance in this state. For the purposes of this chapter, carrier includes an insurance company, a hospital or professional service corporation, a fraternal benefit society, a health maintenance organization, any entity providing health insurance coverage or benefits to residents of

this state as certificate holders under a group policy issued or delivered outside of this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

(8) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claim experience, health status and duration of coverage shall not be case characteristics for the purposes of this chapter.

(9) "Catastrophic health benefit plan" means a higher limit health benefit plan developed pursuant to section 41-4712, Idaho Code.

(10) "Class of business" means all or a separate grouping of small employers established pursuant to section 41-4705, Idaho Code.

(11) "Committee" means the health benefit plan committee created pursuant to section 41-4712, Idaho Code.

(12) "Control" shall be defined in the same manner as in section 41-3801(2), Idaho Code.

(13) "Dependent" means a spouse, and unmarried child under the age of nineteen (19) years, and unmarried child who is a full-time student under the age of twenty-three (23) years and who is financially dependent upon the parent, and an unmarried child of any age who is medically certified as disabled and dependent upon the parent.

(14) "Director" means the director of the department of insurance of the state of Idaho.

(15) "Eligible employee" means an employee who works on a full-time basis and has a normal work week of thirty (30) or more hours or, by agreement between the employer and the carrier, an employee who works between twenty (20) and thirty (30) hours per week. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health benefit plan of a small employer, but does not include an employee who works on a part-time, temporary, seasonal or substitute basis. The term eligible employee may include public officers and public employees without regard to the number of hours worked when designated by a small employer.

(16) "Established geographic service area" means a geographic area, as approved by the director and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(17) "Health benefit plan" means any hospital or medical policy or certificate, any subscriber contract provided by a hospital or professional service corporation, or health maintenance organization subscriber contract. Health benefit plan does not include policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issues for a period of twelve (12) months or less.

(18) "Index rate" means, for each class of business as to a rating

period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(19) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty (30) days. However, an eligible employee or dependent shall not be considered a late enrollee if:

(a) The individual meets each of the following:

(i) The individual was covered under qualifying previous coverage at the time of the initial enrollment;

(ii) The individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage; and

(iii) The individual requests enrollment within thirty (30) days after termination of the qualifying previous coverage.

(b) The individual is employed by an employer which offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(c) A court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty (30) days after issuance of the court order.

(d) The individual first becomes eligible.

(e) If an individual seeks to enroll a dependent during the first sixty (60) days of eligibility, the coverage of the dependent shall become effective:

(i) In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(ii) In the case of a dependent's birth, as of the date of such birth; or

(iii) In the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

(20) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered or which could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(21) "Plan of operation" means the plan of operation of the program established pursuant to section 41-4711, Idaho Code.

(22) "Plan year" means the year that is designated as the plan year in the plan document of a group health benefit plan, except that if the plan document does not designate a plan year or if there is no plan document, the year plan is:

(a) The deductible/limit year used under the plan;

(b) If the plan does not impose deductibles or limits on a yearly basis, then the plan year is the policy year;

(c) If the plan does not impose deductibles or limits on a yearly

basis or the insurance policy is not renewed on an annual basis, then the plan year is the employer's taxable year; or

(d) In any other case, the plan year is the calendar year.

(23) "Premium" means all moneys paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(234) "Program" means the Idaho small employer reinsurance program created in section 41-4711, Idaho Code.

(245) "Qualifying previous coverage" and "qualifying existing coverage" means benefits or coverage provided under:

(a) Medicare or medicaid, civilian health and medical program for uniformed services (CHAMPUS), the Indian health service program, a state health benefit risk pool or any other similar publicly sponsored program; or

(b) Any other group or individual health insurance policy or health benefit arrangement whether or not subject to the state insurance laws, including coverage provided by a health maintenance organization, hospital or professional service corporation, or a fraternal benefit society, that provides benefits similar to or exceeding benefits provided under the basic health benefit plan.

(256) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(267) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to section 41-4711, Idaho Code.

(278) "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier to provide health care services to covered individuals.

(289) "Risk-assuming carrier" means a small employer carrier whose application is approved by the director pursuant to section 41-4710, Idaho Code.

(~~29~~30) "Small employer" means any person, firm, corporation, partnership or association that is actively engaged in business that, ~~on at least fifty percent (50%) of its working days during the preceding calendar year,~~ employed an average of at least two (2) ~~eligible employees on the first day of the plan year,~~ but no more than fifty (50) eligible employees on business days during the preceding calendar year and that employs at least two (2) but no more than fifty (50) eligible employees on the first day of the plan year, the majority of whom were and are employed within this state. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of state taxation, shall be considered one (1) employer.

(301) "Small employer carrier" means a carrier that offers health benefit plans covering eligible employees of one (1) or more small employers in this state.

(312) "Standard health benefit plan" means a health benefit plan developed pursuant to section 41-4712, Idaho Code.

SECTION 2. That Section 41-4707, Idaho Code, be, and the same is hereby amended to read as follows:

41-4707. RENEWABILITY OF COVERAGE. (1) A health benefit plan subject to the provisions of this chapter shall be renewable with respect to all eligible employees or dependents, at the option of the small employer, except in any of the following cases:

(a) Nonpayment of the required premiums;

(b) Fraud or intentional misrepresentation of material fact by the small employer;

(c) Noncompliance with the carrier's minimum participation requirements;

(d) Noncompliance with the carrier's employer contribution requirements;

(e) In the case of health benefit plans that are made available in the small employer market only through one (1) or more associations as defined in section 41-2202, Idaho Code, the membership of an employer in the association, on the basis of which the coverage is provided ceases, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor relating to any covered individual;

(f) The small employer no longer meets the requirements of section 41-4703(~~28~~30), Idaho Code;

(g) The small employer carrier elects to nonrenew all of its health benefit plans delivered or issued for delivery to small employers in this state. In such a case the carrier shall:

(i) Provide advance notice of its decision under this paragraph to the director in each state in which it is licensed; and

(ii) Provide notice of the decision not to renew coverage to all affected small employers and to the director at least one hundred eighty (180) days prior to the nonrenewal of any health benefit plans by the carrier. Notice to the director under the provisions of this paragraph shall be provided at least three (3) working days prior to the notice to the affected small employers; or

(h) The director finds that the continuation of the coverage would:

(i) Not be in the best interests of the policyholders or certificate holders; or

(ii) Impair the carrier's ability to meet its contractual obligations.

In such instance the director shall assist affected small employers in finding replacement coverage.

(2) A small employer carrier that elects not to renew a health benefit plan under the provisions of subsection (1)(g) of this section shall be prohibited from writing new business in the small employer market in this state for a period of five (5) years from the date of notice to the director.

(3) In the case of a small employer carrier doing business in one (1) established geographic service area of the state, the rules set forth in this subsection shall apply only to the carrier's operations in that service area.

SECTION 3. That Section 41-4708, Idaho Code, be, and the same is hereby amended to read as follows:

41-4708. AVAILABILITY OF COVERAGE.

(1) (a) Every small employer carrier shall, as a condition of offering health benefit plans in this state to small employers, actively offer to small employers at least three (3) health benefit plans. One (1) health benefit plan offered by each small employer carrier shall be a basic health benefit plan, one (1) plan shall be a standard health benefit plan, and one (1) plan shall be a catastrophic benefit plan.

(b) (i) A small employer carrier shall issue a basic, standard or catastrophic health benefit plan to any eligible small employer that applies for either such plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with the provisions of this chapter.

(ii) In the case of a small employer carrier that establishes more than one (1) class of business pursuant to the provisions of section 41-4705, Idaho Code, the small employer carrier shall maintain and issue to eligible small employers at least one (1) basic health benefit plan, at least one (1) standard health benefit plan and at least one (1) catastrophic benefit plan in each class of business so established. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) The criteria are not intended to discourage or prevent acceptance of small employers applying for a basic, standard or catastrophic health benefit plan;

(B) The criteria are not related to the health status or claim experience of the small employer;

(C) The criteria are applied consistently to all small employers applying for coverage in the class of business; and

(D) The small employer carrier provides for the acceptance of all eligible small employers into one (1) or more classes of business.

The provisions of this paragraph shall not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) A small employer is eligible under the provisions of paragraph (b) of this section if it ~~employed at least two (2) or more eligible employees within this state on the first day of the plan year~~ <u>satisfies the definition of "small employer" set forth in section 41-4703(30), Idaho Code.</u>

(2) (a) A small employer carrier shall file with the director, in a format and manner prescribed by the director, the basic, standard and catastrophic health benefit plans to be used by the carrier. A health benefit plan filed pursuant to the provisions of this paragraph may be used by a small employer carrier beginning thirty (30) days after it is filed unless the director disapproves its use.

(b) The director at any time may, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic, standard or catastrophic health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

(3) Health benefit plans covering small employers shall comply with the following provisions:

(a) A health benefit plan shall not deny, exclude or limit benefits for a covered individual for covered expenses incurred more than twelve (12) months following the effective date of the individual's coverage due to a preexisting condition. A health benefit plan shall not define a preexisting condition more restrictively than a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care or treatment was recommended or received during the six (6) months immediately preceding the effective date of coverage.

(b) Genetic information shall not be considered as a condition described in subsection (3)(a) of this section in the absence of a diagnosis of the condition related to such information.

(c) A health benefit plan shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than sixty-three (63) days prior to the effective date of the new coverage. The period of continuous coverage shall not include any waiting period for the effective date of the new coverage applied by the employer or the carrier. This paragraph does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(d) A health benefit plan may exclude coverage for late enrollees for the greater of twelve (12) months or for a twelve (12) month preexisting condition exclusion; provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period shall not exceed twelve (12) months from the date the individual enrolls for coverage under the health benefit plan.

(e) (i) Except as provided in subsection (3)(~~d~~e)(iv) of this section, requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, shall be applied uniformly among all small employers with the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier.

(ii) A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(iii) In applying minimum participation requirements with respect to a small employer, a small employer carrier shall

not consider employees or dependents who have qualifying existing coverage in determining whether the applicable percentage of participation is met.

(iv) A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(f) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier shall not offer coverage to only certain individuals in a small employer group or to only part of the group, except in the case of late enrollees as provided in paragraph (ed) of this subsection.

(ii) A small employer carrier shall not modify a basic, standard or catastrophic health benefit plan with respect to a small employer or any eligible employee or dependent through riders, endorsements or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier shall not be required to offer coverage or accept applications pursuant to the provisions of subsection (1) of this section in the case of the following:

(i) To a small employer, where the small employer is not physically located in the carrier's established geographic service area;

(ii) To an employee, when the employee does not work or reside within the carrier's established geographic service area; or

(iii) Within an area where the small employer carrier reasonably anticipates, and demonstrates to the satisfaction of the director, that it will not have the capacity within its established geographic service area to deliver service adequately to the members of such groups because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier that cannot offer coverage pursuant to the provisions of subsection (4)(a)(iii) of this section may not offer coverage in the applicable area to new cases of employer groups with more than fifty (50) eligible employees or to any small employer groups until the later of one hundred eighty (180) days following each such refusal or the date on which the carrier notifies the director that it has regained capacity to deliver services to small employer groups.

(5) A small employer carrier shall not be required to provide coverage to small employers pursuant to the provisions of subsection (1) of this section for any period of time for which the director determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) of this section would place the small employer carrier in a financially impaired condition.

(6) A small employer carrier shall not be required to comply with the provisions of this section until the director has approved or adopted the revised plan of operation as provided in section 41-4711, Idaho Code.

Approved March 20, 1998.

CHAPTER 144
(S.B. No. 1423)

AN ACT

RELATING TO COUNTIES; AMENDING CHAPTER 32, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-3201D, IDAHO CODE, TO PROVIDE FOR A COUNTY MISDEMEANOR PROBATION SUPERVISION FEE, TO PROVIDE THE AMOUNT OF THE FEE, TO PROVIDE THE EFFECT OF FAILURE TO PAY THE FEE, TO SPECIFY THE FUND INTO WHICH FEES SHALL BE DEPOSITED AND TO PROVIDE THE PURPOSES FOR WHICH THE FEES MAY BE USED.

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

SECTION 1. That Chapter 32, 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 31-3201D, Idaho Code, and to read as follows:

31-3201D. COUNTY MISDEMEANOR PROBATION SUPERVISION FEE. Any person under a supervised probation program for a misdemeanor offense shall be required to pay not more than thirty-five dollars ($35.00) per month, or such lesser sum as determined by the administrative judge of the judicial district, as a misdemeanor probation supervision fee. Any failure to pay such fee shall constitute grounds for the revocation of probation by the court, but this shall not be the exclusive remedy for its collection. The court for good cause may exempt a person from the payment of all or any part of the foregoing fee.

The fee imposed under this section shall be paid to the clerk of the district court for deposit into the county misdemeanor probation fund which is hereby created in each county, or at the option of the board of county commissioners, deposited in the county justice fund to be used for the purposes described in this section. Moneys from this fee may be accumulated from year to year and shall be expended exclusively for county misdemeanor probation services and related purposes.

Approved March 20, 1998.

CHAPTER 145
(S.B. No. 1388)

AN ACT

RELATING TO EXEMPTION FROM PAYMENT OF FEES; AMENDING SECTION 67-2301, IDAHO CODE, TO PROVIDE THAT NO FILING OR RECORDING FEE SHALL BE

CHARGED FOR DUTIES PERFORMED OR SERVICES RENDERED TO ANY COUNTY, MUNICIPAL CORPORATION OR DISTRICT CREATED PURSUANT TO STATUTE OR ANY OFFICER OF SUCH SUBDIVISION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-2301, Idaho Code, be, and the same is hereby amended to read as follows:

67-2301. EXEMPTION FROM PAYMENT OF FEES. No fees or compensation of any kind (except the regular salary or compensation paid by the state to the officer, agent, or employee individually for his services) shall be charged or received by any state board, officer, agent or employee for duties performed or services rendered to or for the state or to or for any state board, officer, agent, or employee in the performance of his or their official duties, or to or for the state or any state board, officer, agent and employee in any action or proceeding in which they or any of them are parties. No filing or recording fee shall be charged or received for duties performed or services rendered to or for the state or to or for any state board, officer, agent, employee or any ~~county or county~~ subdivision of the state, to include a county, municipal corporation or district created pursuant to statute, or an officer of such subdivision in the performance of his or their official duties.

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, 1998.

CHAPTER 146
(S.B. No. 1387)

AN ACT

RELATING TO NOTARIES PUBLIC; AMENDING SECTION 51-106, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR THE OFFICIAL SEAL OF A NOTARY PUBLIC WHOSE CURRENT COMMISSION BECOMES EFFECTIVE ON OR AFTER JULY 1, 1998, AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 51-106, Idaho Code, be, and the same is hereby amended to read as follows:

51-106. SEAL. (1) Each notary public whose current commission became effective prior to July 1, 1998, shall provide and keep an official seal which shall conform to one (1) of the following configurations:

(a) A seal embosser engraved with the words "Notary Public," the notary public's name, and the words "State of Idaho."

(b) A rubber stamp with a serrated or milled edge border in rectangular or circular form, which contains the same information required for the seal embosser.

(2) Each notary public whose current commission became effective on or after July 1, 1998, shall provide and keep an official seal which shall be a rubber stamp with a serrated or milled edge border in a rectangular or circular form, which includes the words "Notary Public," the notary public's name, the words "State of Idaho," and nothing more.

(3) The seal shall be impressed below or near the notary public's official signature on each notary certificate which he administers.

Approved March 20, 1998.

CHAPTER 147
(S.B. No. 1386)

AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION; AMENDING SECTION 61-206, IDAHO CODE, TO PROVIDE THAT REGULATORY POLICY STRATEGISTS OF THE PUBLIC UTILITIES COMMISSION SHALL BE NONCLASSIFIED EMPLOYEES AND REPORT DIRECTLY TO THE COMMISSION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 61-206, Idaho Code, be, and the same is hereby amended to read as follows:

61-206. EMPLOYEES. (1) The commission shall have power to employ, during its pleasure, such officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees as it may deem necessary to carry out the provisions of this act or to perform the duties and exercise the powers conferred by law upon the commission.

(2) In addition to the number of nonclassified employees provided by other provisions of law, the commission shall have the authority to employ not more than three (3) nonclassified employees as regulatory policy strategists reporting directly to the commission.

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, 1998.

CHAPTER 148
(S.B. No. 1375)

AN ACT

RELATING TO PURCHASES BY GOVERNMENTAL ENTITIES; AMENDING SECTION 67-2349, IDAHO CODE, TO ADD SERVICES TO THE LIST FOR PREFERENCE OF IDAHO SUPPLIERS.

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

SECTION 1. That Section 67-2349, Idaho Code, be, and the same is hereby amended to read as follows:

67-2349. PREFERENCE FOR IDAHO SUPPLIERS FOR PURCHASES. To the extent permitted by federal laws and regulations, whenever the state of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract for purchase of any materials, supplies, services or equipment, the bidder domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible bidder domiciled in Idaho as would be required for such an Idaho domiciled bidder to succeed over the bidder domiciled outside Idaho on a like contract being let in his domiciliary state.

For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year preceding the date of the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following:

(a) That the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and

(b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

Approved March 20, 1998.

CHAPTER 149
(S.B. No. 1340, As Amended)

AN ACT

RELATING TO THE LEASING OF FACILITIES FOR STATE USE; AMENDING SECTION 67-5708, IDAHO CODE, TO DEFINE FACILITIES, TO PROVIDE REFERENCES TO FACILITIES AND TO PROVIDE FOR AUTHORIZATION FOR STATE FACILITIES BY CONCURRENT RESOLUTION; AMENDING CHAPTER 57, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5708A, IDAHO CODE, TO PROVIDE FOR THE CREATION OF AN INVENTORY AND PROGRAM OF EVALUATION OF STATE FACILITIES LEASES; AND AMENDING SECTION 67-5709, IDAHO CODE, TO PROVIDE A REFERENCE TO FACILITIES.

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

SECTION 1. That Section 67-5708, Idaho Code, be, and the same is hereby amended to read as follows:

67-5708. LEASING OF ~~OFFICE-SPACE~~ FACILITIES FOR STATE USE -- ~~MANAGEMENT-OF-STATE-CAPITOL-MALL~~--- CONTROL OF PARKING. The department of administration shall negotiate for, approve, and make any and all lease or rental agreements for ~~office-space~~ facilities to be used by the various state departments, agencies and institutions in the state of Idaho.

For purposes of this ~~chapter~~ section and sections 67-5708A and 67-5709, Idaho Code, the term ~~"office-space"~~ "facility or facilities" may be used interchangeably and shall ~~include and~~ mean ~~the warehouse and central office of the Idaho state liquor dispensary~~ real property and improvements, including buildings and structures of any kind, excluding water rights not appurtenant to other facilities, and state endowment lands.

The department of administration shall manage multi-agency ~~office space~~ facilities constructed, acquired or refurbished through the state building authority as established in chapter 64, title 67, Idaho Code, and shall sublease ~~such office space~~ the facilities to various state departments, agencies, and institutions in the state of Idaho. The department of administration is directed to operate any ~~property~~ facilities acquired for the state ~~capitol--mall~~ and to enter into rental contracts and lease agreements ~~not inconsistent~~ with the use of ~~such--capitol--mall real estate~~ the facilities for state ~~building~~ purposes when so authorized.

The director may authorize and enter into leases of state capitol mall real estate and multi-agency ~~office space~~ facilities constructed through the state building authority, not needed for state ~~building~~ purposes, to other governmental entities or to nonprofit organizations upon such terms as are just and equitable.

The administrator of the division of public works shall promulgate rules for the control of the parking of motor vehicles in the state capitol mall. Any person who shall violate any of the provisions of the rules shall be subject to a fine of not less than two dollars ($2.00) nor more than twenty-five dollars ($25.00); provided however, that any person who shall violate any of the provisions of the rules concerning the altering, counterfeiting or misuse of parking permits shall be subject to a fine of not more than fifty dollars ($50.00).

Every magistrate and every court having jurisdiction of criminal offenses and the violation of public laws committed in the county of Ada shall have jurisdiction to hear and determine violations of the provisions of the rules and to fix, impose and enforce payment of fines therefor. Alleged violations of the parking rules are not subject to the provisions of chapter 52, title 67, Idaho Code. The department of administration may pay costs incurred in the operation and management of those properties from rents received therefrom.

When a ~~state building or~~ facility of the state of Idaho is authorized by ~~statute~~ concurrent resolution, and a maximum cost for ~~such building--or~~ the facility has been set by ~~statute~~ concurrent resolution, the administrator of the division of public works may enter into lease-purchase or other time-purchase agreements with the Idaho state building authority or other party for ~~such building or~~ the facility.

SECTION 2. That Chapter 57, Title 67, Idaho Code, be, and the

same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5708A, Idaho Code, and to read as follows:

67-5708A. STATE FACILITIES MANAGEMENT -- COMPARATIVE LEASE COST ANALYSIS AND ACCOUNTABILITY. (1) The director of the department of administration shall establish a program to identify and maintain a current inventory of all leases of facilities used in any manner for the conduct of functions of state government now or hereafter entered into by any state department, agency or institution. Not later than January 1, 1999, all departments, agencies and institutions shall submit copies of all leases of facilities to the director. The submitted inventory shall record the essential terms of the leases, including the rental rate, term of the lease, description of the facilities, the size of the facilities, and the governmental use of the facilities.

(2) The director of the department of administration shall establish a program for evaluation of all leases of facilities in effect on or to be entered into after January 1, 1999. No department, agency or institution may enter into or renew any lease of facilities after January 1, 1999, until a comprehensive analysis is performed by that department, agency or institution in accord with standards and criteria established by the director of the department of administration. The comprehensive analysis shall address, at a minimum, an evaluation of the need for facilities, space utilization efficiency, long-term needs and objectives, and viable alternatives to meet facility needs, including acquiring facilities with appropriated funds and leasing facilities through the state building authority. Departments, agencies and institutions shall consult with the director when performing the comprehensive analysis and, with the director's assistance, shall select the alternative that best serves long-term needs and objectives and that provides suitable facilities at the lowest responsible cost to the taxpayer measured over the time the facilities are expected to be needed, or forty (40) years, whichever is less. Departments, agencies and institutions shall include a summary of the comprehensive analysis annually in their budget requests to the governor and the legislature, and shall include in that summary, where appropriate, the time necessary to implement their selection.

For purposes of this section, consideration of the "lowest responsible cost," shall take into account the estimated residual asset value of facilities acquired with appropriated funds, or acquired through the state building authority or other lease-purchase arrangements and the use of public lands, wherever practicable, that are owned or can be timely acquired by the state.

SECTION 3. That Section 67-5709, Idaho Code, be, and the same is hereby amended to read as follows:

67-5709. MANAGEMENT OF STATE ~~OFFICE-SPACE~~ FACILITIES. The director of the department of administration may pay personnel costs and operating expenditures incurred in the operation and management of the state capitol mall and the multi-agency ~~office-space~~ facilities constructed through the state building authority from the rents received therefrom. Proceeds accruing from such rental contracts and lease

agreements after payment of personnel costs and operating expenditures which are in excess of two hundred thousand dollars ($200,000) at the end of the fiscal year shall be deposited to the credit of the permanent building account. Proceeds from the rental of parking spaces in the capitol mall shall be deposited upon receipt to the credit of the permanent building account. Said proceeds shall not be expended without an appropriation and shall only be appropriated for the security, maintenance and upkeep of the state capitol mall.

Approved March 20, 1998.

CHAPTER 150
(S.B. No. 1318)

AN ACT

RELATING TO THE PEACE OFFICERS STANDARDS AND TRAINING ACCOUNT; AMENDING SECTION 19-5116, IDAHO CODE, TO INCREASE THE MAXIMUM AMOUNT WHICH MAY BE ACCUMULATED IN THE ACCOUNT AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 19-5116, Idaho Code, be, and the same is hereby amended to read as follows:

19-5116. PEACE OFFICERS STANDARDS AND TRAINING ACCOUNT. (a) There is hereby established in the state operating fund, the peace officers standards and training account. All moneys deposited to the account shall be expended by the peace officers standards and training council for the following purposes:

(1) Training peace officers, county detention officers, and self-sponsored students, within the state of Idaho, including, but not limited to, sheriffs and their deputies, officers of the Idaho department of law enforcement and conservation officers of the Idaho department of fish and game, and city and county prosecutors and their deputies~~.~~;

(2) Salaries, costs and expenses relating to such training as provided in subsection (1) of this section;

(3) Such capital expenditures as the peace officers standards and training council may provide, for the acquisition, construction and/or improvement of a peace officers standards and training academy; and

(4) Such expenditures as may be necessary to aid approved peace officers training programs or county detention officer programs certified as having met the standards established by the peace officers standards and training council.

(b) The peace officers standards and training account shall be funded as provided in section 31-3201B, Idaho Code.

(c) All contributions and other moneys and appropriations which are designated for peace officers standards and training shall be deposited in the peace officers standards and training account.

(d) Moneys received into the account as provided in subsection (c) of this section, shall be accounted for separately.

(e) If the fiscal year-end balance in the account pursuant to section 31-3201B, Idaho Code, exceeds ~~five hundred fifty thousand~~ one million dollars ($~~55~~1,000,000) the excess shall revert to the general account.

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, 1998.

CHAPTER 151
(S.B. No. 1308)

AN ACT

RELATING TO A NONCUSTODIAL PARENT'S ACCESS TO A CHILD'S RECORDS; AMENDING SECTION 32-717A, IDAHO CODE, TO PROVIDE THAT A MINOR CHILD'S ADDRESS SHALL BE DELETED FROM THE CHILD'S MEDICAL, DENTAL, HEALTH, SCHOOL OR EDUCATIONAL RECORDS UPON THE WRITTEN REQUEST OF THE CUSTODIAL PARENT.

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

SECTION 1. That Section 32-717A, Idaho Code, be, and the same is hereby amended to read as follows:

32-717A. PARENTS' ACCESS TO RECORDS AND INFORMATION. Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to, medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child's custodial parent. <u>However, information concerning the minor child's address shall be deleted from such records to a parent, if the custodial parent has advised the records custodian in writing to do so.</u>

Approved March 20, 1998.

CHAPTER 152
(S.B. No. 1464)

AN ACT

RELATING TO THE ADMINISTRATION OF SUSPENSIONS OF DRIVERS' LICENSES AND DRIVING PRIVILEGES; AMENDING SECTION 49-237, IDAHO CODE, TO PROVIDE FOR INFORMATION TO BE SENT TO THE TRANSPORTATION DEPARTMENT FOR ADMINISTRATION OF COURT-ORDERED SUSPENSIONS; AMENDING SECTION 49-326, IDAHO CODE, TO PROVIDE FOR DEPARTMENT SUSPENSION OR REVOCATION OF A DRIVER'S LICENSE OR PRIVILEGES FOR MORE THAN ONE YEAR,

TO AUTHORIZE REINSTATEMENT BEFORE THE EXPIRATION OF ONE YEAR AFTER REVOCATION AND TO PROVIDE AN EXEMPTION FOR SUSPENSIONS ORDERED TO TAKE EFFECT AFTER RELEASE FROM CONFINEMENT OR IMPRISONMENT; AMENDING CHAPTER 3, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-326A, IDAHO CODE, TO PROVIDE FOR DEPARTMENT ADMINISTRATION OF JUDICIAL SUSPENSIONS OF DRIVERS' LICENSES OR PRIVILEGES TO BECOME EFFECTIVE AFTER THE PERSON'S RELEASE FROM CONFINEMENT; AND AMENDING CHAPTER 80, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-8011, IDAHO CODE, TO PROVIDE FOR THE STAY OF SUSPENSION OF A DRIVER'S LICENSE OR DRIVING PRIVILEGES UPON AN INDIVIDUAL'S REINCARCERATION.

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

SECTION 1. That Section 49-237, Idaho Code, be, and the same is hereby amended to read as follows:

49-237. RECORDS ~~OF CONVICTIONS~~ TO BE SENT TO DEPARTMENT. Upon the conviction of any person for the violation of any of the provisions of this title, the ~~judicial officer before whom the proceedings are had~~ clerk of the district court shall immediately ~~certify~~ transmit the facts of the case to the department and the department of correction, either in paper or electronic form, including the name, ~~and~~ address, ~~of the offender,~~ date of birth, and the driver's license number or social security number of the party charged, and any judgment issued, including a withheld judgment. The clerk of the district court shall also forward to the department information regarding the character of the punishment, and the amount of any fine imposed and paid, the ordered sentence and its terms, and the ordered suspension period, including when the suspension is to commence. The information provided to the department and the department of correction shall be certified if submitted in paper form; no certification is required for electronic transfers of information. The department shall enter the facts either in the records of registered vehicles, or in the records of registered dealers, or in the driver's license records, as the case may be, opposite the name of the person so convicted, and in the case of any other person, in a record of offenders, to be kept for that purpose. If an individual is reincarcerated while that person's driver's license or driving privileges are suspended, the department of correction is to notify the department that the individual is reincarcerated, as well as the terms and period of reincarceration. If the conviction be reversed on appeal, the person whose conviction has been reversed may serve on the department a certified copy of the order of reversal, and the department shall enter the reversal in the proper records.

SECTION 2. That Section 49-326, Idaho Code, be, and the same is hereby amended to read as follows:

49-326. AUTHORITY OF DEPARTMENT TO SUSPEND, DISQUALIFY OR REVOKE DRIVER'S LICENSE AND PRIVILEGES. (1) If the court has not ordered the suspension of a license or privileges, the department is authorized to suspend, disqualify or revoke the license or privileges of a driver

without preliminary hearing upon a showing by its records or other sufficient evidence that the driver:

(a) Has committed an offense for which mandatory revocation or disqualification of license or privileges is required upon conviction;

(b) Has been convicted in any court in this state of an offense against a municipal ordinance which would have been grounds for suspension, revocation or disqualification of his driver's license or privileges had the charge been prosecuted under a state law;

(c) Is incompetent to drive a motor vehicle;

1. Any person who in the opinion of the department, based upon recommendation of the person's personal physician, is afflicted with or subject to any condition which brings about momentary or prolonged lapses of consciousness or control, which is or may become chronic, or when the person is suffering from a physical or mental disability or disease serving to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating it upon the streets and highways, or any person who is unable to understand highway signs, warning, regulating or directing traffic, is incompetent to drive a motor vehicle.

2. Any person who shall not have minimum visual acuity with or without corrective lenses of 20/40 in at least one (1) eye as determined by the Snellen system or other available systems is incompetent to operate a motor vehicle, however, the department shall have the authority to license such person upon the recommendation of an ophthalmologist or qualified physician and upon passage of a skills test. At 20/70 or more in both eyes with or without corrective lenses the department may suspend the driver's license and privileges. Any person who applies for or receives any type of tax, welfare or other benefits or exemptions for the blind shall be conclusively presumed incompetent to operate a motor vehicle.

3. Any person, department, or political subdivision of the state of Idaho who receives an application for any type of tax, welfare, aid or other benefits or exemptions for the blind shall immediately forward the name, address, sex, date of birth, and date of application of the applicant to the department;

(d) Has permitted an unlawful or fraudulent use of a driver's license;

(e) Has committed an offense in another state which if committed in Idaho would be grounds for suspension, disqualification or revocation;

(f) Has been convicted of the offense of reckless driving, or fleeing or attempting to elude a peace officer, and providing that the operating privilege shall be suspended for a period of thirty (30) days upon conviction and providing further, that if a second conviction occurs within a two (2) year period of time from the time of the first conviction, the suspension shall be for ninety (90) days, and if a third conviction shall occur within a three (3) year period of time from the time of the first conviction, the period of suspension shall be for one (1) year;

(g) Has failed to satisfy a judgment as set forth in chapter 12, title 49, Idaho Code;

(h) Has failed to maintain proof of financial responsibility as set forth in chapter 12, title 49, Idaho Code;

(i) Has a driving record which shows a violation point count of twelve (12) or more points in any consecutive twelve (12) month period;

(j) Is an habitual violator of traffic laws;

(k) Has been convicted of the offense of violation of a restricted license and providing the driver's license and privileges be suspended for a period of thirty (30) days;

(l) Has been convicted for the offense of leaving the scene of an accident involving damages to a vehicle, the period of revocation shall be one (1) year;

(m) Has been convicted for the offense of leaving the scene of an accident resulting in injury or death, the period of revocation shall be one (1) year;

(n) Is under the age of eighteen (18) years and is not satisfactorily enrolled in school, has not received a waiver pursuant to or has not completed school as provided in section 49-303A, Idaho Code.

(2) A violation point is assessed for conviction of any charge or with proof of any infraction involving a moving traffic violation. A value of one (1) point shall be given for a less serious violation and up to four (4) points for a more serious violation. Conviction or proof of infraction for only one (1) violation arising from one (1) occasion of arrest or citation shall be counted in determining the violation point count.

(3) The department is authorized and directed to establish a violation point count system for various moving traffic violations and infractions occurring either within or without the state of Idaho, affecting all holders of driver's licenses issued by the department.

(4) Notification of suspension, revocation, cancellation or disqualification. Upon suspending, revoking, canceling or disqualifying the driver's license or driving privileges of any person, the department shall immediately notify the applicant or licensee in writing, at the licensee's address on file with the department pursuant to section 49-320, Idaho Code. Upon his request the department shall afford him an opportunity for a hearing before a hearing officer appointed by the director. The hearing may be held by telephone within twenty (20) days after receipt of the request, unless this period is for good cause shown, extended by the hearing officer for one ten-day period. The notice and hearing shall be required prior to the imposition of additional suspension or disqualification periods beyond the periods as set forth in this section. Upon a hearing the hearing officer may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee. Upon the hearing the department shall either rescind its order or, with good cause, may affirm or extend the suspension or disqualification of the driver's license or revoke the driver's license.

Whenever a driver's license, permit or driving privilege has been suspended or revoked by the department as provided in this section,

other than as set forth in subsection (1)(c), (d), (g), (h), (m) or (n), the department may issue a temporary restricted permit restricting the time, area and purpose of use. The application, eligibility requirements and form of the temporary restricted permit shall be provided by administrative rule.

(5) The department shall not suspend or revoke a driver's license or privileges for a period of more than one (1) year, ~~and upon revoking a driver's license or privileges shall not in any event grant application for a new driver's license until the expiration of one (1) year after the revocation~~ unless otherwise provided by law. The provisions of this subsection shall not be applicable with respect to the issuance of temporary restricted permits as provided in section 49-325, Idaho Code, nor shall it be applicable to those suspensions placed on an individual's record for the purpose of administering suspensions ordered to take effect after an individual's release from confinement or imprisonment pursuant to chapter 80, title 18, Idaho Code.

(6) The department shall not disqualify a driver for a period longer than specified by 49 CFR part 383.

SECTION 3. That Chapter 3, 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 49-326A, Idaho Code, and to read as follows:

49-326A. ADMINISTRATION BY DEPARTMENT OF JUDICIAL SUSPENSIONS OF DRIVERS' LICENSES OR PRIVILEGES TO BECOME EFFECTIVE AFTER RELEASE FROM CONFINEMENT. (1) When a court's judgment or order provides that the suspension of an individual's driver's license or driving privileges shall begin after the individual is released from confinement or imprisonment, the department, for purposes of administering the ordered suspension, shall consider the driver's license or driving privileges as suspended effective as of the end of the last day of the fixed portion of the ordered sentence, as shown by the judgment or sentencing order of the court.

(2) Unless otherwise ordered by the court, the suspension shall remain in effect until the individual applies for reinstatement of his or her driver's license or driving privileges and can provide verifiable documentation to establish the date of release from confinement or imprisonment and show that the court-ordered suspension period has expired since the individual's release. Upon such a showing, the department will reinstate the individual's driver's license or driving privileges as provided by law.

(3) Where the department is notified of the release of the individual, either by the court or the agency having custody over the individual during the period of confinement or imprisonment, the department shall amend its records to reflect the actual court-ordered period of suspension.

(4) No time credit against the court-ordered period of suspension will be given while the individual is incarcerated or if the individual is reincarcerated. The entire period of the court-ordered suspension must run after the individual is released from confinement or imprisonment.

SECTION 4. That Chapter 80, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-8011, Idaho Code, and to read as follows:

18-8011. STAY OF SUSPENSION OF DRIVERS' LICENSES OR DRIVING PRIVILEGES UPON REINCARCERATION. A court-ordered suspension of an individual's driver's license or driving privileges issued pursuant to this chapter that is to commence after that individual's release from confinement or imprisonment, shall cease to run if the individual is reincarcerated. The court-ordered suspension will be stayed for the entire period the individual is reincarcerated and will recommence as of the date the individual is rereleased from confinement or imprisonment. Upon the individual's release from confinement or imprisonment, the suspension period will run for the number of days remaining on the suspension as of the date of the individual's reincarceration.

Approved March 20, 1998.

CHAPTER 153
(S.B. No. 1449)

AN ACT

RELATING TO THE OCCUPATIONAL THERAPY PRACTICE ACT; AMENDING SECTION 54-3702, IDAHO CODE, TO PROVIDE A DEFINITION FOR AN OCCUPATIONAL THERAPY AIDE.

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

SECTION 1. That Section 54-3702, Idaho Code, be, and the same is hereby amended to read as follows:

54-3702. DEFINITIONS. As used in this chapter:

(1) "Association" means the Idaho occupational therapy association.

(2) "Board" means the Idaho state board of medicine.

(3) "Licensure board" means the board established to conduct examinations under this chapter, to make recommendations and consult with the board and to perform such other duties as may be required or authorized by this chapter.

(4) "Occupational therapist" means a person licensed to practice occupational therapy.

(5) "Occupational therapy" is the use of purposeful, goal-oriented activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities/deficits, poverty or cultural difficulties or the aging process in order to achieve optimum functional performance, independence, prevent further disability and maintain health. The practice of occupational therapy encompasses the evaluation, consultation and treatment of individuals whose abilities to cope with the tasks of daily living are threatened or impaired by physical injury or illness,

psychosocial dysfunction, developmental or learning disabilities/deficits, poverty or cultural difficulties or the aging process and includes a treatment program through the use of specific techniques which enhance functional performance and includes the evaluation/assessment of the patient/clients self-care, work and leisure skills, cognition, perception; sensory and motor performance; play skills; vocational and prevocational capacities; need for adaptive equipment; application of selected prosthetic or orthotic devices; and the administration of standardized and nonstandardized assessments.

(6) "Occupational therapy aide" means an unlicensed person who aids a licensed occupational therapist or occupational therapy assistant in the practice of occupational therapy, whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(7) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy, who works under the supervision of an occupational therapist.

(~~7~~8) "Person" means any individual, partnership, unincorporated organization, or corporation.

Approved March 20, 1998.

CHAPTER 154
(S.B. No. 1465)

AN ACT

RELATING TO HIGHWAYS; AMENDING SECTION 40-604, IDAHO CODE, TO DELETE THE REQUIREMENT OF LETTING CERTAIN PROJECTS BY CONTRACT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 40-807, IDAHO CODE, TO PROVIDE FOR JOINT LOCAL HIGHWAY JURISDICTIONS, TO PROVIDE TAX LEVYS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 40-1202, IDAHO CODE, TO INCREASE THE AMOUNT FOR CONSTRUCTION OF A NEW BRIDGE AND TO PROVIDE A PERCENTAGE OF QUALIFIED VOTERS PETITIONING BEFORE A HEARING SHALL BE HELD; AND REPEALING SECTION 40-1204, IDAHO CODE.

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

SECTION 1. That Section 40-604, Idaho Code, be, and the same is hereby amended to read as follows:

40-604. DUTIES AND POWERS OF COMMISSIONERS. Commissioners shall:

(1) Exercise general supervision over all highways in the county highway system, including their location, design, construction, reconstruction, repair and maintenance, and develop general policies regarding highway matters.

(2) Cause to be surveyed, viewed, laid out, recorded, opened and worked, any highways or public rights-of-way as are necessary for pub-

lic convenience under the provisions of sections 40-202 and 40-203A, Idaho Code.

(3) Cause to be recorded all highways and public rights-of-way within their highway system.

(4) Have authority to abandon and vacate any highway or public right-of-way within their highway system under the provisions of section 40-203, Idaho Code.

(5) Designate county highways, or parts of them, as controlled-access highways and regulate, restrict or prohibit access to those highways so as best to serve the traffic for which the facility is intended.

(6) Have authority to make agreements with any incorporated city, other county, a highway district, the state, or the United States, its agencies, departments, bureaus, boards, or any government owned corporation for the construction, reconstruction, or maintenance of the county's highway system by those entities or for the construction, reconstruction, or maintenance of the highway systems of those entities by the county's highway organization. The county shall compensate or be compensated for the fair cost of the work except as otherwise specifically provided in this title.

(7) ~~Let-out-by-contract-the-improvement--of--highways,--the--construction--and--repair--of-bridges-or-other-adjuncts-to-highways,-when the-amount-of-work-to-be-done-by-contract-exceeds-five-hundred-dollars ($500).-At-least-twenty-five-percent-(25%)-of-the--fund--collected--in any-highway-division-must-be-expended-within-the-division-in-which-the fund-was-collected.~~

~~(8)~~ Contract, purchase, or otherwise acquire the right-of-way over private property for the use of county highways and for this purpose may institute proceedings under the code of civil procedure.

(~~9~~8) Levy an ad valorem tax to be paid into the county highway fund and cause the tax collected each year to be paid into that fund and kept by the treasurer as a separate fund. When all of the territory of a county is included in one (1) or more highway districts the commissioners shall not make any levy for general highway purposes.

(~~10~~9) Audit and draw warrants on the county highway fund required for payment for rights-of-way improvement.

(1~~1~~0) Rename any highway within the county, excepting those situated within the territorial limits of incorporated cities, when the renaming will eradicate confusion.

(1~~2~~1) Cause guide posts properly inscribed to be erected and maintained on designated highways.

(1~~3~~2) Exercise other powers as may be prescribed by law.

SECTION 2. That Section 40-807, Idaho Code, be, and the same is hereby amended to read as follows:

40-807. JOINT ~~COUNTY~~ LOCAL HIGHWAY JURISDICTION BRIDGES -- ADDITIONAL TAX LEVY. (1) Any two (2) or more ~~counties~~ local highway jurisdictions in the state are empowered to join in the construction, maintenance and repair of bridges at places ~~within-or-without-highway-districts,~~ where the bridges will ~~be-a~~ directly benefit ~~to~~ each of the ~~counties~~ local highway jurisdictions, and contract for the cost of construction, maintenance or repair of the bridge that each ~~county~~

local highway jurisdiction is to bear.

(2) For the purpose of defraying the costs and expenses incurred under the provisions of this section, the commissioners of the respective ~~counties~~ local highway jurisdictions are empowered to levy upon all taxable property of each ~~county~~ local highway jurisdiction, in addition to all other taxes, an annual tax not exceeding twenty-four ten thousandths ~~per--cent~~ percent (0.0024%) of the market value for assessment purposes of the property~~,~~. T~~t~~he entire proceeds of the levy ~~to~~ shall be used solely for the purposes of this section.

SECTION 3. That Section 40-1202, Idaho Code, be, and the same is hereby amended to read as follows:

40-1202. PETITION FOR CONSTRUCTING -- NOTICE OF HEARING. When the construction of a new bridge, ~~the-cost-of~~ for which the expenditure contemplated will exceed twenty-five ~~hundred~~ thousand dollars ($25,000), ~~is--necessary,--any~~ five percent (5%) or ~~more-taxpayers~~ twenty-five (25) qualified voters, whichever is greater, of a county highway system or highway district system interested in it may petition the respective ~~highway~~ commissioners for the erection of the needed bridge. The commissioners shall then advertise the petition, in accordance with the provisions of section 40-206, Idaho Code, giving the location and notify the director of highways to attend at a certain time and place to hear the petition.

SECTION 4. That Section 40-1204, Idaho Code, be, and the same is hereby repealed.

Approved March 20, 1998.

CHAPTER 155
(S.B. No. 1360, As Amended)

AN ACT

RELATING TO THE HUMAN RIGHTS COMMISSION; AMENDING SECTION 67-5907, IDAHO CODE, TO REVISE PROCEDURES ON COMPLAINTS, TO PROVIDE THAT A COMPLAINANT MAY REQUEST DISMISSAL OF AN ADMINISTRATIVE COMPLAINT AT ANY TIME AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 59, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5907A, IDAHO CODE, TO PROVIDE FOR COMPLIANCE WITH THE IDAHO TORT CLAIMS ACT; AMENDING SECTION 67-5908, IDAHO CODE, TO PROVIDE THAT A COMPLAINT MUST BE FILED WITH THE HUMAN RIGHTS COMMISSION AS A CONDITION PRECEDENT TO LITIGATION AND TO REVISE PROCEDURES; AND REPEALING SECTION 67-5908a, IDAHO CODE.

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

SECTION 1. That Section 67-5907, Idaho Code, be, and the same is hereby amended to read as follows:

67-5907. COMPLAINTS -- PROCEDURE ON COMPLAINT. (1) Any person who

believes he or she has been subject to unlawful discrimination, or a member of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination within one (1) year of the alleged unlawful discrimination.

(2) Upon receipt of such a complaint, the commission or its delegated investigator shall endeavor to resolve the matter by informal means prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. The commission or its delegated investigator shall conduct such investigation as may be necessary to resolve the issues raised by the facts set forth in the complaint.

(3) If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding, and shall notify the complainant and the respondent of its action.

(4) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, it shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. No offer or counter offer of conciliation nor the terms of any conciliation agreement may be made public without the written consent of all the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal. If the case is disposed of by such informal means in a manner satisfactory to the commission, the commission shall dismiss the proceeding, and shall notify the complainant and the respondent.

(5) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination if relief is not immediately granted, or if conciliation efforts under subsection (4) have not succeeded, the commission may file a civil action seeking appropriate legal and equitable relief.

(6) A complainant may request dismissal of an administrative complaint at any time. Dismissals requested before three hundred sixty-five (365) calendar days from the date of filing of the administrative complaint may be granted at the discretion of the staff director who will attempt to contact all parties who have appeared in the proceeding and consider their interests. After three hundred sixty-five (365) calendar days, if the complaint has not been dismissed pursuant to subsection (3) of this section or the parties have not entered into a settlement or conciliation agreement pursuant to subsection (2) or (4) of this section or other administrative dismissal has not occurred, the commission shall, upon request of the complainant, dismiss the complaint and notify the parties.

SECTION 2. That Chapter 59, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5907A, Idaho Code, and to read as follows:

67-5907A. COMPLIANCE WITH THE IDAHO TORT CLAIMS ACT. Compliance with section 67-5907(1), Idaho Code, satisfies the notice requirements of sections 6-905 and 6-906, Idaho Code, as to the allegations of the

administrative complaint arising under chapter 59, title 67, Idaho Code.

SECTION 3. That Section 67-5908, Idaho Code, be, and the same is hereby amended to read as follows:

67-5908. PROCEDURE IN DISTRICT COURT. (1) Any action filed by the commission shall be heard by the district court unless either party shall move for a jury trial. Except as otherwise provided herein, the court shall hear the case and grant relief as in other civil actions. Any such action shall be brought in the name of the commission for the use of the person alleging discrimination or a described class, and the commission shall furnish counsel for the prosecution thereof. Any person aggrieved by the alleged discrimination may intervene in such an action.

(2) ~~Nothing contained in this chapter shall prohibit a person who has been subject to alleged unlawful discrimination from filing an action in the district court on his or her own behalf, but such action shall be commenced not more than two (2) years after the act of alleged unlawful discrimination complained of~~ A complaint must be filed with the commission as a condition precedent to litigation. A complainant may file a civil action in district court within ninety (90) days of issuance of the notice of administrative dismissal pursuant to section 67-5907(6), Idaho Code.

(3) In a civil action filed by the commission or filed directly by the person alleging unlawful discrimination, if the court finds that unlawful discrimination has occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not limited to:

(a) An order to cease and desist from the unlawful practice specified in the order;

(b) An order to employ, reinstate, promote or grant other employment benefits to a victim of unlawful employment discrimination;

(c) An order for actual damages including lost wages and benefits, provided that such back pay liability shall not accrue from a date more than two (2) years prior to the filing of the complaint with the commission or the district court, whichever occurs first;

(d) An order to accept or reinstate such a person in a union;

(e) An order for punitive damages, not to exceed one thousand dollars ($1,000) for each willful violation of this chapter.

(4) Any civil action filed by the commission under this section shall commence not more than one (1) year after a complaint of discrimination under oath is filed with the commission~~; provided, however, that the commission shall commence its actions not more than one (1) year after the effective date of this act for sworn complaints already pending before the commission upon passage and approval of this act~~.

(5) In any civil action under this chapter, the burden of proof shall be on the person seeking relief.

SECTION 4. That Section 67-5908a, Idaho Code, be, and the same is hereby repealed.

Approved March 20, 1998.

CHAPTER 156
(S.B. No. 1350)

AN ACT

RELATING TO DEALER AND MANUFACTURER LICENSE PLATES; AMENDING SECTION 49-411, IDAHO CODE, TO INCREASE THE FEE FOR VEHICLE DEALER OR MANUFACTURER LICENSE PLATES OR REGISTRATION STICKERS; AND PROVIDING LEGISLATIVE INTENT.

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

SECTION 1. That Section 49-411, Idaho Code, be, and the same is hereby amended to read as follows:

49-411. DEALER AND MANUFACTURER PLATE -- FEES. (1) Any person conducting the business of manufacturing, buying, selling or dealing in vehicles, and licensed as a manufacturer of or a dealer in vehicles, and owning and operating any such vehicle upon any highway may, in lieu of registering each vehicle obtain from the department upon application on the proper form and payment of the required fee, and attach to each vehicle, one (1) number plate as required for different classes of vehicles in section 49-434, Idaho Code. The special number plate shall bear a distinctive number assigned to the manufacturer or dealer, the name of this state, which may be abbreviated, and the year for which the plate is issued, together with words which may be abbreviated or a distinguishing symbol indicating that the plate is issued to a manufacturer or dealer.

(2) The fee for a dealer or manufacturer number plate or registration sticker shall be ~~five~~ twelve dollars ($~~5~~12.00) for each plate or sticker.

(3) All such fees shall be paid to the state treasurer and deposited to the state highway account.

SECTION 2. It is the intent of the Legislature that the increase in fees provided in Section 1 of this act shall apply to registration periods which begin on and after January 1, 1999.

Approved March 20, 1998.

CHAPTER 157
(S.B. No. 1325)

AN ACT

RELATING TO THE IDAHO BOARD OF HEARING AID DEALERS AND FITTERS; AMENDING CHAPTER 29, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW

SECTION 54-2920, IDAHO CODE, TO PROVIDE THAT ACTING AS A HEARING AID DEALER OR FITTER WITHOUT A LICENSE SHALL BE A MISDEMEANOR.

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

SECTION 1. That Chapter 29, 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 54-2920, Idaho Code, and to read as follows:

54-2920. VIOLATIONS OF ACT A MISDEMEANOR. Any person who shall engage in conduct requiring a hearing aid dealer's and fitter's license as herein defined without a license as provided for by this chapter, or the rules of the board herein provided for, shall be guilty of a misdemeanor.

Approved March 20, 1998.

CHAPTER 158
(H.B. No. 623, As Amended, As Amended in the Senate)

AN ACT

RELATING TO ALLOWABLE GROSS LOADS AND MAXIMUM SPEED LIMITS; AMENDING SECTION 49-654, IDAHO CODE, TO AUTHORIZE THE TRANSPORTATION BOARD TO SET A MAXIMUM SPEED LIMIT OF SIXTY-FIVE MILES PER HOUR FOR TRUCKS WITH FIVE OR MORE AXLES WEIGHING MORE THAN TWENTY-SIX THOUSAND POUNDS FOR TRAVEL ON INTERSTATE HIGHWAYS; AMENDING SECTION 49-1001, IDAHO CODE, TO ALLOW VEHICLES WITH REDUCIBLE LOADS WITH GROSS WEIGHTS EXCEEDING ONE HUNDRED FIVE THOUSAND FIVE HUNDRED POUNDS BUT NOT MORE THAN ONE HUNDRED TWENTY-NINE THOUSAND POUNDS TO OPERATE ON SPECIFIED PILOT PROJECT ROUTES IF IN CONFORMITY WITH OTHER WEIGHT, LENGTH AND FEE REQUIREMENTS OF LAW, TO EXTEND THE ALLOWABLE GROSS LOADS TABLE TO THIRTEEN AXLES AND ONE HUNDRED TWENTY-NINE THOUSAND POUNDS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-1004, IDAHO CODE, TO AUTHORIZE DESIGNATION OF PILOT PROJECT ROUTES ON NONINTERSTATE AND NONSTATE HIGHWAYS, TO DESIGNATE PILOT PROJECT ROUTES ON STATE HIGHWAYS, TO PROVIDE AN ANNUAL ADMINISTRATIVE PERMIT FOR TRAVEL ON PILOT PROJECT ROUTES AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING LEGISLATIVE INTENT FOR ANNUAL REPORTS TO THE LEGISLATURE BY THE IDAHO TRANSPORTATION DEPARTMENT REGARDING IMPORTANT IMPACTS INCLUDING THE IMPACT ON SAFETY, BRIDGES AND PAVEMENT ON PILOT PROJECT ROUTES AND TO SUNSET THE PILOT PROJECT PROGRAM.

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

SECTION 1. That Section 49-654, Idaho Code, be, and the same is hereby amended to read as follows:

49-654. BASIC RULE AND MAXIMUM SPEED LIMITS. (1) No person shall drive a vehicle at a speed greater than is reasonable and prudent

under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding highway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(2) Where no special hazard or condition exists that requires lower speed for compliance with subsection (1) of this section the limits as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of the maximum limits:

(a) Thirty-five (35) miles per hour or a lesser maximum speed adopted pursuant to section 49-207(2)(a), Idaho Code, in any residential, business or urban district;

(b) Thirty-five (35) miles per hour in any urban district;

(c) Seventy-five (75) miles per hour on interstate highways;

(d) Sixty-five (65) miles per hour on state highways;

(e) Fifty-five (55) miles per hour in other locations unless otherwise posted up to a maximum of sixty-five (65) miles per hour.

(3) The maximum lawful speed limit on interstate highways shall not exceed sixty-five (65) miles per hour for vehicles with five (5) or more axles operating at a gross weight of more than twenty-six thousand (26,000) pounds.

SECTION 2. That Section 49-1001, Idaho Code, be, and the same is hereby amended to read as follows:

49-1001. ALLOWABLE GROSS LOADS. The gross load imposed on the highway by any vehicle or combination of vehicles shall not exceed the limits in this section. The maximum single axle gross weight shall be twenty thousand (20,000) pounds, the maximum single wheel gross weight shall be ten thousand (10,000) pounds and the maximum gross vehicle or combination weight shall be one hundred five thousand five hundred (105,500) pounds, provided that maximum gross vehicle or combination weight on United States federal interstate and defense highways of this state shall not exceed eighty thousand (80,000) pounds, except as permitted under the provisions of section 49-1004, Idaho Code.

(1) The total gross weight imposed on the highway by any group of consecutive axles shall be determined by the following formula:

$$W=500((LN/N-1)+12N+36)$$

Where W is the maximum weight in pounds (to the nearest 500 pounds) carried on any group of two (2) or more consecutive axles. L is the distance in feet between the extremes of any group of two (2) or more consecutive axles, and N is the number of axles under consideration.

The formula is modified as illustrated in the following table:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Maximum load in pounds carried on any group of 2 or more consecutive axles											
axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles	10 axles	11 axles	12 axles	13 axles
4	34,000											
5	34,000			WHEN NO ALLOWABLE WEIGHT IS								
6	34,000			LISTED FOR ANY AXLE SPACING,								
7	34,000			APPLY THE ALLOWABLE WEIGHT AS								
8	34,000			LISTED IN THE FIRST COLUMN TO								
8+	38,000	42,000		THE LEFT								
9	39,000	42,500										
10	40,000	43,500										
11		44,000										
12		45,000	50,000									
13		45,500	50,500									
14		46,500	51,500									
15		47,000	52,000									
16		48,000	52,500	58,000								
17		48,500	53,500	58,500								
18		49,500	54,000	59,000								
19		50,000	54,500	60,000								
20		51,000	55,500	60,500	66,000							
21		51,500	56,000	61,000	66,500							
22		52,500	56,500	61,500	67,000							
23		53,000	57,500	62,500	68,000							
24		54,000	58,000	63,000	68,500	74,000						
25		54,500	58,500	63,500	69,000	74,500						
26		55,500	59,500	64,000	69,500	75,000						
27		56,000	60,000	65,000	70,000	75,500						
28		57,000	60,500	65,500	71,000	76,500	82,000					
29		57,500	61,500	66,000	71,500	77,000	82,500					
30		58,500	62,000	66,500	72,000	77,500	83,000					
31		59,000	62,500	67,500	72,500	78,000	83,500					
32		60,000	63,500	68,000	73,000	78,500	84,500	90,000				
33			64,000	68,500	74,000	79,000	85,000	90,500				
34			64,500	69,000	74,500	80,000	85,500	91,000				
35			65,500	70,000	75,000	80,500	86,000	91,500				
36			66,000	70,500	75,500	81,000	86,500	92,000	98,000			
37			66,500	71,000	76,000	81,500	87,000	93,000	98,500			
38			67,500	71,500	77,000	82,000	87,500	93,500	99,000			
39			68,000	72,500	77,500	82,500	88,500	94,000	99,500			
40			68,500	73,000	78,000	83,500	89,000	94,500	100,000	106,000		
41			69,500	73,500	78,500	84,000	89,500	95,000	103,500	103,500		
42			70,000	74,000	79,000	84,500	90,000	95,500	101,000	107,000		
43			70,500	75,000	80,000	85,000	90,500	96,000	102,000	107,500		
44			71,500	75,500	80,500	85,500	91,000	96,500	103,500	108,000	114 000	
45			72,000	76,000	81,000	86,000	91,500	97,500	103,000	108,500	114,500	
46			72,500	76,500	81,500	87,000	92,500	98,000	103,500	109,000	115,000	
47			73,500	77,500	82,000	87,500	93,000	98,500	104,000	110,000	115,500	
48			74,000	78,000	83,000	88,000	93,500	99,000	103,500	110,500	115,500	129,000
49			74,500	78,500	83,500	88,500	94,000	99,500	105,000	111,000	115,500	123,500
50			75,500	79,000	84,000	89,000	94,500	100,000	103,500	111,500	117,000	123,000
51			76,000	80,000	84,500	89,500	95,000	100,500	106,000	112,000	118,000	123,500
52			76,500	80,500	85,000	90,500	95,500	101,000	107,000	112,500	118,500	124,000
53			77,500	81,000	86,000	91,000	96,500	102,000	107,500	113,000	119,000	124,500
54			78,000	81,500	86,500	91,500	97,000	102,500	108,000	113,500	115,500	129,000
55			78,500	82,500	87,000	92,000	97,500	103,000	103,500	114,000	120,000	123,500
56			79,500	83,000	87,500	92,500	98,000	103,500	109,000	115,000	120,500	126,000
57			80,000	83,500	88,000	93,000	98,500	104,000	109,500	115,500	121,000	127,000
58				84,000	89,000	94,000	99,000	104,500	110,000	116,000	121,500	127,500
59				85,000	89,500	94,500	99,500	105,000	110,500	116,500	122,000	128,000

Distance in feet between the extremes of any group of 2 or more consecutive axles	Maximum load in pounds carried on any group of 2 or more consecutive axles										
	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles	10 axles	11 axles	12 axles	13 axles
60				85,500	90,000	95,000	100,500	105,500	111,000	117,000	126,500	128,500
61				86,000	90,500	95,500	101,000	106,000	112,000	117,500	123,000	129,000
62				87,000	91,000	96,000	101,500	107,000	112,500	118,000	126,500	
63				87,500	92,000	96,500	102,000	107,500	112,500	118,500	126,500	
64				88,000	92,500	97,500	102,500	108,000	113,500	126,500	125,000	
65				88,500	93,000	98,000	103,000	108,500	114,000	119,500	125,000	
66				89,500	93,500	98,500	103,500	109,000	114,500	120,000	125,000	
67				90,000	94,000	99,000	104,500	108,500	115,000	121,000	126,500	
68				90,500	95,000	99,500	105,000	110,000	119,500	121,500	127,000	
69				91,000	95,500	100,000	105,500	111,000	116,000	126,500	127,500	
70				92,000	96,000	101,000	106,000	111,500	117,000	126,500	125,000	
71				92,500	96,500	101,500	108,500	112,000	117,500	123,000	128,500	
72				93,000	97,000	102,000	107,000	112,500	118,000	126,500	125,000	
73				93,500	98,000	102,500	107,500	113,000	119,500	124,000		
74				94,500	98,500	103,000	108,500	112,500	119,000	126,500		
75				95,000	99,000	103,500	109,000	114,000	119,500	126,500		
76				95,500	99,500	104,500	109,500	118,500	120,000	126,500		
77				96,000	100,000	105,000	110,000	115,000	126,500	126,500		
78				97,000	101,000	105,500	119,500	116,000	121,000	127,000		
79				97,500	101,500	108,500	111,000	119,500	122,000	127,500		
80				98,000	102,000	108,500	111,500	117,000	126,500	128,000		
81				98,500	102,500	107,000	112,500	127,500	123,000	126,500		
82				99,000	103,000	108,000	113,000	118,000	126,500	126,500		
83				100,000	104,000	108,500	111,500	118,500	124,000			
84					104,500	108,500	114,000	119,000	126,500			
85					105,000	108,500	119,500	120,000	126,500			
86 ~~or more~~					105,500	110,000	115,000	126,500	126,500			
87					106,000	111,000	115,500	121 000	126,500			
88					107,000	111,500	116,000	121,500	127,000			
89					107,500	112,000	117,000	122,000	127,500			
90					108,500	112,500	117,500	126,500	128,000			
91					108,500	113,000	118,000	123,000	126,500			
92					109,000	113,500	118,500	123,500	129,000			
93					110,000	114,000	119,500	124,000				
94					110,500	115,000	119,500	126,500				
95					111,000	118,500	125,000	126,500				
96					111,500	116,000	121,000	126,000				
97					112,000	116,500	125,000	126,500				
98					113,000	117,000	122,000	127,000				
99					113,500	118,000	125,000	127,500				
100					114,000	118,500	123,000	126,500				
101					114,500	119,000	125,000	126,500				

(a) A public highway agency may limit the application of the weights authorized in this section as to certain highways within its jurisdiction which it determines have limited structural capacity of pavements, bridges, or other appurtenances. In designating such highways, it may specify a minimum wheelbase for combinations to be operated thereon. It may also designate specific highways or portions on which operation of a combination of vehicles with seven (7)~~, eight (8) or nine (9)~~ through thirteen (13) axles ~~vehicles~~ will be subject to specified lesser allowable gross weights.

(b) Notwithstanding the figures shown in the table in this subsection (1), two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more.

(c) Vehicles may operate with reducible loads at gross weights greater than one hundred five thousand five hundred (105,500) pounds but not exceeding one hundred twenty-nine thousand (129,000) pounds on noninterstate highways in accordance with the provisions of section 49-1004, Idaho Code, provided such vehicles are in compliance with the weight formula specified in this subsection (1) of this section, have paid the weight-distance operating fees calculated as specified in section 49-434, Idaho Code, and are in compliance with the length restrictions set forth in section 49-1010(7), Idaho Code.

(2) The weight limitations set forth in the table in subsection (1) of this section shall not apply to any vehicle, or combination of vehicles when a greater allowed weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state, the following table of allowable weights shall apply only to vehicles engaged in the transportation of logs, pulp wood, stull, rough lumber, poles or piling; or to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel and aggregates thereof, in bulk; or to any such vehicle engaged in the transportation of agricultural commodities, including livestock:

Distance in feet between the extremes of any group of 2 ~~of~~ or more consecutive axles	Allowed Load in Pounds Vehicles with Three or Four axles	Vehicles with Five or more axles
3 through 12	37,800	37,800
13	56,470	56,470
14	57,940	57,940
15	59,400	59,400
16	60,610	60,610
17	61,820	61,820
18	63,140	63,140
19	64,350	64,350
20	65,450	65,450
21	66,000	66,330
22	66,000	67,250
23	66,000	67,880
24	66,000	68,510
25	66,000	69,150
26	66,000	69,770
27	66,000	70,400
28	66,000	70,950
29	66,000	71,500
30	66,000	72,050
31		72,600
32		73,150
33		73,700
34		74,250
35		74,800
36		75,350
37		75,900
38		76,450

39	77,000
40	77,550
41	78,100
42	78,650
43 and over	79,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles is intended to exceed seventy-nine thousand (79,000) pounds as declared by the operator. When the provisions of this subsection are applicable to a vehicle or combination of vehicles, it shall be a violation of the provisions of this subsection if that vehicle or combination of vehicles exceeds the weights specified in this table.

(3) In determining the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles under subsection (1) or (2) or (9) of this section, the total gross weight of the vehicle or combination of vehicles or the gross weight of any two (2) or more consecutive axles shall be the sum of the axle weights.

For the purposes of this chapter the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles may be determined by accumulatively adding the separate weights of individual axles and tandem axles or groups of axles to determine gross weight. The results of any weighing at a temporary or permanent port of entry and the records relating to the calibration and accuracy of any scale at a temporary or permanent port of entry shall be admissible in any proceeding in this state. In order to prove a violation of the provisions of this section the state must show that:

(a) The sum of the axle weights exceeds what is allowable under the provisions of subsection (1) or (2) or (9) of this section;

(b) The scale involved in the weighing was at the time of weighing calibrated in conformity with and met the accuracy requirements of the standards for the enforcement of traffic and highway laws as set forth in the latest edition of handbook 44 of the national institute of standards and technology;

(c) Weights of individual axles or axles within a commonly suspended group of axles supported by a mechanical system designed to distribute equal wheel loads to individual axles in the group were utilized only to determine gross weights of that group of axles, and that any further evaluation of gross weights of combinations of axles considered only the accumulated gross weight of each such commonly suspended group of axles.

(4) In applying the weight limitations imposed in this section, a vehicle or combination of vehicles must comply exclusively with the weight limitations in either subsection (1) or (2) or (9) of this section.

(5) In applying the weight limitations imposed in this section, the distance between axles shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

(6) The limitations imposed in this section are in addition and supplemental to all other laws imposing limitations upon the size and weight of vehicles. Further, single axles within groups of axles are subject to the provisions and limitations of this chapter. Single axles within groups of axles may be weighed and evaluated separately,

or single axles may be prequalified in accordance with rules or ordinances established by the board or other public road jurisdiction, if any of the following conditions exist regarding the single axle within a group of axles:

(a) A suspension system common to all axles in the group of axles does not exist.

(b) One (1) or more axles in the group of axles is equipped with separate variable load suspension controls to regulate the weight carried by individual axles.

(c) One (1) or more axles in a group of axles is equipped with more or fewer tires than other axles in the group of axles.

(d) All tires in the group of axles are not the same size as determined by the manufacturer's sidewall rating.

(7) Notwithstanding the other provisions of this chapter, no vehicle, motor vehicle, trailer and/or semitrailer, or combination thereof, may be operated on the public highways of the state under loads which would result in the withholding of funds by operation of controlling federal law as provided in the Federal Aid Highway Act of 1956, as amended.

(8) Except as provided herein, no vehicle or combination of vehicles may proceed past the place of weighing at temporary or permanent ports of entry or checking stations when: the weight of a single axle exceeds the maximum limitations set forth herein by two thousand (2,000) pounds or more; the weight of a combination of axles, or gross vehicle weight exceeds the maximum allowable weight as set forth herein by seven percent (7%) or more. Vehicles or combinations of vehicles which exceed the weight limitations set forth herein shall be required to be brought into compliance with applicable weight limitations contained within this subsection at the place of weighing prior to continuing, except those vehicles or combinations of vehicles which are transporting loads which, in the determination of the board or other proper authorities in charge of or having jurisdiction over a highway, are deemed unsafe or impractical to bring into compliance at the place of weighing, and except those vehicles which do not exceed fifteen percent (15%) over maximum axle and axle group weights set forth in this section. Vehicles or combinations of vehicles transporting loads in this latter category shall obtain a travel authorization to the nearest place of safe unloading, load adjustment or other means of legalization.

(a) Neither the state of Idaho or its employees, nor any authority and its employees in charge of or having jurisdiction over a highway, shall be held liable for personal injury or property damage resulting from the requirements of section 49-1001(8), Idaho Code.

(b) The fee for a travel authorization as set forth above shall be fifty dollars ($50.00) and shall be on a form prescribed by the board or other proper authorities, and shall not be construed as contributing to a reduction in the penalties prescribed in section 49-1013, Idaho Code.

(c) The board or other proper authorities in charge of or having jurisdiction over a highway shall adopt and enforce administrative rules as may be necessary to carry out the provisions of this section.

(9) For vehicles on all highways except the United States federal interstate and defense highways of this state, the following table shall apply:

Distance in feet between the extremes of any group of 2 ~~of~~ or more consecutive axles	Allowed Load in Pounds Vehicles with Three or Four axles	Vehicles with Five or more axles
3 through 12	37,800	37,800
13	56,470	56,470
14	57,940	57,940
15	59,400	59,400
16	60,610	60,610
17	61,820	61,820
18	63,140	63,140
19	64,350	64,350
20	65,450	65,450
21	66,000	66,330
22	66,000	67,250
23	66,000	67,880
24	66,000	68,510
25	66,000	69,150
26	66,000	69,770
27	66,000	70,400
28	66,000	70,950
29	66,000	71,500
30	66,000	72,050
31		72,600
32		73,150
33		73,700
34		74,250
35		74,800
36		75,350
37		75,900
38		76,450
39		77,000
40		77,550
41		78,100
42		78,650
43 and over		80,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles is intended to exceed eighty thousand (80,000) pounds as declared by the operator. When the provisions of this subsection are applicable to a vehicle or combination of vehicles, it shall be a violation of the provisions of this subsection if that vehicle or combination of vehicles exceeds the weights specified in this table.

(10) When owned by or under contract to or under authority of a city, county, or state agency, refuse/sanitation trucks transporting refuse may be operated on public highways in accordance with the weights allowed in subsection (9) of this section, except that such trucks equipped with single rear axles are allowed twenty-four thousand (24,000) pounds on that single rear axle when specifically authorized by the public highway agency governing the highways over which

the refuse/sanitation truck is operating and provided the following conditions are met:

(a) The weight allowances provided for in this subsection shall not apply to the United States federal interstate and defense highways of the state; and

(b) The owner or operator has paid an annual operating fee for a permit, not to exceed fifty dollars ($50.00) per refuse/sanitation truck to each public agency governing the public highways over which the refuse/sanitation truck operates. The permit shall be carried in the refuse/sanitation truck. The permit fee may be waived by a public agency for refuse/sanitation trucks operated over public highways under that agency's jurisdiction.

(11) Variable load suspension axles shall meet the following criteria in order to be included in the computation of gross vehicle or axle weight limits for vehicles under the provisions of this section:

(a) The deployment control switch for such axles may be located inside of the driver's compartment but the pressure regulator valve for the operation of pressure on the pavement shall be located outside of and inaccessible to the driver's compartment.

(b) The gross axle weight rating of each such axle must not be less than the actual loading of the axle and shall not be less than nine thousand (9,000) pounds.

(c) All variable load suspension axles mounted on a vehicle after January 1, 1990, shall be designed to be self-steering in a manner that will guide or direct the variable load suspension mounted wheels through a turning movement without undue tire scrubbing or pavement scuffing.

(d) Variable load suspension axles must be fully deployed or fully raised. The pressure regulator valve which governs the load distribution to the variable load suspension axle(s) shall be set and sealed by the owner of the vehicle(s) in accordance with rules or ordinances established by the board or other public road jurisdiction. For applicable definitions, see sections 49-117 and 49-123, Idaho Code.

(12) Any person who operates a motor vehicle with a variable load suspension axle in violation of the provisions of this section shall be subject to the penalties provided in section 49-1013, Idaho Code.

SECTION 3. That Section 49-1004, Idaho Code, be, and the same is hereby amended to read as follows:

49-1004. PERMITS FOR OVERWEIGHT OR OVERSIZE LOADS. (1) Upon application in writing to the board or other proper authorities in charge of, or having jurisdiction over a highway, the board or authorities may in their discretion issue a special permit to the owner or operator of any vehicle allowing vehicles or loads having a greater weight or size than permitted by law to be moved or carried over and on the highways and bridges. Special permits shall be in writing and may limit the time of use and operation over the particular highways and bridges which may be traversed and may contain any special conditions and require any undertaking or other security as the board or other proper authority shall deem to be necessary to protect the highways and bridges from injury, or provide indemnity for any injury to

highways and bridges or to persons or property resulting from such operation. The owner or operator of an overweight or oversize vehicle shall obtain a permit, or shall ~~stablish~~ establish intent to obtain a permit by contacting a permit office and receiving a permit number before moving the vehicle on the highways. All special permits or evidence of intent to obtain a permit, shall be carried in the vehicles to which they refer and shall upon demand be delivered for inspection to any peace officer, authorized agent of the board or any officer or employee charged with the care or protection of the highways. It shall be unlawful for any person to violate, or to cause or permit to be violated, the limitations or conditions of special permits and any violation shall be deemed for all purposes to be a violation of the provisions of this chapter.

(2) A special pilot project route permit authorizing travel on pilot project routes may be issued by the board or a local public highway agency for operation of vehicles with a legal maximum gross weight of at least one hundred five thousand five hundred one (105,501) pounds but not exceeding one hundred twenty-nine thousand (129,000) pounds. Such pilot project routes on nonstate and noninterstate highways shall be determined by the local highway agency for those roads under its jurisdiction, based on criteria established by the board. No local public highway agency shall approve a pilot project route which provides a thoroughfare for interstate carriers to pass through the state. State pilot project routes designated by the board based on criteria established by the board and identified on a map entitled "Designated Pilot Project Routes" are:

(a) Ashton to Kimberly to Twin Falls to Nevada using US-20, US-30, SH-33, US-93, SH-25, SH-50 and SH-74.

(b) Interstate 15 to Wyoming or Utah border using US-30, SH-34 and US-91.

Additions or deletions to the approved state pilot project routes specified in paragraphs (a) and (b) of this subsection (2) shall be made only with the approval of the state legislature.

(3) An annual administrative permit fee for operating on pilot project routes at the weights specified in subsection (2) of this section shall be set by the board for travel on state pilot project routes and by the local public highway agency for travel on routes under its jurisdiction, but not to exceed a maximum of fifty dollars ($50.00) per vehicle. The annual permit shall cover administrative costs. Local public highway agencies are authorized to request the department to issue permits on their behalf. Permit fees for permits issued by the department shall be retained by the department to cover administrative costs. In addition to the annual administrative permit fee and the weight-distance fee for weights up to one hundred five thousand five hundred (105,500) pounds, the appropriate weight-distance fee for weights over one hundred five thousand five hundred (105,500) pounds shall be calculated and collected in accordance with the fee schedules set forth in section 49-434, Idaho Code.

SECTION 4. It is the intent of the legislature that the Idaho Transportation Department shall report annually to the legislature on the results of their monitoring and evaluation of all important impacts, including impacts to safety, bridges and pavement on all the

state pilot project routes. The first report shall be submitted to the First Regular Session of the Fifty-fifth Idaho Legislature which convenes in January of 1999. The pilot project program shall sunset in three years following implementation unless otherwise extended by the legislature.

Approved March 20, 1998.

CHAPTER 159
(H.B. No. 633)

AN ACT

RELATING TO EXCEPTIONS TO LIABILITY; AMENDING CHAPTER 9, TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 6-904D, IDAHO CODE, TO PROVIDE IMMUNITY INDIVIDUALLY TO MEMBERS OF BOARDS OF TRUSTEES OR EMPLOYEES OF SCHOOL DISTRICTS, INCLUDING SPECIALLY CHARTERED DISTRICTS, IN UTILIZING A MOTOR VEHICLE IN TRANSPORTING STUDENTS IF THE VEHICLE MEETS CERTAIN SAFETY STANDARDS AND TO PROVIDE LIMITATIONS ON THE IMMUNITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 9, 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 6-904D, Idaho Code, and to read as follows:

6-904D. EXCEPTIONS TO LIABILITY -- SCHOOL DISTRICTS. Any and all individual boards of trustees and employees of all school districts, including the individual board of trustees and employees of specially chartered districts, shall be individually immune from tort liability with regard to any decision by the board of trustees or employee to utilize a motor vehicle which does not comply with federal transit administrative regulations, to wit "bus testing", 49 C.F.R. part 665 and any revision thereto, for the transport of students within the state of Idaho. Provided that this immunity is limited only to that decision by the individual member of the board of trustees or employee with regard to the utilization of such vehicle or vehicles and does not grant immunity to any school district, driver, vehicle owner or other individual or entity, public or private, with regard to any claim relating to any conduct thereby, including gross negligence, negligence, recklessness, willful or wanton conduct or any claim resulting in injury or damage relating to the use of the vehicle and further provided that the vehicle or vehicles in question comply with all vehicle safety requirements 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 March 20, 1998.

CHAPTER 160
(H.B. No. 704)

AN ACT
RELATING TO THE UNIFORM CONTROLLED SUBSTANCES ACT; AMENDING SECTION 37-2705, IDAHO CODE, TO INCLUDE GAMMA HYDROXYBUTYRATE (GHB) AS A CONTROLLED SUBSTANCE UNDER SCHEDULE I.

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

SECTION 1. That Section 37-2705, Idaho Code, be, and the same is hereby amended to read as follows:

37-2705. SCHEDULE I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
(2) Acetylmethadol;
(3) Allylprodine;
(4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
(5) Alphameprodine;
(6) Alphamethadol;
(7) Alpha-methylfentanyl;
(8) Alpha-methylthiofentanyl (N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide);
(9) Benzethidine;
(10) Betacetylmethadol;
(11) Beta-hydroxyfentanyl (N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide);
(12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
(13) Betameprodine;
(14) Betamethadol;
(15) Betaprodine;
(16) Clonitazene;
(17) Dextromoramide;
(18) Diampromide;
(19) Diethylthiambutene;
(20) Difenoxin;
(21) Dimenoxadol;
(22) Dimepheptanol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;

(28) Etoxeridine;
(29) Furethidine;
(30) Hydroxypethidine;
(31) Ketobemidone;
(32) Levomoramide;
(33) Levophenacylmorphan;
(34) 3-Methylfentanyl;
(35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
(36) Morpheridine;
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(38) Noracymethadol;
(39) Norlevorphanol;
(40) Normethadone;
(41) Norpipanone;
(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
(43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(44) Phenadoxone;
(45) Phenampromide;
(46) Phenomorphan;
(47) Phenoperidine;
(48) Piritramide;
(49) Proheptazine;
(50) Properidine;
(51) Propiram;
(52) Racemoramide;
(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(54) Tilidine;
(55) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophine;

(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2,5-dimethoxy amphetamine;
(2) 2,5-dimethoxyamphetamine;
(3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alpha-desmethyl DOB, 2C-B);
(4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
(5) 4-methoxyamphetamine (PMA);
(6) 5-methoxy-3,4-methylenedioxy-amphetamine;
(7) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
(8) 3,4-methylenedioxy amphetamine;
(9) 3,4-methylenedioxymethamphetamine (MDMA);
(10) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
(11) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hydroxy MDA);
(12) 3,4,5-trimethoxy amphetamine;
(13) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
(14) Bufotenine;
(15) Diethyltryptamine (DET);
(16) Dimethyltryptamine (DMT);
(17) Ibogaine;
(18) Lysergic acid diethylamide;
(19) Marihuana;
(20) Mescaline;
(21) Parahexyl;
(22) Peyote;
(23) N-ethyl-3-piperidyl benzilate;
(24) N-methyl -3- piperidyl benzilate;
(25) Psilocybin;
(26) Psilocyn;
(27) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.
$\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)
(28) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;
(29) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl) -pyrrolidine, PCPy, PHP;
(30) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;
(31) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy.
(e) Any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers wherever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Gamma hydroxybutyrate (GHB);
(2) Flunitrazepam (also known as "R2", "Rohypnol");
(~~2~~3) Mecloqualone;
(~~3~~4) Methaqualone.
(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
(1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);
(2) Cathinone (some other names: alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);
(3) Fenethylline;
(4) Methcathinone (some other names: 2-(methyl-amino)-propiophenone, alpha-(methylamino)-propiophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);
(5) (t)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];
(6) N-ethylamphetamine;
(7) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethyl-benzeneethanamine).
(g) Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture or preparation which contains any quantity of the following substances:
(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers.
(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.
(3) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).

Approved March 20, 1998.

CHAPTER 161
(H.B. No. 564)

AN ACT

RELATING TO COMMISSION ON HISPANIC AFFAIRS; AMENDING SECTION 67-7202, IDAHO CODE, TO DECREASE THE COMPENSATION THAT THE MEMBERS OF THE COMMISSION RECEIVE.

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

SECTION 1. That Section 67-7202, Idaho Code, be, and the same is hereby amended to read as follows:

67-7202. ORGANIZATION OF COMMISSION. The commission shall meet not more than four (4) times a year. The commission shall elect a chairperson and a vice chairperson and other officers from its members as it deems advisable. Five (5) members constitute a quorum. Commission members shall be compensated as provided in section 59-509(~~g~~b), Idaho Code. Emergency sessions may be called by a two-thirds (2/3) majority of the commissioners.

Approved March 20, 1998.

CHAPTER 162
(H.B. No. 568)

AN ACT

RELATING TO THE IDAHO REAL ESTATE COMMISSION; AMENDING SECTION 54-2040, IDAHO CODE, TO PROVIDE THAT REAL ESTATE LICENSEES FOUND GUILTY OF GROSS NEGLIGENCE OR RECKLESS CONDUCT IN A REAL ESTATE TRANSACTION ARE SUBJECT TO DISCIPLINE BY THE REAL ESTATE COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 54-2040, Idaho Code, be, and the same is hereby amended to read as follows:

54-2040. REVOCATION OR SUSPENSION OF LICENSE -- GROUNDS THEREFOR. A. The commission may upon its own motion, and shall upon verified complaint in writing of any person claiming to have been injured or defrauded, investigate the action of any person engaged in the business or acting in the capacity of real estate broker or real estate salesman within this state and shall have the power to temporarily suspend or permanently revoke licenses issued under the provisions of this act and/or to impose a civil penalty in an amount not to exceed five thousand dollars ($5,000) and to assess costs and attorney fees against the person for the cost of any investigation and/or administrative or other proceedings upon the licensee at any time where the

holder thereof in performing or attempting to perform any of the acts mentioned in section 54-2022, Idaho Code, regardless of whether the acts were for his own account or in his capacity as a broker or salesman, is guilty of (a) making any fraudulent misrepresentations; or, (b) a continued or flagrant course of misrepresentation or making of false promises whether through agents or salesmen; or, (c) failure to account for or remit any property or moneys coming into his possession which belong to another; or, (d) failure to keep adequate records of all property transactions in which he acts in the capacity of real estate broker or real estate salesman; or, (e) failing or refusing upon demand to disclose any information within his knowledge, or to produce any documents, books, or records in his possession for inspection by the commission or its authorized representatives when acting within the jurisdiction or by authority of law; or, (f) employment of fraud, deception, misrepresentation, misstatement or any unlawful means in applying for or securing a license to act as real estate broker or salesman in the state of Idaho; or, (g) acting as a real estate broker or salesman under an assumed name; or, (h) violation of any provision of sections 54-2021 ~~to~~ through 54-2053, Idaho Code, or any of the rules made or promulgated by the real estate commission, or final order of the commission; or, (i) any other conduct whether of the same or a different character than hereinabove specified which constitutes dishonest or dishonorable dealings; or, (j) the use by a licensee of any provision allowing the licensee an option to purchase in any agreement authorizing or employing such licensee to sell, buy, list or exchange real estate for compensation or commission, except when such licensee, prior to or coincident with entering into such agreement, discloses in writing to his principal the purpose for which the property will be purchased, that the licensee is licensed, and such other information as the commission may require by rule; or, (k) gross negligence or reckless conduct in a regulated real estate transaction. Conduct is grossly negligent or reckless when, taken as a whole, the conduct substantially fails to meet the generally accepted standard of care in the practice of real estate in Idaho.

B. The commission may also temporarily suspend or permanently revoke a license where the holder thereof (a) is convicted of any felony in a state or federal court, or is convicted of ~~any~~ a misdemeanor involving moral turpitude. The record of conviction, or a certified copy thereof, certified by the clerk of the court, or the judge in whose court the judgment was had, shall be prima facie evidence of conviction in such cases; (b) is declared insane by a court of competent jurisdiction; provided, however, that when a license shall have been revoked or suspended for this cause, such license may be reactivated by the commission upon a declaration of sanity being made; (c) has a judgment entered against him in a civil action upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required.

C. The commission may also temporarily suspend or permanently revoke a license of a broker or salesman where the license of such licensee, issued by another jurisdiction, is suspended or revoked for acts or omissions which would be grounds for suspension or revocation under chapter 20, title 54, Idaho Code. A certified copy of the findings of fact, conclusions of law, memorandum opinion and/or final

order from the appropriate administrative agency or court shall be prima facie evidence of the suspension or revocation and the facts stated therein.

D. If the commission temporarily suspends or permanently revokes a license, and/or imposes a civil penalty, the commission may withhold execution of said suspension, revocation and/or civil penalty on such terms and for such time as it may prescribe.

E. In the event of the revocation or suspension of the broker's license issued to the designated broker of a partnership, limited liability company or corporation, the license issued to such partnership, limited liability company or corporation shall be revoked or suspended by the commission. However, the commission may withhold execution of the revocation or suspension on such terms and for such time as it may prescribe.

F. All civil penalties collected by the commission under the provisions of this chapter shall be deposited in the state treasury to the credit of the special real estate account established pursuant to section 54-2037, Idaho Code.

G. The commission may accept, on such conditions as it may prescribe, or reject any offer to voluntarily terminate the license of a person whose activity is under investigation or against whom a formal complaint has been filed.

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, 1998.

CHAPTER 163
(H.B. No. 415)

AN ACT

RELATING TO ABSENTEE VOTING; AMENDING SECTION 34-1006, IDAHO CODE, TO ENABLE COUNTY CLERKS TO ESTABLISH MORE THAN ONE ABSENTEE POLLING PLACE IN THE COUNTY.

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

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

34-1006. COUNTY CLERKS SHALL PROVIDE ~~AN~~ ONE OR MORE "ABSENT ELECTORS' VOTING PLACE." Each county clerk shall provide ~~an~~ one (1) or more "absent electors' polling place(s)~~.~~" ~~It~~ as determined necessary by each county. Each polling place shall be provided with voting booths and other necessary supplies as provided by law. Electioneering is prohibited at an "absent electors' polling place" as provided in section 18-2318, Idaho Code.

Approved March 20, 1998.

CHAPTER 164
(H.B. No. 440)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-340, IDAHO CODE, TO PROVIDE EXEMPTIONS FROM DISCLOSURE FOR CERTAIN PUBLIC RECORDS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 9-340, Idaho Code, be, and the same is hereby amended to read as follows:

9-340. RECORDS EXEMPT FROM DISCLOSURE. The following records are exempt from disclosure:

(1) Exemption under state or federal law or court rule.

(a) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(b) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(2) Law enforcement records, investigatory records of agencies, worker's compensation.

(a) Investigatory records of a law enforcement agency, as defined in section 9-337(5), Idaho Code, under the conditions set forth in section 9-335, Idaho Code.

(b) Juvenile records of a person maintained pursuant to chapter 5, title 20, Idaho Code, except that facts contained in such records shall be furnished upon request in a manner determined by the court to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the juvenile who is thirteen (13) years of age or younger. If the juvenile is ~~fourteen (14) years or older and is adjudicated guilty of~~ petitioned or charged with an offense which would be a ~~felony~~ criminal offense if committed by an adult, the name, offense of which the juvenile was ~~adjudicated~~ petitioned or charged and disposition of the court shall be subject to disclosure as provided in section 20-525, Idaho Code. Additionally, facts contained in any records of a juvenile maintained under chapter 5, title 20, Idaho Code, shall be furnished upon request to any school district where the juvenile is enrolled or is seeking enrollment.

(c) Records of the department of correction or the commission of pardons and parole to the extent that disclosure thereof would

interfere with the secure and orderly conduct of their operations, or the rehabilitation of any person in the custody of the department of correction or on parole, or would substantially prejudice or prevent the carrying out of the functions of the department of correction or the commission of pardons and parole if the public interest in confidentiality clearly outweighs the public interest in disclosure. Records exempt from disclosure shall include, but not be limited to, those containing the names and addresses of witnesses or victims or those containing information identifying victims or witnesses.

(d) Records of the sheriff or department of law enforcement received or maintained pursuant to section 18-3302, Idaho Code, relating to an applicant or licensee.

(e) Records of investigations prepared by the department of health and welfare pursuant to its statutory responsibilities dealing with the protection of children, the rehabilitation of youth, adoptions and the commitment of mentally ill persons.

(f) Records including, but not limited to, investigative reports, resulting from investigations conducted into complaints of discrimination made to the Idaho human rights commission unless the public interest in allowing inspection and copying of such records outweighs the legitimate public or private interest in maintaining confidentiality of such records. A person may inspect and copy documents from an investigative file to which he or she is a named party if such documents are not otherwise prohibited from disclosure by federal law or regulation or state law. The confidentiality of this subsection will no longer apply to any record used in any judicial proceeding brought by a named party to the complaint or investigation, or by the Idaho human rights commission, relating to the complaint of discrimination.

(g) Records containing information obtained by the manager of the Idaho state insurance fund pursuant to chapter 9, title 72, Idaho Code, from or on behalf of employers or employees contained in underwriting and claims for benefits files.

(h) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(i) To the parties in any worker's compensation claim and to the industrial special indemnity fund of the state of Idaho; or

(ii) To employers and prospective employers subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, who certify that the information is being requested with respect to a worker to whom the employer has extended an offer of employment and will be used in accordance with the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations; or

(iii) To employers and prospective employers not subject to the provisions of the Americans with disabilities act, 42 U.S.C. 12112, or other statutory limitations, provided the employer presents a written authorization from the person to whom the records pertain; or

(iv) To others who demonstrate that the public interest in allowing inspection and copying of such records outweighs the public or private interest in maintaining the confidentiality of such records, as determined by a civil court of competent jurisdiction.

(3) Privacy, personnel records, personal information, health records, professional discipline.

(a) Except as provided in this subsection, all personnel records of a current or former public official other than the public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee's or applicant's written consent. A public official or authorized representative may inspect and copy his personnel records, except for material used to screen and test for employment.

(b) Retired employees' and retired public officials' home addresses, home telephone numbers and other financial and nonfinancial membership records; active and inactive member financial and membership records and mortgage portfolio loan documents maintained by the public employee retirement system. Financial statements prepared by retirement system staff, funding agents and custodians concerning the investment of assets of the public employee retirement system of Idaho are not considered confidential under this chapter.

(c) Information and records submitted to the Idaho state lottery for the performance of background investigations of employees, lottery retailers and major procurement contractors; audit records of lottery retailers, vendors and major procurement contractors submitted to or performed by the Idaho state lottery; validation and security tests of the state lottery for lottery games; business records and information submitted pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, and such documents and information obtained and held for the purposes of lottery security and investigative action as determined by lottery rules unless the public interest in disclosure substantially outweighs the private need for protection from public disclosure.

(d) Records of a personal nature as follows:

(i) Records of personal debt filed with a public agency pursuant to law;

(ii) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(iii) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(iv) Records, with regard to the ownership of, or security interests in, registered public obligations;

(v) Vital statistics records;

(vi) Except as provided in this subsection, all information provided to a law enforcement agency for sex offender registration pursuant to the provisions of section 18-8306, Idaho Code:

1. Such information shall be available upon request to a law enforcement agency; and

2. The information provided pursuant to the provisions of subsections (1) and (3) of section 18-8306, Idaho Code, shall be provided to any person upon written request. Such written request shall include the name and either date of birth or address of the person for whom the information is requested.

(e) Information in an income or other tax return measured by items of income or sales, which is gathered by a public agency for the purpose of administering the tax, except such information to the extent disclosed in a written decision of the tax commission pursuant to a taxpayer protest of a deficiency determination by the tax commission, under the provisions of section 63-3045B, Idaho Code.

(f) Records of a personal nature related directly or indirectly to the application for and provision of statutory services rendered to persons applying for public care for the elderly, indigent, or mentally or physically handicapped, or participation in an environmental or a public health study, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(g) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(h) Any personal records, other than names, business addresses and business phone numbers, such as parentage, race, religion, sex, height, weight, tax identification and social security numbers, financial worth or medical condition submitted to any public agency pursuant to a statutory requirement for licensing, certification, permit or bonding.

(i) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.

(j) The records, finding, determinations and decision of any prelitigation screening panel formed under chapter 10, title 6, Idaho Code.

(k) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(l) Records of the department of health and welfare or a public health district that identifies a person infected with a reportable disease.

(m) Records of hospital care, medical records, records of psychiatric care or treatment and professional counseling records relating to an individual's condition, diagnosis, care or treatment, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(n) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(o) Personal information contained in motor vehicle and driver records that are exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(p) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(q) Records of the department of law enforcement or department of correction received or maintained pursuant to section 19-5514, Idaho Code, relating to DNA databases and databanks.

(4) Trade secrets, production records, appraisals, bids, proprietary information.

(a) Trade secrets including those contained in response to public agency requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that:

(i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) Production records, sale or purchase records, catch records, mortgage portfolio loan documents, or similar business records of a private concern or enterprise required by law to be submitted to or inspected by a public agency. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding.

(c) Records relating to the appraisal of real property, timber or mineral rights prior to its acquisition, sale or lease by a public agency.

(d) Any estimate prepared by a public agency that details the cost of a public project until such time as disclosed or bids are opened, or upon award of the contract for construction of the public project.

(e) Examination, operating or condition reports and all documents relating thereto, prepared by or supplied to any public agency responsible for the regulation or supervision of financial institutions including, but not limited to, banks, savings and loan

associations, regulated lenders, business and industrial development corporations, credit unions, and insurance companies, or for the regulation or supervision of the issuance of securities.

(f) Records gathered by a local agency or the Idaho department of commerce, as described in chapter 47, title 67, Idaho Code, for the specific purpose of assisting a person to locate, maintain, invest in, or expand business operations in the state of Idaho.

(g) Shipping and marketing records of commodity commissions used to evaluate marketing and advertising strategies and the names and addresses of growers and shippers maintained by commodity commissions.

(h) Financial statements and business information and reports submitted by a legal entity to a port district organized under title 70, Idaho Code, in connection with a business agreement, or with a development proposal or with a financing application for any industrial, manufacturing, or other business activity within a port district.

(i) Names and addresses of seed companies, seed crop growers, seed crop consignees, locations of seed crop fields, variety name and acreage by variety. Upon the request of the owner of the proprietary variety, this information shall be released to the owner. Provided, however, that if a seed crop has been identified as diseased or has been otherwise identified by the Idaho department of agriculture, other state departments of agriculture, or the United States department of agriculture to represent a threat to that particular seed or commercial crop industry or to individual growers, information as to test results, location, acreage involved and disease symptoms of that particular seed crop, for that growing season, shall be available for public inspection and copying. This exemption shall not supersede the provisions of section 22-436, Idaho Code.

(j) Information obtained from books, records, and accounts required in chapter 47, title 22, Idaho Code, to be maintained by the Idaho canola and rapeseed commission and pertaining to the individual production records of canola or rapeseed growers.

(k) Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney client privilege or attorney work product privilege otherwise available to any public agency.

(l) Records of laboratory test results provided by or retained by the ~~department of agriculture's~~ Idaho food quality assurance laboratory. Nothing in this subsection shall limit the use which can

be made, or availability of such information if used, for regulatory purposes or its admissibility in any enforcement proceeding.

(m) Reports required to be filed under chapter 13, title 62, Idaho Code, identifying electrical or natural or manufactured gas consumption data for an individual customer or account.

(n) Voluntarily prepared environmental audits, and voluntary disclosures of information submitted on or before December 31, 1997, to an environmental agency as defined in section 9-803, Idaho Code, which are claimed to be confidential business information.

(o) Computer programs developed or purchased by or for any public agency for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from the computer system, and any associated documentation and source material that explain how to operate the computer program. Computer program does not include:

(i) The original data including, but not limited to, numbers, text, voice, graphics and images;

(ii) Analysis, compilation and other manipulated forms of the original data produced by use of the program; or

(iii) The mathematical or statistical formulas that would be used if the manipulated forms of the original data were to be produced manually.

(5) Archaeological, endangered species, libraries, legislative, test keys, miscellaneous exemptions.

(a) Records, maps or other records identifying the location of archaeological or geophysical sites or endangered species, if not already known to the general public.

(b) Archaeological and geologic records concerning exploratory drilling, logging, mining and other excavation, when such records are required to be filed by statute for the time provided by statute.

(c) The records of a library which, when examined alone, or when examined with other public records, would reveal the identity of the library patron checking out, requesting, or using an item from a library.

(d) The material of a library, museum or archive which has been contributed by a private person, to the extent of any limitation that is a condition of the contribution.

(e) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.

(f) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative services office by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation

of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(g) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(h) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

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 July 1, 1997.

Approved March 20, 1998.

CHAPTER 165
(H.B. No. 754)

AN ACT

RELATING TO POSTSECONDARY ENROLLMENT OPTIONS; AMENDING SECTION 33-5106, IDAHO CODE, TO PROVIDE THAT A PUPIL'S ENROLLMENT IN COURSES FOR SECONDARY CREDITS SHALL BE COUNTED AS FOUR HOURS A DAY FOR PURPOSES OF DETERMINING THE LOCAL DISTRICT'S INSTRUCTIONAL TIME EVEN IF ACTUAL TIME IS LESS THAN FOUR HOURS; AND AMENDING SECTION 33-5109, IDAHO CODE, TO CLARIFY THAT FOUR SEMESTER COLLEGE CREDITS SHALL EQUAL AT LEAST TWO SEMESTER CREDITS OF HIGH SCHOOL CREDIT IN A PARTICULAR SUBJECT AND TO CLARIFY THAT POSTSECONDARY FACULTY INSTRUCTING A COURSE FOR POSTSECONDARY, SECONDARY OR DUAL CREDIT SHALL NOT BE REQUIRED TO OBTAIN A SECONDARY TEACHING CERTIFICATE AND SHALL NOT BE DEEMED AN EMPLOYEE OF A LOCAL SCHOOL DISTRICT.

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

SECTION 1. That Section 33-5106, Idaho Code, be, and the same is hereby amended to read as follows:

33-5106. LIMIT ON PARTICIPATION. (1) A pupil who first enrolls in grade eleven (11) may not enroll in postsecondary courses under the provisions of this chapter for secondary credit for more than the equivalent of two (2) academic years.

(2) A pupil who first enrolls in grade twelve (12) may not enroll in postsecondary courses under the provisions of this chapter for secondary credit for more than the equivalent of one (1) academic year.

(3) A pupil ~~shall~~ may also be enrolled in courses for secondary credits approved by the local school district. ~~for a minimum of~~ If a pupil's enrollment pursuant to this chapter decreases the pupil's instructional time in the local school district to less than four (4) hours a day, the pupil shall nevertheless be counted as in local school district instructional time for four (4) hours a day for purposes of chapter 10, title 33, Idaho Code.

(4) A pupil who has completed course requirements for graduation but who has not received a diploma may participate in the program.

(5) A pupil who has graduated from high school cannot participate in the program.

SECTION 2. That Section 33-5109, Idaho Code, be, and the same is hereby amended to read as follows:

33-5109. CREDITS. (1) A pupil may enroll in a course under the provisions of this chapter for secondary credit, for postsecondary credit or for dual credit. At the time a pupil enrolls in a course, the pupil shall designate the type of credit desired. A pupil taking several courses may designate some for secondary credit, some for postsecondary credit and some for dual credit.

(2) A school district shall grant academic credit to a pupil enrolled in a course for secondary credit if the pupil successfully completes the course. Four (4) semester college credits equal at least one (1) full year (two (2) semester credits) of high school credit in that subject. Fewer college credits may be prorated.

(3) The secondary credits granted to a pupil shall be counted toward the graduation requirements and subject area requirements of the school district. Evidence of successful completion of each course and secondary credits granted shall be included in the pupil's secondary school record. A pupil shall provide the school with a copy of the pupil's grade in each course taken for secondary credit under the provisions of this chapter. Upon the request of a pupil, the pupil's secondary school record shall also include evidence of successful completion and credits granted for a course taken for postsecondary credit. In either case, the record shall indicate that the credits were earned at a postsecondary institution.

(4) If a pupil enrolls in a postsecondary institution after leaving secondary school, the postsecondary institution shall award postsecondary credit for any course successfully completed for secondary credit at that institution. Other postsecondary institutions may award, after a pupil leaves secondary school, postsecondary credit for any courses successfully completed under the provisions of this chapter. An institution shall not charge a pupil for the award of credit.

(5) Postsecondary faculty instructing a course for postsecondary, secondary or dual credit shall not be required to obtain a certificate pursuant to chapter 12, title 33, Idaho Code, nor shall the postsecondary faculty be deemed an employee of a school district for any purpose under law.

Approved March 20, 1998.

CHAPTER 166
(H.B. No. 626)

AN ACT
RELATING TO THE EDUCATIONAL SUPPORT PROGRAM; AMENDING SECTION 33-1004, IDAHO CODE, TO CLARIFY APPLICATION OF CALCULATIONS OF THE STAFF ALLOWANCE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-1004, Idaho Code, be, and the same is hereby amended to read as follows:

33-1004. STAFF ALLOWANCE. For each school district, a staff allowance shall be determined as follows:

1. Using the daily attendance reports that have been submitted for computing the February 15th apportionment of state funds as provided in section 33-1009, Idaho Code, determine the total support units for the district in the manner provided in section 33-1002 8.b., Idaho Code;

2. Determine the instructional staff allowance by multiplying the support units by 1.1. A district must demonstrate that it actually employs the number of certificated instructional staff allowed. If the district does not employ the number allowed, the staff allowance shall be reduced to the actual number employed;

3. Determine the administrative staff allowance by multiplying the support units by .075. A district must demonstrate that it actually employs the number of certificated administrative staff allowed. If the district does not employ the number allowed, the staff allowance shall be reduced to the actual number employed, except that not more than twenty percent (20%) of the administrative staff allowance may be noncertificated staff;

4. Determine the classified staff allowance by multiplying the support units by .375~~.~~;

5. Additional conditions governing staff allowance:

a. In determining the number of staff in subsections 2., 3. and 4. of this section, a district may contract separately for services to be rendered by nondistrict employees and such employees may be counted in the staff allowance. A "nondistrict employee" means a person for whom the school district does not pay the employer's obligations for employee benefits. When a district contracts for the services of a nondistrict employee, only the salary portion of the contract shall be allowable for computations.

b. If there are circumstances preventing eligible use of staff allowance to which a district is entitled as provided in subsections 2. and 3. of this section, an appeal may be filed with the state department of education outlining the reasons and proposed alternative use of these funds, and a waiver may be granted.

c. For any district with less than forty (40) support units:

(1) The instructional staff allowance shall be calculated applying the actual number of support units. If the actual instructional staff employed in the ~~1994~~-95 school year is

greater than the instructional staff allowance, then the instructional staff allowance shall be increased by one-half (1/2) staff allowance; and

(2) The administrative staff allowance shall be calculated applying the actual number of support units. If the actual administrative staff employed in the ~~1994-95~~ school year is greater than the administrative staff allowance, then the administrative staff allowance shall be increased by one-half (1/2) staff allowance.

(3) Additionally, for any district with less than twenty (20) support units, the instructional staff allowance shall be calculated applying the actual number of support units. If the number of instructional staff employed in the ~~1994-95~~ school year is greater than the instructional staff allowance, the staff allowance shall be increased as provided in paragraphs (1) and (2) of this subsection, and by an additional one-half (1/2) instructional staff allowance.

d. Only instructional, administrative and classified personnel compensated by the school district from the general maintenance and operation fund of the district shall be included in the calculation of staff allowance or in any other calculations based upon staff, including determination of the experience and education multiplier, the reporting requirements, or the district's salary-based apportionment calculation. No food service staff or transportation staff shall be included in the staff allowance.

6. In the event that the staff allowance in any category is insufficient to meet accreditation standards, a district may appeal to the state board of education, demonstrating the insufficiency, and the state board may grant a waiver authorizing sufficient additional staff to be included within the staff allowance to meet accreditation standards. Such a waiver shall be limited to one (1) year, but may be renewed upon showing of continuing justification.

Approved March 20, 1998.

CHAPTER 167
(H.B. No. 749)

AN ACT

RELATING TO DISSOLUTION OF ADOPTION; AMENDING CHAPTER 15, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 16-1509A, IDAHO CODE, TO AUTHORIZE THE DISSOLUTION OF AN ADOPTION UNDER CONDITIONS SPECIFIED.

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

SECTION 1. That Chapter 15, Title 16, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 16-1509A, Idaho Code, and to read as follows:

16-1509A. DISSOLUTION OF ADOPTION. An adoption may be dissolved, upon petition, with the agreement of both the adoptee and the adopting parent, when the adopting parent was the spouse of a natural parent, and the marriage of the natural parent and adoptive parent was terminated. If the petition for dissolution occurs after the death of the adoptive parent, the court shall, in the finding of dissolution, specify the effect upon rights of inheritance. The court must determine that avoidance of statutory care is not the purpose of the dissolution, unless the court finds grounds to waive this finding. An action to obtain a decree of dissolution of adoption may be commenced at any time after the adoptee reaches twenty-one (21) years of age.

Approved March 20, 1998.

CHAPTER 168
(H.B. No. 573)

AN ACT

RELATING TO TRAFFICKING IN CONTROLLED SUBSTANCES; AMENDING SECTION 37-2732B, IDAHO CODE, TO INCLUDE TRAFFICKING IN AMPHETAMINE AS A TRAFFICKING OFFENSE.

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

SECTION 1. That Section 37-2732B, Idaho Code, be, and the same is hereby amended to read as follows:

37-2732B. TRAFFICKING -- MANDATORY SENTENCES. (a) Except as authorized in this chapter, and notwithstanding the provisions of section 37-2732, Idaho Code:

(1) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, one (1) pound of marijuana or more, or twenty-five (25) marijuana plants or more, as defined in section 37-2701, Idaho Code, is guilty of a felony, which felony shall be known as "trafficking in marijuana." If the quantity of marijuana involved:

(A) is one (1) pound or more, but less than five (5) pounds, or consists of twenty-five (25) marijuana plants or more but fewer than fifty (50) marijuana plants, regardless of size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of one (1) year and fined not less than five thousand dollars ($5,000);

(B) is five (5) pounds or more, but less than twenty-five (25) pounds, or consists of fifty (50) marijuana plants or more but fewer than one hundred (100) marijuana plants, regardless of size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars ($10,000);

(C) is twenty-five (25) pounds or more, or consists of one hundred (100) marijuana plants or more, regardless of size or

weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars ($15,000).

(D) The maximum number of years of imprisonment for trafficking in marijuana shall be fifteen (15) years, and the maximum fine shall be fifty thousand dollars ($50,000).

(E) For the purposes of this section, the weight of the marijuana is its weight when seized or as determined as soon as practicable after seizure, unless the provisions of subsection (c) of this section apply.

(2) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, twenty-eight (28) grams or more of cocaine or of any mixture or substance containing a detectable amount of cocaine is guilty of a felony, which felony shall be known as "trafficking in cocaine." If the quantity involved:

(A) is twenty-eight (28) grams or more, but less than two hundred (200) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars ($10,000);

(B) is two hundred (200) grams or more, but less than four hundred (400) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars ($15,000);

(C) is four hundred (400) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars ($25,000).

(D) The maximum number of years of imprisonment for trafficking in cocaine shall be life, and the maximum fine shall be one hundred thousand dollars ($100,000).

(3) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, twenty-eight (28) grams or more of methamphetamine <u>or amphetamine</u> or of any mixture or substance containing a detectable amount of methamphetamine <u>or amphetamine</u> is guilty of a felony, which felony shall be known as "trafficking in methamphetamine <u>or amphetamine.</u>" If the quantity involved:

(A) is twenty-eight (28) grams or more, but less than two hundred (200) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars ($10,000);

(B) is two hundred (200) grams or more, but less than four hundred (400) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars ($15,000);

(C) is four hundred (400) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars ($25,000).

(D) The maximum number of years of imprisonment for trafficking in methamphetamine <u>or amphetamine</u> shall be life, and

the maximum fine shall be one hundred thousand dollars ($100,000).

(4) Any person who knowingly manufactures, delivers, brings into this state, or who is knowingly in actual or constructive possession of the below-specified quantities of any of the following immediate precursors to methamphetamine or amphetamine (namely ephedrine, methylamine, methyl formamide, phenylacetic acid, phenylacetone, or pseudoephedrine) as defined in section 37-2707(g)(1), Idaho Code, or any compound, mixture or preparation which contains a detectable quantity of these substances, is guilty of a felony which shall be known as "trafficking in immediate precursors of methamphetamine or amphetamine." If the quantity:

(A) of ephedrine is five hundred (500) grams or more;

(B) of methylamine is one-half (1/2) pint or more;

(C) of methyl formamide is one-quarter (1/4) pint or more;

(D) of phenylacetic acid is five hundred (500) grams or more;

(E) of phenylacetone is four hundred (400) grams or more;

(F) of pseudoephedrine is five hundred (500) grams or more;

such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars ($25,000). The maximum number of years of imprisonment for trafficking in immediate precursors of methamphetamine or amphetamine shall be life, and the maximum fine shall be one hundred thousand dollars ($100,000).

(5) Any person who knowingly manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of, two (2) grams or more of heroin or any salt, isomer, or salt of an isomer thereof, or two (2) grams or more of any mixture or substance containing a detectable amount of any such substance is guilty of a felony, which felony shall be known as "trafficking in heroin." If the quantity involved:

(A) is two (2) grams or more, but less than seven (7) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars ($10,000);

(B) is seven (7) grams or more, but less than twenty-eight (28) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than fifteen thousand dollars ($15,000);

(C) is twenty-eight (28) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of fifteen (15) years and fined not less than twenty-five thousand dollars ($25,000).

(D) The maximum number of years of imprisonment for trafficking in heroin shall be life, and the maximum fine shall be one hundred thousand dollars ($100,000).

(6) A second conviction for any trafficking offense as defined in subsection (a) of this section shall result in a mandatory minimum fixed term that is twice that otherwise required under this section.

(7) Notwithstanding any other provision of law, with respect to

any person who is found to have violated the provisions of this section, adjudication of guilt or the imposition or execution of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum fixed term of imprisonment prescribed in this section. Further, the court shall not retain jurisdiction.

(b) Any person who agrees, conspires, combines or confederates with another person or solicits another person to commit any act prohibited in subsection (a) of this section is guilty of a felony and is punishable as if he had actually committed such prohibited act.

(c) For the purposes of subsections (a) and (b) of this section the weight of the controlled substance as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of the controlled substance.

Approved March 20, 1998.

CHAPTER 169
(H.B. No. 785)

AN ACT

APPROPRIATING MONEYS TO THE EXECUTIVE OFFICE OF THE GOVERNOR FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Executive Office of the Governor the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. GOVERNOR'S OFFICE ADMINISTRATION:				
FROM:				
General Fund	$1,014,800	$325,100		$1,339,900
II. GOVERNOR'S EXPENSE ALLOWANCE:				
TO BE EXPENDED PURSUANT TO SECTION 67-808d, IDAHO CODE:				
FROM:				
General Fund		$ 7,800		$ 7,800
III. SOCIAL SERVICES:				
FROM:				
Federal Grant Fund	$ 93,900	$ 5,200	$115,300	$ 214,400
IV. ACTING GOVERNOR PAY:				
FROM:				
General Fund	$ 9,600			$ 9,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
V. GOVERNOR-ELECT TRANSITION:				
FROM:				
General Fund	$ 15,000			$ 15,000
GRAND TOTAL	$1,133,300	$338,100	$115,300	$1,586,700

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Executive Office of the Governor is authorized no more than twenty-three (23) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 20, 1998.

CHAPTER 170
(H.B. No. 727)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-104, IDAHO CODE, TO PROVIDE FOR ADOPTION OF PROCLAMATIONS BY THE COMMISSION; AMENDING SECTION 36-105, IDAHO CODE, TO PROVIDE PROCEDURES FOR ADOPTING AND PUBLISHING PROCLAMATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-106, IDAHO CODE, TO PROVIDE FOR ENFORCEMENT OF PROCLAMATIONS BY THE DIRECTOR; AMENDING SECTION 36-202, IDAHO CODE, TO PROVIDE THAT THE WORDS "ORDER," "RULE," "REGULATION" AND "PROCLAMATION" ARE USED INTERCHANGEABLY AND TO DEFINE "PROCLAMATION"; AMENDING SECTION 36-901, IDAHO CODE, TO PROHIBIT FISHING EXCEPT AS PROVIDED BY STATUTE AND RULES OR PROCLAMATIONS OF THE COMMISSION; AMENDING SECTION 36-902, IDAHO CODE, TO PROVIDE CERTAIN TYPES OF FISHING EXCEPT AS PROVIDED BY STATUTE AND RULES OR PROCLAMATIONS OF THE COMMISSION; AMENDING SECTION 36-1101, IDAHO CODE, TO PROHIBIT TAKING WILDLIFE EXCEPT AS ALLOWED BY STATUTE OR RULE OR PROCLAMATION OF THE COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-1102, IDAHO CODE, TO PROVIDE FOR HUNTING BIRDS AS ALLOWED BY PROCLAMATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-1103, IDAHO CODE, TO PROVIDE FOR THE TAKING OF FUR-BEARING ANIMALS AS ALLOWED BY RULE OR PROCLAMATION OF THE COMMISSION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-1301, IDAHO CODE, TO PROVIDE FOR ENFORCEMENT OF RULES AND PROCLAMATIONS; AMENDING SECTION 36-1304, IDAHO CODE, TO PROVIDE FOR SEIZURE OF EQUIPMENT USED IN VIOLATION OF RULES OR PROCLAMATIONS OF THE COMMISSION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-1401, IDAHO CODE, TO PROVIDE FOR VIOLA-

TIONS OF PROCLAMATIONS; AMENDING SECTION 36-1402, IDAHO CODE, TO PROVIDE PENALTIES FOR VIOLATIONS OF PROCLAMATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-2201, IDAHO CODE, TO PROVIDE A REFERENCE TO PROCLAMATIONS; AMENDING SECTION 36-2202, IDAHO CODE, TO PROVIDE A REFERENCE TO PROCLAMATIONS ADOPTED BY THE COMMISSION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-2205, IDAHO CODE, TO PROVIDE REFERENCES TO RULES AND PROCLAMATIONS OF THE COMMISSION; AND AMENDING SECTION 36-2210, IDAHO CODE, TO PROVIDE A REFERENCE TO PROCLAMATIONS OF THE COMMISSION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 36-104, Idaho Code, be, and the same is hereby amended to read as follows:

36-104. GENERAL POWERS AND DUTIES OF COMMISSION. (a) Organization -- Meetings. The members of the commission shall annually meet at their offices in the city of Boise and organize by electing from their membership a chairman, who shall hold office for a period of one (1) year, or until his successor has been duly elected. In addition to the regular annual meeting, to be held in January, said commission shall hold other regular quarterly meetings in April, July and October of each year at such places within the state as the commission shall select for the transaction of business. Special meetings may be called at any time and place by the chairman or a majority of the members of the commission. Notice of the time, place and purpose of any and all special meetings shall be given by the secretary to each member of the commission prior to said meeting.

(b) Authorization for Commission Powers and Duties. For the purpose of administering the policy as declared in section 36-103, Idaho Code, the commission is hereby authorized and empowered to:

1. Investigate and find facts regarding the status of the state's wildlife populations in order to give effect to the policy of the state hereinbefore announced.

2. Hold hearings for the purpose of hearing testimony, considering evidence and determining the facts as to when the supply of any of the wildlife in this state will be injuriously affected by the taking thereof, or for the purpose of determining when an open season may be declared for the taking of wildlife. Whenever said commission determines that the supply of any particular species of wildlife is being, or will be, during any particular period of time, injuriously affected by depletion by permitting the same to be taken, or if it should find a longer or different season, or different bag limit should be adopted for the better protection thereof, or if it finds that an open season may be declared without endangering the supply thereof, then it shall make a rule <u>or proclamation</u> embodying its findings in respect to when, under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken.

3. Whenever it finds it necessary for the preservation, protection, or management of any wildlife of this state, by reason of

any act of God or any other sudden or unexpected emergency, declare by temporary rule or proclamation the existence of such necessity, and the cause thereof, and prescribe and designate all affected areas or streams, and close the same to hunting, angling or trapping, or impose such restrictions and conditions upon hunting, angling or trapping as said commission shall find to be necessary. Every such temporary rule shall be made in accordance with the provisions of chapter 52, title 67, Idaho Code.

4. At any time it shall deem necessary for the proper management of wildlife on any game preserve in the state of Idaho, declare an open season in any game preserve as it deems appropriate.

5. (A) Upon notice to the public, hold a public drawing giving to license holders, under the wildlife laws of this state, the privilege of drawing by lot for a controlled hunt permit authorizing the person to whom issued to hunt, kill, or attempt to kill any species of wild animals or birds designated by the commission under such rules as it shall prescribe.

(B) The commission may, under rules or proclamations as it may prescribe, authorize the director to issue additional controlled hunt permits and collect fees therefor authorizing owners, lessees in control of land valuable for habitat or propagation purposes of deer, elk or antelope, or members of their immediate families, to hunt deer, elk or antelope in controlled hunt units containing the eligible land owned or controlled by those individuals in areas where permits for deer, elk or antelope are limited.

(C) A nonrefundable fee of five dollars ($5.00) shall be charged each applicant for a controlled hunt permit; provided however, there shall be no fees charged for controlled hunt permits subsequently issued to successful applicants. Additionally, a fee may be charged for telephone and credit card orders in accordance with subsection (e)11. of section 36-106, Idaho Code. The department shall include a checkoff form to allow applicants to designate one dollar ($1.00) of such five dollar ($5.00) fee for transmittal to the reward fund of citizens against poaching, inc., an Idaho nonprofit corporation. From the net proceeds generated by the nonrefundable fee, the director shall transfer from the fish and game account to the big game secondary depredation account each fiscal year an amount that equals two hundred fifty thousand dollars ($250,000) less the amount of earned interest transferred in accordance with section 36-115(b), Idaho Code, or two hundred thousand dollars ($200,000), whichever is less, until the total of all transfers from the fish and game account to the big game secondary depredation account equals one million two hundred fifty thousand dollars ($1,250,000) as certified by the state controller. When the department's total transfers to the big game secondary depredation account equal or exceed one million two hundred fifty thousand dollars ($1,250,000), the net proceeds from the nonrefundable fee shall be deposited in the fish and game account and none of the net proceeds shall be used to pur-

chase lands.

6. Adopt rules pertaining to the importation, exportation, release, sale, possession or transportation into, within or from the state of Idaho of any species of live, native or exotic wildlife or any eggs thereof.

7. Acquire for and on behalf of the state of Idaho, by purchase, condemnation, lease, agreement, gift, or other device, lands or waters suitable for the purposes hereinafter enumerated in this paragraph. Whenever the commission proposes to purchase a tract of land in excess of fifteen (15) acres, the commission shall notify the board of county commissioners of the county where this land is located of the intended action. The board of county commissioners shall have ten (10) days after official notification to notify the commission whether or not they desire the commission to hold a public hearing on the intended purchase in the county. The commission shall give serious consideration to all public input received at the public hearing before making a final decision on the proposed acquisition. Following any land purchase, the fish and game commission shall provide, upon request by the board of county commissioners, within one hundred twenty (120) days, a management plan for the area purchased that would address noxious weed control, fencing, water management and other important issues raised during the public hearing. When considering purchasing lands pursuant to this paragraph, the commission shall first make a good faith attempt to obtain a conservation easement, as provided in chapter 21, title 55, Idaho Code, before it may begin proceedings to purchase, condemn or otherwise acquire such lands. If the attempt to acquire a conservation easement is unsuccessful and the commission then purchases, condemns or otherwise acquires the lands, the commission shall record in writing the reasons why the attempt at acquiring the conservation easement was unsuccessful and then file the same in its records and in a report to the joint finance-appropriations committee. The commission shall develop, operate, and maintain the lands, waters or conservation easements for said purposes, which are hereby declared a public use:

(A) For fish hatcheries, nursery ponds, or game animal or game bird farms;

(B) For game, bird, fish or fur-bearing animal restoration, propagation or protection;

(C) For public hunting, fishing or trapping areas to provide places where the public may fish, hunt, or trap in accordance with the provisions of law, or the regulation of the commission;

(D) To extend and consolidate by exchange, lands or waters suitable for the above purposes.

8. Enter into cooperative agreements with educational institutions, and state, federal, or other agencies to promote wildlife research and to train students for wildlife management.

9. Enter into cooperative agreements with state and federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of wildlife rearing, propagating, management, protection and demonstration projects.

10. In the event owners or lawful possessors of land have restricted the operation of motor-propelled vehicles upon their land, the commission, upon consultation with all other potentially affected landowners, and having held a public hearing, if requested by not less than ten (10) residents of any county in which the land is located, may enter into cooperative agreements with those owners or possessors to enforce those restrictions when the restrictions protect wildlife or wildlife habitat. Provided, however, the commission shall not enter into such agreements for lands which either lie outside or are not adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho.

(A) The landowners, with the assistance of the department, shall cause notice of the restrictions, including the effective date thereof, to be posted on the main traveled roads entering the areas to which the restrictions apply. Provided, however, that nothing in this subsection shall allow the unlawful posting of signs or other information on or adjacent to public highways as defined in subsection (5) of section 40-109, Idaho Code.

(B) Nothing in this section authorizes the establishment of any restrictions that impede normal forest or range management operations.

(C) No person shall violate such restrictions on the use of motor-propelled vehicles or tear down or lay down any fencing or gates enclosing such a restricted area or remove, mutilate, damage or destroy any notices, signs or markers giving notice of such restrictions. The commission may promulgate rules to administer the restrictions and cooperative agreements addressed in this subsection.

11. Capture, propagate, transport, buy, sell or exchange any species of wildlife needed for propagation or stocking purposes, or to exercise control of undesirable species.

12. Adopt rules pertaining to the application for, issuance of and administration of a lifetime license certificate system.

13. Adopt rules governing the application and issuance of permits for and administration of fishing contests on waters under the jurisdiction of the state.

14. Adopt rules governing the application for and issuance of licenses by telephone and other electronic methods.

(c) Limitation on Powers. Nothing in this title shall be construed to authorize the commission to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law.

(d) Organization of Work. The commission shall organize the department, in accordance with the provisions of title 67, Idaho Code, into administrative units as may be necessary to efficiently administer said department. All employees of the department except the director shall be selected and appointed by the director in conformance with the provisions of chapter 53, title 67, Idaho Code.

SECTION 2. That Section 36-105, Idaho Code, be, and the same is hereby amended to read as follows:

36-105. COMMISSION ORDERS, RULES AND ~~REGULATIONS~~ PROCLAMATIONS. (1) Adoption and Publication of Rules~~,--Regulations~~ and Orders. All rules~~,--regulations~~ and orders adopted pursuant to the provisions of this title shall be made in accordance with chapter 52, title 67, Idaho Code. Said rules~~,-regulations,~~ and orders may also be given such other publicity as the commission may deem desirable.

(2) Violation of Rules, ~~Regulations~~ Proclamations and Orders. All rules, ~~regulations~~ proclamations and orders made as herein provided shall have full force and effect as law and any person violating any such rule, ~~regulation,~~ proclamation or order of the commission, adopted and published as herein set forth, shall be found guilty as set forth in section 36-1401, Idaho Code.

(3) Notwithstanding any other provision of chapter 52, title 67, Idaho Code, the Idaho fish and game commission and the director of the Idaho fish and game department shall be ~~deemed-in-full-compliance-with the-notice-provisions-of-section-67-5221,-Idaho--Code,~~ excepted from the requirements of rulemaking when adopting, repealing, or amending any ~~rule~~ proclamation relating to setting of any season or limit on numbers, size, sex or species of wildlife classified by the commission as game animals, game birds, furbearers, migratory birds, salmon, steelhead and resident fish which may be taken in this state if:

(a) ~~n~~Notice of the proposed proclamation is published in the Idaho administrative bulletin ~~at-least-fourteen-(14)-days-prior-to the-effective-date-of-the-action;~~ and is provided in the same manner as an open meeting under section 67-2343, Idaho Code;

(b) ~~n~~Notice is given to the director of the legislative ~~council concurrent-with-publication-in-the-bulletin.~~ services office for review by the germane joint subcommittee as soon as possible after adoption by the commission; and

~~When-adopting,-repealing,-or-amending-any-rule-relating-to-setting of--any--season--or-limit-on-numbers,-size,-sex-or-species-of-wildlife classified-by-the-commission-as-salmon,-steelhead,-or-migratory--birds which--may--be-taken-in-this-state,-the-Idaho-fish-and-game-commission and-the-director-of-the-Idaho-fish-and-game-department-shall-be-exempt from-the-provisions-of-section-67-5221,--Idaho--Code;--however,--after taking--such--action,--the--commission--or--the-director-shall-cause-a notice-of-such-action-to-be-published-in-the-first-available-issue--of the-bulletin~~

(c) The proclamation shall be published in a pamphlet or brochure as provided in section 59-1012, Idaho Code, and distributed without charge to the public. The text of the proclamation published in a pamphlet or brochure shall be the official text of the proclamation. Judicial notice shall be taken of the proclamation pamphlet or brochure.

SECTION 3. That Section 36-106, Idaho Code, be, and the same is hereby amended to read as follows:

36-106. DIRECTOR OF DEPARTMENT OF FISH AND GAME. (a) Office of Director Created. The commission shall appoint a director of the department of fish and game, hereinafter referred to as the director, who shall be a person with knowledge of, and experience in, the requirements for the protection, conservation, restoration, and man-

agement 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) Secretary to Commission. The director or his designee 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 at the rate provided by law for state employees for all actual and necessary traveling and other expenses incurred by him in the discharge of his official duties.

(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 be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

(e) Duties and Powers of Director.

1. The director shall have general supervision and control of all activities, functions, and employees of the department of fish and game, under the supervision and direction of the commission, and shall enforce all the provisions of the laws of the state, and rules and ~~regulations~~ proclamations of the commission relating to wild animals, birds, and fish and, further, shall perform all the duties prescribed by section 67-2405, Idaho Code, and other laws of the state not inconsistent with this act, and shall exercise all necessary powers incident thereto not specifically conferred on the commission.

2. The director is hereby authorized to appoint as many classified employees as the commission may deem necessary to perform administrative duties, to enforce the laws and to properly implement management, propagation, and protection programs established for carrying out the purposes of the Idaho fish and game code.

3. The appointment of such employees shall be made by the director in accordance with the Idaho personnel commission act and rules promulgated pursuant to chapter 53, title 67, Idaho Code, and they shall be compensated as provided therein. Said employees shall be bonded to the state of Idaho in the time, form, and manner prescribed by chapter 8, title 59, Idaho Code.

4. The director is hereby authorized to establish and maintain fish hatcheries for the purpose of hatching, propagating, and distributing all kinds of fish.

5. (A) The director, or any person appointed by him in writing to do so, may take wildlife of any kind, dead or alive, or import the same, 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 resource of the state.

(B) The director shall have supervision over all of the matters pertaining to the inspection, cultivation, propagation and distribution of the wildlife propagated under the provisions of title 36, Idaho Code. He shall also have the power and authority to obtain, by purchase or otherwise, wildlife 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.

(C) The director is hereby authorized to issue a license/tag/permit to a nonresident landowner who resides in a contiguous state for the purpose of taking one (1) animal during an emergency depredation hunt which includes the landowner's Idaho property subject to such conditions, restrictions or regulations as the director may provide. The fee for this license/tag/permit shall be equal to the costs of a resident hunting license, a resident tag fee and a resident depredation permit.

(D) Notwithstanding the provisions of section 36-408, Idaho Code, to the contrary, on and after the effective date of this act, the director shall not expend any funds, or take any action, or authorize any employee or agent of the department or other person to take any action, to undertake actual transplants of bighorn sheep into areas they do not now inhabit or to augment the number of bighorn sheep in existing herds until:

(i) The boards of county commissioners of the counties in which the release is proposed to take place have been given reasonable notice of the proposed release.

(ii) The affected federal and state land grazing permittees and owners or leaseholders of private land in or contiguous to the proposed release site have been given reasonable notice of the proposed release.

(iii) The president pro tempore of the senate and the speaker of the house of representatives have received from the director a plan for the forthcoming year that details, to the best of the department's ability, the proposed transplants which shall include the estimated numbers of bighorn sheep to be transplanted and a description of the areas the proposed transplant or transplants are planned for.

Upon request, the department shall grant one (1) hearing per transplant if any affected individual or entity expresses written concern within ten (10) days of notification regarding any transplants of bighorn sheep and shall take into consideration these concerns in approving, modifying or canceling any proposed bighorn sheep transplant. Any such hearing shall be held within thirty (30) days of the request. Upon any transplant of bighorn sheep into areas they do not now inhabit or a transplant to augment existing populations, the department shall provide for any affected federal or state land grazing permittees or owners or leaseholders of private land a written letter signed by all federal, state and pri-

vate entities responsible for the transplant stating that the existing sheep or livestock operations in the area of any such bighorn sheep transplant are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted.

6. (A) The director shall have the power, at any time when it is desired to introduce any new species, or if at any time any species of wildlife of the state of Idaho shall be threatened with excessive shooting, trapping, or angling or otherwise, to close any open season for such time as he may designate; in the event an emergency is declared to exist such closure shall become effective forthwith upon written order of the director; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.

(B) In order to protect property from damage by wildlife, the fish and game commission may delegate to the director or his designee the authority to declare an open season upon that particular species of wildlife to reduce its population. The director or his designee shall make an order embodying his findings in respect to when, under what circumstances, in which localities, by what means, and in what amounts, numbers and sex the wildlife subject to the hunt may be taken. In the event an emergency is declared to exist such open season shall become effective forthwith upon written order of the director or his designee; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.

(C) Any order issued under authority hereof shall be published in at least one (1) newspaper of general circulation in the area affected by the order for at least once a week for two (2) consecutive weeks, and such order shall be posted in public places in each county as the director may direct.

(D) During the closure of any open season or the opening of any special depredation season by the director all provisions of laws relating to the closed season or the special depredation season on such wildlife shall be in force and whoever violates any of the provisions shall be subject to the penalties prescribed therefor.

(E) Prior to the opening of any special depredation hunt, the director or his designee shall be authorized to provide up to a maximum of fifty percent (50%) of the available permits for such big game to the landholder(s) of privately owned land within the hunt area or his designees. If the landholder(s) chooses to designate hunters, he must provide a written list of the names of designated individuals to the department. If the landholder(s) fails to designate licensed hunters, then the department will issue the total available permits in the manner set by rule. All hunters must have a current hunting license and shall have equal access to both public and private lands within the hunt boundaries. It shall be unlawful for any landholder(s) to receive any form of compensation from a person who obtains or uses a depredation controlled hunt permit.

7. The director shall make an annual report to the governor, the legislature, and the secretary of state, of the doings and conditions of his office, which report shall be made in accordance with section 67-2509, Idaho Code.
8. The director may sell or cause to be sold publications and materials in accordance with section 59-1012, Idaho Code.
9. Any deer, elk, antelope, moose, bighorn sheep or bison imported or transported by the department of fish and game shall be tested for the presence of certain communicable diseases that can be transmitted to domestic livestock. Those communicable diseases to be tested for shall be arrived at by mutual agreement between the department of fish and game and the department of agriculture. Any moneys expended by the department of fish and game on wildlife disease research shall be mutually agreed upon by the department of fish and game and the department of agriculture.

In addition, a comprehensive animal health program for all deer, elk, antelope, moose, bighorn sheep, or bison imported into, transported, or resident within the state of Idaho shall be implemented after said program is mutually agreed upon by the department of fish and game and the department of agriculture.

In order to enhance and protect the health of wildlife within the state, as well as safeguard the health of livestock resources, the director of the department of agriculture shall employ at least one (1) veterinarian licensed in Idaho whose duties shall include, but not be limited to, addressing wildlife disease issues and coordinating disease prevention work between the department of fish and game and the department of agriculture. The employing of said veterinarian shall be by mutual agreement of the director of the department of fish and game and of the director of the department of agriculture. The veterinarian shall be on the staff of the division of animal industries, department of agriculture. The salary or compensation to be paid said veterinarian or veterinarians shall be divided equally between the department of fish and game and the department of agriculture, and the department of fish and game's portion shall be deposited directly into the livestock disease control account. The veterinarian shall be employed on and after July 1, 1989.
10. In order to monitor and evaluate the disease status of wildlife and to protect Idaho's livestock resources, any suspicion by fish and game personnel of a potential communicable disease process in wildlife shall be reported within twenty-four (24) hours to the department of agriculture. All samples collected for disease monitoring or disease evaluation of wildlife shall be submitted to the division of animal industries, department of agriculture.
11. (A) The director is authorized to enter into an agreement with an independent contractor for the purpose of providing a telephone order and credit card payment service for controlled hunt permits, licenses, tags, and permits.

(B) The contractor may collect a fee for its service in an amount to be set by contract.

(C) All moneys collected for the telephone orders of such licenses, tags, and permits shall be and remain the property of the state, and such moneys shall be directly deposited by

the contractor into the state treasurer's account in accordance with the provisions of section 59-1014, Idaho Code. The contractor shall furnish a good and sufficient surety bond to the state of Idaho in an amount sufficient to cover the amount of the telephone orders and potential refunds.

(D) The refund of moneys for unsuccessful controlled hunt permit applications and licenses, tags, and permits approved by the department may be made by the contractor crediting the applicant's or licensee's credit card account.

SECTION 4. That Section 36-202, Idaho Code, be, and the same is hereby amended to read as follows:

36-202. DEFINITIONS. Whenever the following words appear in title 36, Idaho Code, and orders and rules promulgated by the Idaho fish and game commission or the director of the Idaho department of fish and game, they shall be deemed to have the same meaning and terms of reference as hereinafter set forth. The present tense includes the past and future tenses, and the future, the present.

(a) "Title" shall mean all of the fish and game laws and rules promulgated pursuant thereto.

(b) "Commission" shall mean the Idaho fish and game commission. "Commissioner" shall mean a member of the Idaho fish and game commission.

(c) "Department" shall mean the Idaho department of fish and game.

(d) "Director" shall mean the director of the Idaho department of fish and game or any person authorized to act in his name.

(e) "Employee" shall mean any employee of the Idaho department of fish and game whose salary is paid entirely or in part by funds administered by the Idaho fish and game commission and whose appointment is made in accordance with the Idaho personnel commission act and related rules.

(f) "Person" shall mean an individual, partnership, corporation, company, or any other type of association, and any agent or officer of any partnership, corporation, company, or other type of association. The masculine gender includes the feminine and the neuter. The singular, the plural, and the plural, the singular.

(g) "Wildlife" shall mean any form of animal life, native or exotic, generally living in a state of nature.

(h) "Take" shall mean hunt, pursue, catch, capture, shoot, fish, seine, trap, kill, or possess or any attempt to so do.

(i) "Hunting" shall mean chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, shooting at, stalking, or lying in wait for, any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded. Such term does not include stalking, attracting, searching for, or lying in wait for, any wildlife by an unarmed person solely for the purpose of watching wildlife or taking pictures thereof.

(j) "Fishing" shall mean any effort made to take, kill, injure, capture, or catch any fish or bullfrog.

(k) "Trapping" shall mean taking, killing, and capturing wildlife by the use of any trap, snare, deadfall, or other device commonly used

to capture wildlife, and the shooting or killing of wildlife lawfully trapped, and includes all lesser acts such as placing, setting or staking such traps, snares, deadfalls, and other devices, whether or not such acts result in the taking of wildlife, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife with traps, snares, deadfalls, or other devices.

(l) "Possession" shall mean both actual and constructive possession, and any control of the object or objects referred to; provided that wildlife taken accidentally and in a manner not contrary to the provisions of this title shall not be deemed to be in possession while being immediately released live back to the wild.

(m) "Possession limit" shall mean the maximum limit in number or amount of wildlife which may be lawfully in the possession of any person. "Possession limit" shall apply to wildlife being in possession while in the field or being transported to final place of consumption or storage.

(n) "Bag limit" shall mean the maximum number of wildlife which may be legally taken, caught, or killed by any one (1) person for any particular period of time, as provided by order of the commission. The term "bag limit" shall be construed to mean an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another.

(o) "Buy" shall mean to purchase, barter, exchange, or trade and includes any offer or attempt to purchase, barter, exchange, or trade.

(p) "Sell" shall mean to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging or trading.

(q) "Transport" shall mean to carry or convey or cause to be carried or conveyed from one (1) place to another and includes an offer to transport, or receipt or possession for transportation.

(r) "Resident" shall mean any person who has been domiciled in this state, with a bona fide intent to make this his place of permanent abode, for a period of not less than six (6) months immediately preceding the date of application for any license, tag, or permit required under the provisions of this title or orders of the commission and who, when temporarily absent from this state, continues residency with intent to return, and who does not claim any resident privileges in any other state or country for any purpose. Such privileges include, but are not limited to: state where valid driver's license is issued; state of voter registration; state where resident state income taxes are filed; state where homeowner's tax exemption is granted. Provided that, until any such person has been continuously domiciled outside the state of Idaho for a sufficient period of time to qualify for resident hunting and fishing privileges in his new state of residence, said person shall be deemed not to have lost his residency in Idaho for the purposes of this title. However, mere ownership of real property or payment of property taxes in Idaho does not establish residency. Provided further that:

1. Idaho residents shall not lose their residency in Idaho if they are absent from the state for religious (not to exceed two (2) years) or full-time educational (not to exceed five (5) years)

purposes, full time to be defined by the educational institution attended, and do not claim residency or use resident privileges in any other state or country for any purpose.

2. Idaho residents who are in the military service of the United States and maintain Idaho as their official state of residence as shown on their current leave and earnings statement, together with their spouse and children under eighteen (18) years of age living in the household, shall be eligible for the purchase of resident licenses.

3. A member of the military service of the United States or of a foreign country, together with his spouse and children under eighteen (18) years of age residing in his household, who have been officially transferred, stationed, domiciled and on active duty in this state for a period of thirty (30) days last preceding application shall be eligible, as long as such assignment continues, to purchase a resident license.

4. Any person enrolled as a corpsman at a job corps center in Idaho shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.

5. Any foreign exchange student enrolled in an Idaho high school shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.

(s) "Senior resident" shall mean any person who is over sixty-five (65) years of age and who has been a resident of the state of Idaho as hereinbefore provided for not less than five (5) years.

(t) "Nonresident" shall mean any person who does not qualify as a resident.

(u) "Order, rule, regulation <u>and proclamation"</u> are all used interchangeably and each includes the others.

(v) "Blindness" shall mean sight that does not exceed 20/200 as provided by the administrative guidelines of section 56-213, Idaho Code.

(w) "Public highway" shall mean the traveled portion of, and the shoulders on each side of, any road maintained by any governmental entity for public travel, and shall include all bridges, culverts, overpasses, fills, and other structures within the limits of the right-of-way of any such road.

(x) "Motorized vehicle" shall mean any water, land or air vehicle propelled by means of steam, petroleum products, electricity, or any other mechanical power.

(y) "Commercial fish hatchery" shall mean any hatchery, pond, lake or stream or any other waters where fish are held, raised, or produced for sale but shall not include facilities used for the propagation of fish commonly considered as ornamental or aquarium varieties.

(z) "License" shall mean any license, tag, permit or stamp.

(aa) "License vendor" shall mean any person authorized to issue or sell licenses.

<u>(bb) "Proclamation" shall mean the action by the commission and publication of the pertinent information as it relates to the seasons and limits for taking wildlife.</u>

SECTION 5. That Section 36-901, Idaho Code, be, and the same is hereby amended to read as follows:

36-901. FISHING UNLAWFUL EXCEPT BY COMMISSION ~~REGULATION~~ RULE OR PROCLAMATION. No person shall take by any method or means, at any place or time or in any amount, or to have in possession fish from any of the waters of the state of Idaho except as permitted by provisions of this title and commission ~~regulations~~ rules or proclamations promulgated pursuant thereto.

SECTION 6. That Section 36-902, Idaho Code, be, and the same is hereby amended to read as follows:

36-902. UNLAWFUL FISHING METHODS -- DESTRUCTION OF FISH PROHIBITED -- EXCEPTIONS. Except as may be otherwise permitted by law or commission ~~regulation~~ rule or proclamation no person shall:

(a) Destructive Substances. Deposit, throw, place, allow or cause to pass into any of the waters of this state any deleterious drugs, toxicants, chemicals, poisonous substances, explosives, electrical current, or other material which may tend to destroy, kill, disable, or drive away fish.

(b) Mills. Operate any sawmill, reduction works or quartz mill upon any natural stream course or lake without having first constructed a proper dam for settling purposes as approved by the director.

(c) Net, Spear. Catch, attempt to catch or kill any species of fish whatever in any of the streams, rivers, lakes, reservoirs or waters of this state with any seine, net, spear, snag hook, weir, fence, basket, trap, gill net, dip net, trammel net or any other contrivance.

(d) Minnows. Take, transport, use or have in possession minnows, fish or the young of any fish or parts thereof for bait or to release in any manner live minnows, fish or the young of any fish into the waters of this state except where such use, possession or taking is done in connection with fishing in the waters of the Kootenai River.

(e) Chumming. Deposit or distribute any substance not attached to a hook for the purpose of attracting fish. Salmon eggs or other spawn may be used for bait only when attached to a hook on a line and fished in the conventional manner.

(f) Penalty. Any person convicted of any violation of any of the provisions of this section shall: for subsections (a) and (b), be fined in a sum of not less than one hundred fifty dollars ($150) for each offense, and/or by commitment to jail for a period of not more than six (6) months; for subsection (c), not less than fifty dollars ($50.00), and/or by commitment to jail for a period of not more than six (6) months; for subsections (d) and (e), as provided in section 36-1402, Idaho Code.

SECTION 7. That Section 36-1101, Idaho Code, be, and the same is hereby amended to read as follows:

36-1101. TAKING OF WILDLIFE UNLAWFUL EXCEPT BY STATUTE OR COMMISSION ~~REGULATION~~ RULE OR PROCLAMATION -- METHODS PROHIBITED -- EXCEP-

TIONS. (a) It is unlawful, except as may be otherwise provided by Idaho law, including this title or commission rules or proclamations promulgated pursuant thereto, for any person to take any of the game animals, birds or fur-bearing animals of this state.

(b) Except as may be otherwise provided under this title or commission rules or proclamations promulgated pursuant thereto, it is unlawful for any person to:

1. Hunt from Motorized Vehicles. Hunt any of the game animals or game birds of this state from or by the use of any motorized vehicle except as provided by commission rule; provided however, that the commission shall promulgate rules which shall allow a physically handicapped person to apply for a special permit which would allow the person to hunt from a motorized vehicle which is not in motion. A physically handicapped person means a person:

(A) Who has lost, or has lost the use of, one (1) or both lower extremities or both hands, or who has the significant limitation in the use of the lower extremities, or who has a diagnosed disease or disorder which substantially impairs or interferes with mobility, or who is so severely disabled as to be unable to move without the aid of an assistance device.

(B) Who suffers from lung disease to the extent that his forced (respiratory) expiratory volume for one (1) second when measured by spirometry is less than one (1) liter or his arterial oxygen tension (pO_2) is less than 60 mm/Hg on room air at rest.

(C) Who is impaired by cardiovascular disease to the extent that his functional limitations are classified in severity as class III or class IV according to standards accepted by the American Heart Association.

The commission shall specify the form of application for and design of the special permit which shall allow a physically handicapped person to hunt from a motorized vehicle which is not in motion. No fee shall be charged for the issuance of the special permit and the issuance of a special permit shall not exempt a person from otherwise properly purchasing or obtaining other necessary licenses, permits and tags in accordance with this title and rules promulgated pursuant thereto. The special permit shall not be transferable and may only be used by the person to whom it is issued. A person who has been issued a special permit which allows a physically handicapped person to hunt from a motorized vehicle not in motion shall have that permit prominently displayed on any vehicle the person is utilizing to hunt from and the person shall produce, on demand, the permit and other identification when so requested by a conservation officer of the department of fish and game. A person possessing a special permit shall not discharge any firearm from or across a public highway. In addition to other penalties any unauthorized use of the special permit shall be grounds for revocation of the permit.

2. Molest with Motorized Vehicles. Use any motorized vehicle to molest, stir up, rally or drive in any manner any of the game animals or game birds of this state.

3. Communicate from Aircraft. Make use of aircraft in any manner to spot or locate game animals, game birds or fur-bearing animals of this state from the air and communicate the location or approx-

imate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person then on the ground.

4. Hunt from Helicopter. Make use of any helicopter in any manner in the taking of game or loading, transporting, or unloading hunters, game or hunting gear in any manner except when such use is at recognized airports or airplane landing fields, or at heliports which have been previously established on private land or which have been established by a department or agency of the federal, state or local government or when said use is in the course of emergency or search and rescue operations.

5. Artificial Light. Hunt any animal or bird except raccoon by the aid of a spotlight, flashlight or artificial light of any kind. The act of casting or throwing, after sunset, the beam or rays of any spotlight, headlight or other artificial light capable of utilizing six (6) volts or more of electrical power upon any field, forest or other place by any person while having in his possession or under his control any uncased firearm or contrivance capable of killing any animal or bird, shall be prima facie evidence of hunting with an artificial light. Provided nothing in this subsection shall apply where the headlights of a motor vehicle, operated and proceeding in a normal manner on any highway or roadway, cast a light upon animals or birds on or adjacent to such highway or roadway and there is no intent or attempt to locate such animals or birds. Provided further, nothing in this subsection shall prevent the hunting of unprotected or predatory wildlife with the aid of artificial light when such hunting is for the purpose of protecting property or livestock, is done by landowners or persons authorized in writing by them to do so and is done on property they own, lease or control; and provided further that the hunting and taking of unprotected or predatory wildlife with the aid of artificial light on public lands is authorized after obtaining a permit to do so from the director. The director may, for good cause, refuse to issue such permit.

Other provisions of this subsection notwithstanding, the commission may establish rules allowing the hunting of raccoon with the aid of an artificial light.

6. Regulation of Dogs.

(A) No person shall make use of a dog for the purpose of pursuing, taking or killing any of the big game animals of this state except as otherwise provided by rules of the commission.

(B) Any person who is the owner of, or in possession of, or who harbors any dog found running at large and which is actively tracking, pursuing, harassing or attacking, or which injures or kills deer or any other big game animal within this state shall be guilty as provided in section 36-1401(a)1.(F), Idaho Code. It shall be no defense that such dog or dogs were pursuing said big game animals without the aid or direction of the owner, possessor, or harborer.

(C) Any dog found running at large and which is actively tracking, pursuing, harassing, attacking or killing deer or any other big game animal may be destroyed without criminal or civil liability by the director, or any peace officer, or

other persons authorized to enforce the Idaho fish and game laws.

7. Attempt to take Simulated Wildlife.

(A) Attempt to take, by firearm or any other contrivance capable of killing an animal or bird, simulated wildlife in violation of any of the provisions of this title or commission rules applicable to the taking of the wildlife being simulated, when the simulated wildlife is being used by a conservation officer or other person authorized to enforce Idaho fish and game laws or rules promulgated pursuant thereto. No person shall be found guilty of violating this subpart provided that no other law or rule has been violated.

(B) Any person pleading guilty to, convicted of or found guilty for attempting to take simulated wildlife within this state shall be guilty of a misdemeanor and shall be punished as provided in either subsection (b) or (d) of section 36-1402, Idaho Code.

SECTION 8. That Section 36-1102, Idaho Code, be, and the same is hereby amended to read as follows:

36-1102. PROTECTION OF BIRDS. (a) Game, Song, Insectivorous, Rodent Killing, and Innocent Birds Protected. Except for English sparrows and starlings, no person shall at any time of the year take any game, song, rodent killing, insectivorous or other innocent bird, except as provided by commission ~~regulations~~ proclamations promulgated pursuant hereto, or for any person to intentionally disturb or destroy the eggs or nests of such birds at any time.

(b) Migratory Birds.

1. No person shall hunt, take or have in possession any migratory birds except as provided by federal regulations made pursuant to the Federal Migratory Bird Treaty Act, as amended, and in accordance with related rules and ~~regulations~~ proclamations promulgated by the commission.

2. No person subject to the Federal Migratory Bird Hunting Stamp Act tax shall hunt any migratory waterfowl unless at the time of such hunting he carries on his person an unexpired Federal Migratory Bird Hunting Stamp validated by his signature in ink across the face of the stamp while hunting such birds.

(c) Falconry. The commission is authorized to establish a falconry program and to promulgate rules and ~~regulations~~ proclamations governing same.

SECTION 9. That Section 36-1103, Idaho Code, be, and the same is hereby amended to read as follows:

36-1103. FUR-BEARING ANIMALS -- SEASONS -- METHODS -- AMOUNTS. No person shall trap or take by any method or means and at any place or time or in any amount or to have in possession any wild fur-bearing animals or pelts thereof except as permitted by provisions of this title and commission ~~regulations~~ rules and proclamations promulgated pursuant thereto.

(a) Trapping -- Fur-bearing Animals. No person shall:

1. Use any part of a game bird, game animal, or game fish for bait in trapping or taking of any wildlife.

2. Destroy, disturb, or remove the trap or traps of any licensed trapper within this state provided, however, that the director may inspect such traps and seize same when unlawfully set.

(b) Seizure and Sale of Unclaimed Traps. Traps or other trapping equipment unlawfully set shall be seized by the director or any officer charged with the enforcement of the wildlife laws and may be sold and the ~~monies~~ moneys of such sale shall be credited to the state fish and game fund.

(c) Muskrat House Protected. No person shall trap in or on or to destroy or damage any muskrat house at any time. For the purpose of this section what is known as a push-up is not construed to be a muskrat house in the sense of the law pertaining to trapping in or on muskrat houses.

SECTION 10. That Section 36-1301, Idaho Code, be, and the same is hereby amended to read as follows:

36-1301. POWER AND DUTY OF OFFICERS -- OFFICIAL BADGE -- WHO MAY WEAR -- SEPARABILITY. (a) Authorized Officers. The director, all conservation officers and other classified department employees, and all sheriffs, deputy sheriffs, forest supervisors, marshals, police officers, state forest department officers, and national forest rangers shall have statewide jurisdiction and it is hereby made their duty to enforce the provisions of the Idaho fish and game code.

(b) Authority and Limitations as Peace Officers. All conservation officers who receive certification from the Idaho peace officer standards and training advisory council shall have all the authority given by statute to peace officers of the state of Idaho. All other classified employees appointed by the director shall have the power of peace officers limited to:

1. The enforcement of the provisions of title 36, Idaho Code, and commission ~~regulations~~ rules and proclamations promulgated pursuant thereto.

2. The arrest of persons having domestic animals unlawfully in their possession.

3. The enforcement of the provisions of chapter 70, title 67, Idaho Code, provided that such authority is exercised in cooperation with sheriffs of the respective counties.

4. Responding to express requests from other law enforcement agencies for aid and assistance in enforcing other laws. For purposes of this section, such a request from a law enforcement agency shall mean only a request for assistance as to a particular and singular violation or suspicion of violation of law, and shall not constitute a continuous request for assistance outside the purview of enforcement of title 36, Idaho Code.

(c) Additional Authority and Duties. Said officers and employees shall have additional peace officer power, but not constituting an obligation beyond their regular course of duty, relative to:

1. The enforcement of the provisions of title 38, Idaho Code (Idaho forestry act), as authorized by section 38-133, Idaho Code.

2. The enforcement of provisions of chapter 71, title 67, Idaho

Code.

3. The enforcement of the provisions of sections 18-3906 and 18-7031, Idaho Code, relating to littering.

4. The enforcement of the provisions of section 42-3811, Idaho Code, relating to the enforcement of certain provisions of chapter 38, title 42, Idaho Code.

(d) Official Badge -- Who May Wear. No person who is not at the time a classified employee or conservation officer, duly authorized and commissioned by the director, shall wear or exhibit in public an official badge of the Department of Fish and Game of the state of Idaho.

SECTION 11. That Section 36-1304, Idaho Code, be, and the same is hereby amended to read as follows:

36-1304. SEIZURE OF EQUIPMENT AND WILDLIFE. (a) Seizure of Evidence -- Confiscation of Unlawfully Used Equipment. The director and all other officers empowered to enforce fish and game laws are hereby authorized at any time to seize and hold as evidence any powder, explosives, lime, toxicants, drugs, spears, traps, snares, guns, tackle, nets, seines or any other hunting, trapping or fishing equipment or devices used in the commission of a violation of any provisions of this title or ~~regulations~~ rules or proclamations promulgated pursuant thereto, provided that all lawful traps, guns, spears, tackle, nets and seines taken from the possession of any person arrested for a violation of this title and held as evidence in any prosecution resulting from such arrest shall not be subject to confiscation but the same shall be returned to the person from whom taken when no longer needed as evidence. Provided, however, if it appears from the evidence before the magistrate hearing the case that the powder, explosive, lime, toxicants, drugs, or other unlawful means and devices were used or were about to be used for the unlawful taking or killing of wildlife, said magistrate shall order the same confiscated and sold by the director at public sale, the proceeds therefrom turned into the fish and game account. Any guns, fishing tackle, nets, traps or other equipment used in the taking of wildlife unlawfully and for which no lawful owner can be determined or any such equipment seized as evidence in a case and for which an owner is known, if not claimed within six (6) months following the final disposition of the case in question, shall be deemed to be the property of the fish and game department; provided, that this shall not occur unless written notice is given to the lawful owner, when known, by registered mail to his last known address within thirty (30) days after the final disposition of the case. Equipment so obtained may be sold by the department unless it would be unlawful for the general public to own or possess such equipment. Any proceeds from the sale of such equipment that would be lawful for the general public to own or possess, shall be deposited in the fish and game account.

(b) Unlawfully Taken Wildlife -- Seizure, Confiscation, Disposition. The director or any other officer empowered to enforce the fish and game laws may at any time seize and take into his custody any wildlife or any portion thereof which may have been taken unlawfully, or which may be unlawfully in the possession of any person. If it

appears from the evidence before the magistrate hearing the case that said wildlife was unlawfully taken, the magistrate shall:

1. Order the same confiscated or sold by the director and the proceeds deposited in the fish and game account; or

2. In his discretion, order such confiscated wildlife given to a designated tax-supported, nonprofit or charitable institution or indigent person.

(c) Unclaimed Wildlife -- Seizure, Disposition. All carcasses, hides, pelts or portions of any wildlife protected by the provisions of this title which are deemed to be unclaimed or abandoned may be seized by the director or any other officer empowered to enforce game laws and, upon being so seized, the director shall:

1. Sell same at public or private sale and deposit the proceeds therefrom in the fish and game account.

2. In his discretion, order such wildlife to be given to a designated tax-supported nonprofit or charitable institution or indigent person.

(d) Receipt Required. A written receipt must be executed for all equipment or wildlife disposed of in accordance with the provisions of this section.

SECTION 12. That Section 36-1401, Idaho Code, be, and the same is hereby amended to read as follows:

36-1401. VIOLATIONS. (a) Infractions. Any person who pleads guilty to or is found guilty of a violation of the following provisions of the fish and game code or the following rules <u>or proclamations</u> promulgated pursuant thereto is guilty of an infraction:

1. Statutes

(A) Take, transport, use or have in possession bait fish as set forth in section 36-902(d), Idaho Code.

(B) Chumming as set forth in section 36-902(e), Idaho Code.

(C) Nonresident child under the age of fourteen (14) years fishing without a valid license and not accompanied by a valid license holder as set forth in section 36-401(a)2., Idaho Code.

(D) Use or cut a hole larger than ten (10) inches in the ice for ice fishing as set forth in section 36-1509(a), Idaho Code.

(E) Store fish without required tags/permits/statements as set forth in section 36-503, Idaho Code.

(F) Own, possess or harbor any dog found running loose and which is tracking, pursuing, harassing or attacking a big game animal as set forth in section 36-1101(b)6.(B), Idaho Code.

(G) Hunt migratory waterfowl without having in possession a signed federal migratory bird hunting stamp as set forth in section 36-1102(b)2., Idaho Code.

(H) Hunt migratory waterfowl without having in possession a signed Idaho migratory waterfowl stamp as set forth in section 36-414(2), Idaho Code.

(I) Hunt upland game birds without having in possession an upland game permit as set forth in section 36-409(h), Idaho

Code.

(J) Trap in or on, destroy or damage any muskrat house as provided in section 36-1103(c), Idaho Code.

(K) Hunt migratory game birds with a shotgun capable of holding more than three (3) shells as provided and incorporated in section 36-1102(b), Idaho Code.

2. Rules or Proclamations

(A) Fish from a raft or boat with motor attached in waters where motors are prohibited.

(B) Fish with hooks larger than allowed in that water.

(C) Fish with barbed hooks in waters where prohibited.

(D) Exceed any established bag limit for fish by one (1) fish, except bag limits for anadromous fish, landlocked chinook salmon, kamloops rainbow trout, lake trout, or bull trout.

(E) Fish with more than the approved number of lines or hooks.

(F) Fail to leave head and/or tail on fish while fish are in possession or being transported.

(G) Snag or hook fish other than in the head and fail to release, excluding anadromous fish.

(H) Fail to attend fishing line and keep it under surveillance at all times.

(I) Fail to comply with mandatory check and report requirements.

(J) Fail to leave evidence of sex or species attached as required on game birds.

(K) Hunt or take migratory game birds or upland game birds with shot exceeding the allowable size.

(L) Fail to release, report or turn in nontarget trapped animals.

(M) Fail to complete required report on trapped furbearer.

(N) Fail to present required furbearer animal parts for inspection.

(O) Fail to attach identification tags to traps.

(P) Possess not more than one (1) undersized bass.

(Q) Park or camp in a restricted area, except length of stay violations.

(R) Fail to leave evidence of sex attached as required on game animals.

(b) Misdemeanors. Any person who pleads guilty to, is found guilty or is convicted of a violation of the provisions of this title or rules or proclamations promulgated pursuant thereto, or orders of the commission, except where an offense is expressly declared to be an infraction or felony, shall be guilty of a misdemeanor.

(c) Felonies. Any person who pleads guilty to, is found guilty or is convicted of a violation of the following offenses shall be guilty of a felony:

1. Knowingly and intentionally selling or offering for sale or exchange, or purchasing or offering to purchase or exchange, any wildlife, or parts thereof, which has been unlawfully killed, taken or possessed.

2. Releasing into the wild, without a permit from the director,

any of the following wildlife, whether native or exotic: ungulates, bears, wolves, large felines, swine, or peccaries.

3. Unlawfully killing, possessing or wasting of any combination of numbers or species of wildlife within a twelve (12) month period which has a single or combined reimbursable damage assessment of more than one thousand dollars ($1,000), as provided in section 36-1404, Idaho Code.

4. Conviction within ten (10) years of three (3) or more violations of the provisions of this title, penalties for which include either or both a mandatory license revocation or a reimbursable damage assessment.

SECTION 13. That Section 36-1402, Idaho Code, be, and the same is hereby amended to read as follows:

36-1402. PENALTY -- INFRACTION -- MISDEMEANOR -- FELONY -- REVOCATION OF LICENSE -- DISPOSITION OF MONEYS. (a) Infraction Penalty. Any person who pleads guilty to or is found guilty of an infraction of this code or rules <u>or proclamations</u> promulgated pursuant thereto, shall be punished in accordance with the provisions of the Idaho infractions rules.

(b) Misdemeanor Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a misdemeanor under the provisions of this title or rules <u>or proclamations</u> promulgated pursuant thereto shall, except in cases where a higher penalty is prescribed, be fined in a sum of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000) and/or by commitment to jail for not more than six (6) months. The minimum fine, per animal, fish or bird, for the illegal taking, illegal possession or the illegal waste of the following animals, fish or birds shall be as indicated below:

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

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

(d) License Revocation. Any person entering a plea of guilty or being found guilty or convicted of violating any of the provisions of this title, or who otherwise fails to comply with the requirements of a citation in connection with any such offense, may, in addition to any other penalty assessed by the court, have his hunting, fishing, or trapping privileges revoked for such period of time as may be determined by the court not to exceed three (3) years, except that viola-

tions classified as felonies under section 36-1401, Idaho Code, or as flagrant violations as defined in subsection (e) of this section, shall authorize the court to impose license revocations for periods of time up to and including life, with said period beginning on the date of conviction, finding of guilt or the entry of the plea of guilty. Provided further, that the magistrate hearing the case shall forthwith revoke the hunting, fishing, or trapping privileges for a period of not less than one (1) year for any of the following offenses:

1. Taking or possessing upland game birds, migratory waterfowl, salmon, steelhead, sturgeon, or any big game animal during closed season.

2. Exceeding the daily bag or possession limit of upland game birds, migratory waterfowl or big game animals.

3. Taking any fish by unlawful methods as set forth in section 36-902(a) or (c), Idaho Code.

4. Unlawfully purchasing, possessing or using any license, tag or permit as set forth in section 36-405(c), Idaho Code.

5. Trespassing in violation of warning signs as set forth in section 36-1603, Idaho Code.

~~8~~6. The unlawful release of any species of live fish into any public body of water in the state. For purposes of this paragraph, an "unlawful release of any species of live fish" shall mean a release of any species of live fish, or live eggs thereof, in the state without the permission of the director of the department of fish and game; provided, that no permission is required when fish are being freed from a hook and released at the same time and place where caught or when crayfish are being ~~release~~ released from a trap at the same time and place where caught.

Provided further, that the magistrate hearing the case of a first time hunting violation offender under the age of twenty-one (21) may require that the offender attend a remedial hunter education course at the offender's expense. Upon successful completion of the course, the remainder of the revocation period shall be subject to a withheld judgment so long as the offender is not convicted of any additional hunting violations during the period. The cost of the course shall be seventy-five dollars ($75.00) to be paid to the department. The commission shall establish by rule the curriculum of the hunter education remedial course.

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

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

privilege is revoked.

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

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

1. Taking a big game animal after sunset by spotlighting, with use of artificial light, or with a night vision enhancement device.
2. Unlawfully taking two (2) or more big game animals within a twelve (12) month period.
3. Taking a big game animal with a rimfire or centerfire cartridge firearm during an archery or muzzleloader only hunt.
4. Hunting, fishing, trapping or purchasing a license when license privileges have been revoked pursuant to this section or section 36-1501, Idaho Code.
5. Taking any big game animal during a closed season when there is no established take season open anywhere in the state for any species of big game.
6. Any felony violation provided in section 36-1401, Idaho Code.

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

1. Suspend a violator's license for failure to comply with the terms of a citation from a party state. A copy of a report of failure to comply from the licensing authority of the issuing state shall be conclusive evidence.
2. Revoke a violator's license for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence.

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

SECTION 14. That Section 36-2201, Idaho Code, be, and the same is hereby amended to read as follows:

36-2201. PURPOSE. It is the intent of the legislature by this act to provide for and control the establishment and operation of shooting preserves and to do so in such a manner as to be in the best public interest. Pursuant thereto the director of the Idaho fish and game department is hereby authorized to issue shooting preserve licenses for the purpose of permitting shooting of privately owned upland game birds on privately owned premises as hereinafter provided.

Further, the Idaho fish and game commission is hereby authorized to make rules and ~~regulations~~ proclamations consistent with and for the purpose of carrying out, administering and enforcing the provisions of this act. During the shooting preserve season, the hunting and shooting of upland game birds on such preserves shall be open to any holder of a valid license of the proper class following payment of

the required shooting fee established by the licensed shooting preserve operator.

SECTION 15. That Section 36-2202, Idaho Code, be, and the same is hereby amended to read as follows:

36-2202. SHOOTING PRESERVE LICENSE. Upon receipt of a completed application of a type and form prescribed by the director, his representative shall inspect the proposed shooting preserve premises and facilities where such upland game birds are to be propagated, raised and released. If the department finds that the proposed operation and area meet all of the requirements of law and related rules and ~~regulations~~ proclamations adopted by the fish and game commission, the application shall be approved and the license issued. Upon payment of the annual fee as provided in this act, shooting preserve licenses issued under the provisions hereof shall be and continue in force from the date of issuance until and including the thirtieth day of June thereafter. Application for renewal thereof must be made during the thirty (30) days immediately preceding said expiration date.

Operating licenses or permits may be issued to any person, partnership, association or corporation for the operation of shooting preserves that meet the requirements herein prescribed.

SECTION 16. That Section 36-2205, Idaho Code, be, and the same is hereby amended to read as follows:

36-2205. GAME BIRDS. (a) Game which may be hunted under this act shall be confined to artificially propagated upland game birds.

(b) A minimum release of two hundred (200) upland game birds of each species to be hunted on each shooting preserve must be made on the licensed area during the shooting preserve season.

(c) Artificially propagated upland game birds released on a shooting preserve must be:

(1) Marked by clipping the terminal joint of a single toe on either foot as evidenced by a healed scar, or

(2) Banded with a leg band of a type not removable without breaking or mutilating, such tag to be supplied by the fish and game department at cost. One (1) such band shall be securely affixed to one (1) leg of each bird released and shall remain affixed on the bird until bird is prepared for consumption.

(d) Any wild upland game bird incidentally taken upon a shooting preserve, at any time other than the general open season therefor, must be marked then and there with a tag that has been issued to the shooting preserve licensee by the Idaho fish and game department. Said bird shall count as part of the permittee's shooting preserve limit. The fee for such tags shall be three dollars ($3.00) per bird.

During the general hunting season for the taking of upland game birds, all wild birds harvested on shooting preserves will be subject to the laws applicable to such wild birds and related ~~regulations~~ rules and proclamations of the Idaho fish and game commission.

SECTION 17. That Section 36-2210, Idaho Code, be, and the same is hereby amended to read as follows:

36-2210. BIRDS TAKEN OUTSIDE BOUNDARIES. The taking or shooting of any and all artificially propagated and marked upland game birds that leave the shooting preserve area shall be subject to related provisions of the law and the rules and ~~regulations~~ proclamations of the Idaho fish and game commission, notwithstanding the fact of leg bands attached to said birds.

Approved March 20, 1998.

CHAPTER 171
(H.B. No. 569)

AN ACT

RELATING TO THE RESTORATION OF CIVIL RIGHTS; AMENDING SECTION 18-310, IDAHO CODE, TO PROVIDE THAT FELONY CONVICTIONS FOR CERTAIN ADDITIONAL CRIMES MAY BE USED AS A BASIS FOR DENIAL OF THE RIGHT TO SHIP, TRANSPORT, POSSESS OR RECEIVE A FIREARM, TO MAKE TECHNICAL CORRECTIONS AND TO DELETE OBSOLETE TERMINOLOGY.

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

SECTION 1. That Section 18-310, Idaho Code, be, and the same is hereby amended to read as follows:

18-310. IMPRISONMENT -- EFFECT ON CIVIL RIGHTS AND OFFICES. (1) A sentence of custody to the Idaho state board of correction suspends all the civil rights of the person so sentenced including the right to refuse treatment authorized by the sentencing court, and forfeits all public offices and all private trusts, authority or power during such imprisonment: provided that any such person may bring an action for damages or other relief in the courts of this state or have an action brought against such person; and provided further that any such person may lawfully exercise all civil rights that are not political during any period of parole or probation, except the right to ship, transport, possess or receive a firearm, and the right to refuse treatment authorized by the sentencing court.

(2) Upon ~~the~~ final discharge, ~~of~~ a person convicted of any Idaho felony shall be restored the full rights of citizenship, except ~~treason and those enumerated in paragraph (a) of this subsection with regard to the right to ship, transport, possess or receive a firearm, a person shall be restored the full rights of citizenship~~ that for persons convicted of treason or those offenses enumerated in paragraphs (a) through (jj) of this subsection the right to ship, transport, possess or receive a firearm shall not be restored. As used in this subsection, "final discharge" means satisfactory completion of imprisonment, probation and parole as the case may be.

(a) ~~Any person convicted of~~ aggravated assault (18-905, 18-915, Idaho Code)~~,~~;

(b) aggravated battery (18-907, 18-915, Idaho Code)~~,~~;

(c) assault with intent to commit a serious felony (18-909, 18-915, Idaho Code)~~,~~;

(d) battery with intent to commit a serious felony (18-911, 18-915, Idaho Code)~~,~~;
(e) burglary (18-1401, Idaho Code)~~,~~;
(f) crime against nature (18-6605, Idaho Code);
(g) domestic battery, felony (18-918, Idaho Code);
(h) enticing of children, felony (18-1509, Idaho Code);
(i) forcible sexual penetration by use of a foreign object (18-6608, Idaho Code);
(j) indecent exposure, felony (18-4116, Idaho Code);
(k) injury to child, felony (18-1501, Idaho Code);
(l) intimidating a witness, felony (18-2604, Idaho Code);
(m) lewd conduct with a minor or child under sixteen (18-1508(3), (4), (5) and (6), Idaho Code)~~,~~;
(n) sexual abuse of a child under sixteen (18-1506, Idaho Code)~~,~~;
(o) sexual exploitation of a child (18-1507, Idaho Code);
(p) felonious rescuing prisoners (18-2501, Idaho Code)~~,~~;
(q) escape by one charged with, convicted of or on probation for a felony (18-2505, Idaho Code)~~,~~;
(r) unlawful possession of a firearm (18-3316, Idaho Code)~~,~~;
(s) degrees of murder (18-4003, Idaho Code)~~,~~;
(t) voluntary manslaughter (18-4006(1), Idaho Code)~~,~~;
(u) assault with intent to murder (18-4015, Idaho Code)~~,~~;
(v) administering poison with intent to kill (18-4014, Idaho Code)~~,~~;
(w) kidnapping (18-4501, Idaho Code)~~,~~;
(x) mayhem (18-5001, Idaho Code)~~,~~;
(y) rape (18-6101, Idaho Code)~~,~~;
(z) male rape (18-6108, Idaho Code)~~,~~;
(aa) robbery (18-6501, Idaho Code)~~,~~;
(bb) ritualized abuse of a child (18-1506A, Idaho Code)~~,~~;
(cc) cannibalism (18-5003, Idaho Code)~~,~~;
(dd) felonious manufacture, delivery or possession with the intent to manufacture or deliver, or possession of a controlled or counterfeit substance (37-2732, Idaho Code)~~,~~;
(ee) trafficking (37-2732B, Idaho Code)~~,~~; ~~or any person--convicted of an~~
(ff) threats against state officials of the executive, legislative or judicial branch, felony (18-1353A, Idaho Code);
(gg) unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home (18-3317, Idaho Code);
(hh) unlawful possession of destructive devices (18-3319, Idaho Code);
(ii) unlawful use of destructive device or bomb (18-3320, Idaho Code);
(jj) attempt (18-306, Idaho Code), conspiracy (18-1701, Idaho Code), or solicitation (18-2001, Idaho Code), to commit any of the crimes described in ~~subsection (2)~~ paragraphs (a) through (ii) of this subsection.

(~~b~~kk) The provisions of this subsection shall apply only to those persons convicted of the enumerated felonies in paragraphs (a) through (jj) of this subsection on or after July 1, 1991.

(3) A person not restored to the civil right to ship, transport, possess or receive a firearm may make application to the commission of

pardons and parole to restore the civil right to ship, transport, possess or receive a firearm. The commission shall not accept any such application until five (5) years after the date of final discharge. The commission shall conduct the proceeding upon such application pursuant to ~~the~~ rules ~~and regulations~~ adopted in accordance with the law. The commission shall not restore the right to ship, transport, possess or receive a firearm to any person convicted of murder in the first degree (18-4003, Idaho Code), murder in the second degree (18-4003, Idaho Code), or any felony enumerated in paragraphs (a) through (jj) of ~~this~~ subsection (2), upon which the sentence was enhanced for the use of a firearm during the commission of said felony.

Approved March 20, 1998.

CHAPTER 172
(S.B. No. 1470)

AN ACT

RELATING TO ADOPTION; AMENDING CHAPTER 15, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 16-1515, IDAHO CODE, TO PROVIDE THAT IF THE COURT ORDERS CUSTODY OF A CHILD RETURNED TO A NATURAL PARENT UPON PETITION OF THAT PARENT, BASED UPON WITHDRAWAL OR REVOCATION OF CONSENT TO ADOPT, THE COURT SHALL ORDER REIMBURSEMENT OF EXPENSES, AND TO AUTHORIZE REIMBURSEMENT OF EXPENSES OR FILING A SUIT FOR DAMAGES IN THE EVENT THAT THE NATURAL PARENT AGREES TO CONSENT AND ADOPTION PROCEEDINGS ARE INITIATED BUT THE NATURAL PARENT THEREAFTER REFUSES TO EXECUTE THE CONSENT.

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

SECTION 1. That Chapter 15, Title 16, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 16-1515, Idaho Code, and to read as follows:

16-1515. REVOCATION OF ADOPTION -- PAYMENT OF EXPENSES OF ADOPTIVE PARENTS. (1) If a natural parent withdraws or revokes a consent to adoption and the court orders that the custody of the child be returned to the natural parent upon the petition of a natural parent, whether or not the order of adoption has been entered, the court shall order the natural parent who so petitioned to reimburse the adoptive or prospective adoptive parents for all adoption expenses including, but not limited to, all medical fees and costs and all legal fees and costs, and all other reasonable costs and expenses including, but not limited to, expenses for food and clothing incurred by the adoptive or prospective adoptive parents in connection with the care and maintenance of the child while the child was living with the adoptive or prospective adoptive parents. The court shall determine the amount of the reimbursement owing and shall enter the same as a money judgment in favor of the adoptive or prospective adoptive parents.

(2) If the natural parent agrees to consent to the adoption and

the adoption proceedings have been initiated by the prospective adoptive parents in accordance with that agreement but the natural parent thereafter refuses to execute the consent to adoption, the prospective adoptive parents may file a motion for restitution in the adoption action and the court may order reimbursement as provided in subsection (1) of this section, or the prospective adoptive parents may file a suit independent of the adoption proceedings for damages which may include those items described in subsection (1) of this section.

(3) For purposes of this section, "prospective adoptive parents" shall include foster parents who have initiated adoption proceedings with respect to the child for whom foster care is being provided, but shall not include foster parents who are wholly or partially reimbursed by the state of Idaho for the care of the child.

Approved March 20, 1998.

CHAPTER 173
(S.B. No. 1480)

AN ACT

RELATING TO ENFORCEMENT AUTHORITIES OF THE DEPARTMENT OF WATER RESOURCES; AMENDING SECTION 42-235, IDAHO CODE, TO PROVIDE A STATUTORY REFERENCE; AMENDING SECTION 42-238, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES MAY COMMENCE AN ADMINISTRATIVE ENFORCEMENT ACTION FOR SUBSTANTIAL VIOLATIONS BY ISSUING A WRITTEN NOTICE OF VIOLATION, TO DELETE A CIVIL PENALTY AND TO PROVIDE A STATUTORY REFERENCE, TO PROVIDE THAT CERTAIN PEOPLE WILL BE SUBJECT TO ENFORCEMENT ACTIONS AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 42-238b, IDAHO CODE; AMENDING SECTION 42-351, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR MAY ISSUE A WRITTEN NOTICE OF VIOLATION FOR ILLEGAL DIVERSION OR USE OF WATER AND TO DELETE LANGUAGE REGARDING NOTICE, COMPLIANCE CONFERENCES, CIVIL ENFORCEMENT, PENALTIES, AND LIMITATIONS; REPEALING SECTION 42-352, IDAHO CODE; AMENDING SECTION 42-701, IDAHO CODE, TO PROVIDE A STATUTORY REFERENCE AND TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT MAY COMMENCE AN ADMINISTRATIVE ENFORCEMENT ACTION FOR SUBSTANTIAL VIOLATIONS BY ISSUING A WRITTEN NOTICE OF VIOLATION; AMENDING SECTION 42-1605, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT MAY COMMENCE AN ADMINISTRATIVE ENFORCEMENT ACTION FOR SUBSTANTIAL VIOLATIONS BY ISSUING A WRITTEN NOTICE OF VIOLATION AND TO DELETE LANGUAGE REGARDING NOTICE, REPORTS OF CORRECTIVE ACTION, CONTESTED VIOLATIONS, CIVIL PENALTIES AND JUDICIAL REVIEW; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1701B, IDAHO CODE, TO PROVIDE AUTHORITY TO COMMENCE ENFORCEMENT ACTIONS, TO PROVIDE FOR NOTICE, TO PROVIDE FOR RESPONSES, TO PROVIDE FOR COMPLIANCE CONFERENCES, TO PROVIDE FOR CONSENT ORDERS, TO PROVIDE FOR CIVIL ENFORCEMENT THROUGH THE ATTORNEY GENERAL, TO PROVIDE THAT THE AUTHORITY OF DESIGNATED PERSONS TO ISSUE CITATIONS OR ORDERS IS NOT DIMINISHED, TO PROVIDE FOR INJUNCTIONS, TO PROVIDE THAT ALLEGATIONS OR PROOF OF IRREPARABLE DAMAGE IS NOT REQUIRED, TO PROVIDE

PENALTIES, TO PROVIDE THAT THE ABILITY TO PURSUE CIVIL ACTIONS AND OBTAIN DAMAGES IS NOT IMPAIRED AND TO PROVIDE THAT THE ATTORNEY GENERAL SHALL INSTITUTE AND PROSECUTE CIVIL ENFORCEMENT ACTIONS UPON REQUEST OF THE DIRECTOR; AMENDING SECTION 42-1720, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT MAY COMMENCE AN ADMINISTRATIVE ENFORCEMENT ACTION FOR SUBSTANTIAL VIOLATIONS BY ISSUING A WRITTEN NOTICE OF VIOLATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-3809, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT MAY COMMENCE AN ADMINISTRATIVE ENFORCEMENT ACTION FOR SUBSTANTIAL VIOLATIONS BY ISSUING A WRITTEN NOTICE OF VIOLATION; REPEALING SECTION 42-3813, IDAHO CODE; AMENDING SECTION 42-3916, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT MAY COMMENCE AN ADMINISTRATIVE ENFORCEMENT ACTION FOR SUBSTANTIAL VIOLATIONS BY ISSUING A WRITTEN NOTICE OF VIOLATION; AMENDING SECTION 42-4010, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT MAY COMMENCE AN ADMINISTRATIVE ENFORCEMENT ACTION FOR SUBSTANTIAL VIOLATIONS BY ISSUING A WRITTEN NOTICE OF VIOLATION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 42-5244, IDAHO CODE, TO PROVIDE A CORRECT CITATION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 42-235, Idaho Code, be, and the same is hereby amended to read as follows:

42-235. DRILLING PERMITS. Prior to beginning construction of any well, or changing the construction of any well, the driller or well owner shall obtain a permit from the director of the department of water resources to protect the public health, safety and welfare and the environment, and to prevent the waste of water or mixture of water from different aquifers. There shall be a seventy-five dollar ($75.00) charge for the permit if the well is to be used for domestic or monitoring purposes. If the well is to be used for other than domestic or monitoring purposes, the charge for the permit shall be two hundred dollars ($200). All moneys received pursuant to this section shall be credited to the water administration account. The director may provide a blanket drilling permit for site specific monitoring programs which will determine the quality, quantity, temperature, pressure or other attributes of aquifers. The application for a blanket permit shall include a design proposal prepared by a licensed engineer or licensed geologist which shall describe the overall drilling program and all relevant technical features of the wells to the satisfaction of the director. Progress reports, completion and other data may be required as provided by rule. The fee for the blanket permit shall be one hundred dollars ($100) plus an additional fifty dollars ($50.00) per well. A driller or well owner violating any provision of this section shall be guilty of a misdemeanor and shall also be subject to the enforcement procedures of section 42-~~238b~~1701B, Idaho Code.

SECTION 2. That Section 42-238, Idaho Code, be, and the same is hereby amended to read as follows:

42-238. WELL DRILLERS' LICENSES AND OPERATOR PERMITS. (1) The director of the department of water resources is hereby vested with the duties relating to the licensing of well drillers and operators of well drilling equipment as provided for in this act so as to protect the ground water resources against waste and contamination. Qualifications for well drillers and operators of well drilling equipment shall be adopted by rule of the water resource board.

(2) It shall be unlawful for any person to drill a well in Idaho, including wells excepted under sections 42-227 and 42-228, Idaho Code, without first complying with the provisions of this chapter. It shall be unlawful for any person to abandon a well in Idaho without first obtaining a driller's license or receiving a waiver of the license requirement from the director of the department of water resources. Authorization is required from the director prior to the abandonment and the person abandoning the well shall submit to the director a report describing the abandonment.

(3) For the purpose of this act, a "person" shall be defined as any individual who drills or abandons any well for himself or another in this state; it shall also be defined as any firm, copartnership, corporation or association which drills or abandons, or contracts to drill or abandon any well for hire or otherwise in this state.

(4) A driller's license shall be obtained by filing with the director an application in writing on a form provided by the director accompanied by a two hundred dollar ($200) application fee.

(5) The director shall require that an applicant for a driller's license successfully pass a written or oral examination, and be required to submit references and other detailed information describing past drilling experience to allow the director to determine if the applicant is qualified to drill wells in the state.

(6) The water resource board shall adopt rules for licensing and renewal of licenses of well drillers in compliance with chapter 52, title 67, Idaho Code. The board is authorized to ~~adopted~~ adopt rules on professional responsibility and continuing education requirements, not to exceed twenty (20) hours during each licensing period. Notwithstanding other provisions of this chapter, the director may refuse to issue or renew a driller's license permanently or for a designated period of time if the driller has previously constructed wells improperly or constructed a well without a valid driller's license. The rules may also allow for the director to issue a license with limitations on the type, size or depth of wells the applicant is authorized to construct. A copy of the proposed rules for licensing of well drillers shall be furnished to each well driller holding a current license at the time such proposed rules are promulgated or modified. The rules shall provide for the consideration of such factors as the applicant's:

(a) Knowledge of Idaho water laws and the rules of the water resource board in connection with the drilling of wells including proper well construction standards and procedures;

(b) Knowledge of the various types of drilling tools and their use;

(c) General knowledge of underground geology and ground water hydrology and their relation to well construction;

(d) Ownership or access to equipment capable of adequately con-

structing a well;

(e) Knowledge of types of well casing and their use;

(f) Knowledge of special well drilling problems and their solution, including additional requirements for licensing for drillers who construct wells in areas of drilling concern or for the production of low temperature geothermal resources as defined in section 42-233, Idaho Code, and for the production of geothermal resources as provided in chapter 40, title 42, Idaho Code;

(g) Previous drilling experience; and

(h) History of compliance with well drilling laws and rules.

(7) If it is determined that the applicant for a driller's license is not qualified, the director shall deny the application. If it is determined that the applicant is qualified, a license shall be issued upon the filing with the director of a surety bond or cash bond in the penal sum of not less than five thousand dollars ($5,000), or more than twenty thousand dollars ($20,000) as determined by the director based on the applicant's history of compliance with well drilling laws and rules, the size and depth of the wells the applicant proposes to drill, the complexity of the wells, the resource to be recovered, the area of operation of the applicant, and other relevant factors the director determines are in the public interest. The surety or cash bond shall be conditioned upon the proper compliance with the provisions of this chapter, chapter 40, title 42, Idaho Code, and rules promulgated pursuant thereto. Such bond shall be made payable to the director.

(8) Employees of drilling firms, copartnerships, corporations or associations are authorized to operate drilling equipment for the driller after obtaining an operator's permit from the director. Such employees shall be designated as operators.

(a) A driller is responsible for adequate supervision of the operators during the construction of each well. A driller shall be responsible for the work of the operators employed by the driller.

(b) An operator shall only operate drilling equipment for the driller listed on the operator's permit.

(c) An operator's permit shall be obtained by filing with the director an application in writing on a form provided by the director accompanied by a twenty-five dollar ($25.00) application fee.

(d) The applicant for an operator's permit shall successfully complete a written or oral examination.

(e) The water resource board shall adopt rules for the issuance, revocation and renewal of an operator's permit in accordance with chapter 52, title 67, Idaho Code. The board is also authorized to adopt rules on professional responsibility and continuing education requirements not to exceed twenty (20) hours during each permitting period. The rules shall consider such factors as:

(i) Knowledge of Idaho water laws and the rules of the water resource board in connection with the drilling of wells;

(ii) Demonstrated previous compliance with well drilling laws and rules including well construction standards; and

(iii) General understanding of well drilling equipment, well construction techniques, basic geology and map reading.

(9) Driller's licenses and operator's permits issued under this section shall expire on March 31 in the second year after issuance or upon revocation of the license by the director as provided for in this act. The driller's license can be renewed effective April 1 of every other year upon written application on forms provided by the director and the filing of a one hundred dollar ($100) renewal fee plus a fifteen dollar ($15.00) renewal fee for each operator employed by the licensed driller. Drillers renewing licenses in 1997 shall be assessed a licensing fee prorated monthly based upon the annual fee schedule. Thereafter, driller licenses and operator permits will be renewed upon expiration for a two (2) year period. Documents demonstrating compliance with the continuing education requirements of the rules shall be submitted to the director along with other license and permit renewal documents. 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 director if he determines that the driller or operator has complied with the rules promulgated pursuant to this act. The fees collected for the licensing of well drillers and permitting of operators are nonrefundable and shall be deposited in the water administration fund with the state treasurer with other fees collected by the director.

(10) The licensed driller and permitted operators shall have a card on hand, provided by the director to indicate that the driller or operator is presently licensed or permitted at all times when he is operating the drilling equipment. The director may also require other identification to be posted on the drilling equipment as he deems helpful in the administration of this act.

(11) 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 available for inspection at the well site a daily well log and pertinent data concerning each well, and its construction or abandonment, that is constructed or abandoned under the driller's direction in Idaho, including wells excepted under sections 42-227 and 42-228, Idaho Code, and complete a report on forms furnished by the director. These reports shall be properly prepared and signed by the driller and deposited with the director within thirty (30) days following the completion of the well. When the driller signs the report, the driller shall attest that all information on the report is accurate to the best of the driller's knowledge and that the driller has met all minimum well construction standards, low temperature geothermal resource well construction standards, geothermal resource well construction standards and area of drilling concern standards as adopted by the water resource board. The reports shall become a permanent record in the office of the director for hydrologic and geologic analysis and research, and shall be available for public use. The report shall include such data as the director deems necessary to provide the information that will be valuable for future reference and study.

(12) Well construction standards. The water resource board shall adopt minimum standards for new well construction, modification and abandonment of existing wells, low temperature geothermal resource well construction and geothermal 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 and may include additional requirements for wells drilled in "areas of drilling concern" as designated in accordance with subsection (15) of this section. Every licensed well driller will be furnished a copy of the adopted standards by the director, and will be required to construct or abandon each well in compliance with the adopted standards.

(13) Penalties for violation. Drilling of a well without first obtaining a license as required in this section shall be a criminal misdemeanor, and the employees of the department of water resources are hereby empowered to issue Idaho uniform citations, as provided by the rules of the court for magistrate's division of the district court, to any person who drills a well without first obtaining the required license. When the director of the department of water resources determines that any person is in substantial violation of any provision of this section or any rule, permit, condition of approval or order issued or promulgated pursuant to this section, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. Failure of the driller to comply with the provisions of section 42-238(11), Idaho Code, will allow the director 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.

(a) Failure of the driller to comply with the provisions of section 42-238(11), Idaho Code, is also cause for the director 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 director. If it is found that a driller has intentionally submitted inaccurate or false information in the signed well driller's report as provided in subsection (11) of this section, or has failed to file a report within the time frame required, the driller shall be liable for a civil penalty ~~not in excess of ten thousand dollars ($10,000) which shall be paid into the water administration account~~ as provided in section 42-1701B, Idaho Code. In addition, this shall be cause for the director to suspend an active license for a period not in excess of one (1) year or to not renew a license.

(b) Failure of the driller to comply with the provisions of section 42-238(12), Idaho Code, will allow the director to proceed to repair, reconstruct or abandon a well so that it complies with the adopted minimum standards of well construction and abandonment, 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.

(c) Failure of the driller to comply with the provisions of section 42-238(12), Idaho Code, is also cause for the director 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. Any driller, well owner or well pump installer causing a well to be altered or modified so as to not meet the construction standards

provided for under this section, shall be deemed to have violated the provisions of this section and shall be subject to the enforcement provisions of section 42-1701B, Idaho Code. The director 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.

(14) Appeals. Refusal to issue, refusal to renew, or revocation of a well driller's license or operator's permit by the director shall be cause for the well driller to seek a public hearing before the water resource board. No formal petition shall be required from the affected driller or operator, but a simple statement, in writing, requesting a hearing shall be sufficient. The board shall notify the driller or operator, and the director, of the date set for the hearing, which shall be at least fifteen (15) days after the notice is sent by certified mail to the well driller or operator at his address of record with the department. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision, and make its decision in the form of an order to the director. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code, and rules of practice and procedure adopted by the water resource board. Any party to the hearing may seek judicial review of any final order of the water resource board pursuant to chapter 52, title 67, Idaho Code.

(15) Drilling in a designated "area of drilling concern." The director of the department of water resources may designate as he determines necessary, "areas of drilling concern" on an aquifer by aquifer basis within which drillers must comply with the additional requirements of this section. The director shall designate "areas of drilling concern" to protect public health and to prevent waste or contamination of ground or surface water because of factors such as aquifer pressure, vertical depth of the aquifer, warm or hot ground water, or contaminated ground or surface waters. It is unlawful for any person not meeting the requirements of this subsection to drill a well for any purpose in a designated "area of drilling concern." Any person drilling a new well or deepening or modifying an existing well for any purpose in an "area of drilling concern" as designated by the director as herein provided shall comply with the following additional requirements:

(a) Additional bonding requirements, as determined by the director, to insure that the well is constructed or abandoned in compliance with the adopted standards for well construction.

(b) Additional experience and knowledge in drilling wells encountering warm water or pressurized aquifers as required by rules adopted by the water resource board.

(c) Document that specialized equipment needed to drill wells in "areas of drilling concern," as determined by the director, is or will be available to the driller.

(d) Provide a notice of intent to drill, deepen or modify a well, submit plans and specifications for the well and a description of the drilling methods that will be used, as required by the director, and receive the written approval of the director before commencing to drill, deepen, or modify any well in a designated "area

of drilling concern."~~.~~

Prior to designating an "area of drilling concern," the director shall conduct a public hearing in or near the area to determine the public interest concerning the designation. Notice of the hearing shall be published in two (2) consecutive weekly issues of a newspaper of general circulation in the area prior to the date set for hearing.

In the event an area has been designated as an "area of drilling concern" and the director of the department of water resources desires to remove such designation or modify the boundaries thereof, he shall likewise conduct a public hearing following similar publication of notice prior to taking such action.

SECTION 3. That Section 42-238b, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Section 42-351, Idaho Code, be, and the same is hereby amended to read as follows:

42-351. ILLEGAL DIVERSION OR USE OF WATER -- ENFORCEMENT PROCEDURE -- INJUNCTIVE RELIEF. ~~---ADMINISTRATIVE-ENFORCEMENT-ACTION.~~ (1) If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid water right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to ~~take-action-against-such-person~~ issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, t~~T~~he director may also file an action seeking injunctive relief ~~or-may commence-an-administrative-enforcement-action-by-issuing-the-person--a written--notice--of-violation~~ directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right. ~~The-notice-of-violation-shall-be served-upon-the-alleged-violator-in-person-or-by-certified--mail.--The notice--of--violation-shall-identify-the-alleged-violation-and-specify whether-that-person-is-diverting-water-or-has-diverted-water-without-a water-right-or-is-applying-water-or-has-applied-water-not--in--conformance--with--a--valid-water-right.-The-notice-of-violation-shall-state the-remedy,-including-any-restoration-and-mitigation-measures,-and-the civil-penalty-the-director-seeks-for-redress-of-the-violation-and-contain-a-statement-of-findings-of-fact-and-conclusions-of-law-that--provide--a--factual-and-legal-basis-for-the-initiation-of-the-administrative-enforcement-action.~~

~~(2)--The-notice-of-violation-shall-inform-the-person-to-whom-it-is directed-of--an--opportunity--to--confer--with--the--director--or--the director's--designee-in-a-compliance-conference-concerning-the-alleged violation.-A-written-response-may-be-required-within-fifteen-(15)-days of-a-receipt-of-the-notice-of-violation-by-the-person-to--whom--it--is directed.-If-a-recipient-of-a-notice-of-violation-contacts-the-department-within-fifteen-(15)-days-of-the-receipt-of-the-notice,-the-recipient--shall--be--entitled--to--a-compliance-conference.-The-conference~~

shall be held within twenty (20) days of the receipt of the notice unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in subsection (4) of this section.

(3) The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying the damage caused by the violation and assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty. The consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain in any appropriate district court, specific performance of the consent order and such other relief as authorized by law. If the parties cannot reach agreement of a consent order within sixty (60) days after the receipt of the notice of violation, or if the recipient does not request a compliance conference, the director may commence and prosecute a civil enforcement action in district court in accordance with subsection (4) of this section.

(4) The director may initiate a civil enforcement action through the attorney general as provided in subsection (6) of this section. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to be diverting water or has diverted water without a water right or applying water or has applied water not in conformance with the conditions of a valid water right. The director shall not be required to bring an administrative enforcement action before initiating a civil enforcement action. If the person who is the subject of the notice of violation fails to cease and desist the activity or activities constituting the alleged violation within the time limits set in the notice of violation, the director may seek, by and through the attorney general, injunctive relief in the district court pending the outcome of the administrative enforcement action. In such action, brought against a person for diverting water without having obtained a valid water right to do so, the director need not allege or prove that irreparable injury to the state or to other water users will occur should the preliminary injunction not be issued, or that the remedy at law is inadequate, and the preliminary injunction, or permanent injunction shall issue without such allegations and without such proof.

(5) Any person determined in a civil enforcement action to have willfully and knowingly or after notice diverted water without a water right or applied water not in conformance with a valid water right shall be liable for a civil penalty as provided in section 42-352, Idaho Code. No action taken pursuant to this section shall relieve any person from any civil action and damages that may exist for injury or damages resulting from diverting water without a water right or applying water not in conformance with the conditions of a valid water

~~right.~~

SECTION 5. That Section 42-352, Idaho Code, be, and the same is hereby repealed.

SECTION 6. That Section 42-701, Idaho Code, be, and the same is hereby amended to read as follows:

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN -- MEASURING AND REPORTING OF DIVERSIONS -- PENALTY FOR FAILURE TO COMPLY -- ENFORCEMENT PROCEDURE -- REPORT FILING FEE. (1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(2) If an appropriator determines that installation and maintenance of a measuring device required by the director would be burdensome for his diversion, the appropriator may, upon approval of the director, execute an agreement with the director and submit to the director such information and technical data concerning the diversion and pumping facilities as the director determines necessary to establish the relationship of power usage to water withdrawal by any pump used to divert public water.

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section~~s 42-311, 42-350 and 42-351~~ 42-1701B, Idaho Code, to enforce the requirement to construct, install or main-

tain such devices.

(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

(5) All appropriators of the public waters of the state of Idaho who are given thirty (30) days' written notice by the director prior to the beginning of the irrigation season but no later than March 15 of any year, shall measure their water diversions and report said diversions annually thereafter on a form approved by the director of the department of water resources. Such report shall include: a legal description of the point of diversion, the number assigned to each water right diverting from the public waters of the state, the maximum authorized rate of diversion, the maximum rate at which diversions have been made during the reporting period, the total volume diverted during the reporting period, and a description of the physical changes to the diversion works that have been made during the reporting period. The appropriator shall furnish each year the depth to water in any well prior to commencement of pumping, the depth to water during the pumping period, and the pressure in the pipe distribution system during diversion if the well is not free flowing. ~~Failure to comply with such measurement and reporting requirements or the willful submittal of false or inaccurate data is a violation of the law controlling use of water under the right and is subject to the enforcement and penalty provisions of sections 42-311, 42-350 and 42-351, Idaho Code~~ When the director of the department of water resources determines that any person is in substantial violation of any provision of this section or any rule, permit, condition of approval or order issued or promulgated pursuant to this section, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. Subsections (5) and (6) of this section shall not apply to:

(a) any appropriator or water user with respect to a water right included in an active water district created pursuant to chapter 6, title 42, Idaho Code, the annual report of which meets the reporting requirements of section 42-708, Idaho Code;

(b) any irrigation district or ground water district having shown to the satisfaction of the director that they are currently making and recording sufficient measurements of their diversions with measuring methods acceptable to the director and upon their agreement to provide an annual report of their diversions to the director in substantially the same form as required in section 42-708, Idaho Code; and

(c) any water right included in an active water measurement district created pursuant to this chapter.

(6) The director of the department of water resources shall collect a report processing fee of twenty-five dollars ($25.00) per diversion required to be reported, including those diversions covered by an agreement in lieu of a measuring device as provided in subsection (2) of this section. Such fee shall be submitted with the annual report of diversions and well data. All such fees received by the department shall be deposited in the water administration account cre-

ated pursuant to section 42-238a, Idaho Code, for use by the department to collect, analyze and report water use information and to regulate water withdrawal and use.

(7) All domestic uses, as defined in section 42-111, Idaho Code, and all stock watering uses, as defined in section 42-1401A, Idaho Code, shall be exempt from the measuring device installation and maintenance, measuring and reporting requirements of this section.

SECTION 7. That Section 42-1605, Idaho Code, be, and the same is hereby amended to read as follows:

42-1605. ENFORCEMENT PROCEDURE -- ~~PENALTIES------JUDICIAL--REVIEW~~ INJUNCTIVE RELIEF -- CRIMINAL PENALTIES. (1) When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. The director may petition the district court for injunctive relief in order to prevent damage pending the outcome of enforcement proceedings before the director. ~~Enforcement-procedure:~~

~~(a)--If-the-director-believes-a-person-has-violated-any--provision of--section--42-1601,-Idaho-Code,-or-any-regulation-promulgated-by the-board-or-any-order-issued-by-the--director--pursuant--thereto, the--director-shall-notify-the-person-in-writing-by-certified-mail or-personal-service-of--the--alleged--violation.--This--notice--of violation-shall-specify-the-following:~~

~~1.--The--statutory-provisions,-regulation-or-order-alleged-to have-been-violated;~~

~~2.--The-facts-or-conduct-forming-the--basis--of--the--alleged violation;~~

~~3.--A--proposed-order-for-any-corrective-action-necessary-for compliance-with-this-section-and-a-reasonable-time-period-for completing-any-such-corrective-action,-a-civil-penalty-to--be imposed-pursuant-to-subsection-(2)-of-this-section;-and~~

~~4.--That--the-person-has-thirty-(30)-days-from-the-receipt-of the-notice-of-violation-or-such-longer-time-period-as-may--be stated--in--the--notice--of-violation-in-which-to-correct-the violation-and-to-file-a-report-of-corrective-action-taken,-or the-person-must-notify-the-director,-in-writing,-within--fifteen--(15)--days-from-receipt-of-the-notice-of-violation-that he-wishes-to-contest-the-alleged-violation,--proposed--order, or-proposed-civil-penalty.~~

~~(b)--If--a--person-notifies-the-director-in-writing-within-fifteen (15)-days-from-receipt-of-the-notice-of-violation-that-he--intends to--contest-the-alleged-violation-and-proposed-order,-the-director shall-afford-the-person-an-opportunity-for-a--hearing--before--the water--resource--board--or-its-appointee-and-such-hearing-shall-be conducted-in-accordance-with-the-rules-of-practice--and--procedure promulgated-by-the-board.~~

~~(2)--Civil-penalties.~~

~~(a)--Any--person--owning--or-controlling-an-artesian-well,-who-has~~

~~been-determined-by-the-director-to-have-violated-any-provisions-of this-chapter,-regulation-promulgated-by-the-water--resource--board pertaining--to-well-construction-standards,-or-order-of-the-director-issued-pursuant-to-this-chapter,-shall-be-liable-for--a--civil penalty--or--penalties,-not-to-exceed-three-hundred-dollars-($300) and-for-a-civil-penalty-or-penalties,-not-to--exceed--one--hundred dollars--($100)--per-day-for-each-day-that-the-violation-continues after-notice-of-the-violation-has-been-given-as-provided--in--subsection-(1)(a)-of-this-section.~~

~~(b)--All--civil-penalties-owed-under-this-section-shall-be-paid-to the-director-within-thirty-(30)-days--from--the--issuance--of--the final--order--imposing--such--penalty.--The-director-may-impose-an additional-civil-penalty-of-twenty-five-dollars-($25.00)-for--each day--that-payment-of-the-civil-penalty-is-late.-The-director-shall deposit-all-civil-penalties-collected-into-the--water--administration--account.--Civil-penalties-may-be-recovered-in-a-civil-action brought-in-the-district-court-in-accordance-with-subsection-(3)(c) of-this-section.~~

~~(3)--Judicial-review.~~

~~(a)--Any-person-aggrieved-by-a-final-order-of-the-director-entered pursuant-to-this-section-may-appeal-to-the-district--court--within twenty-eight--(28)--days-of-the-issuance-of-the-order.-Such-appeal shall-be-heard-and-determined-in-accordance-with-chapter-52,-title 67,-Idaho-Code.~~

~~(b)--The-director-may-petition-the-district-court--for--injunctive relief-or-a-temporary-restraining-order-in-order-to-prevent-irreparable-damage-pending-the-outcome-of-enforcement-proceedings-pending-before-the-director-pursuant-to-this-section.~~

~~(c)--The--director--may--commence--a--civil-action-in-the-district court-to-enforce-the-provisions-of-any-final-order-of-the-director issued-pursuant-to-this-section.-If-no-appeal-is-taken-pursuant-to subsection-(1)(a)-of-this-section,-the-director's-findings-of-fact and-order,-including-an-order-deemed-final-pursuant-to--subsection (1)(b)2.--of--this-section,-shall-be-conclusive-in-connection-with any-action-commenced-by-the-director-to-enforce-such-order.~~

(~~4~~2) Criminal penalties. Any person who willfully or negligently violates any of the provisions of this chapter shall, for each offense, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than three hundred dollars ($300) and not more than one thousand dollars ($1,000). Each day upon which such violation occurs shall constitute a separate violation.

SECTION 8. That Chapter 17, 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 42-1701B, Idaho Code, and to read as follows:

42-1701B. ENFORCEMENT PROCEDURE -- NOTICE -- CONSENT ORDER -- CIVIL ACTION. (1) Authority to commence actions. The director of the department of water resources is authorized and may commence and pursue enforcement actions to remedy the designated violations set out in title 42, Idaho Code.

(2) Notice. When the director commences an administrative

enforcement action the notice of violation shall be served upon the alleged violator in person or by certified mail. The notice of violation shall identify the alleged violation and shall specify each provision of the designated chapter, rule, permit, condition of approval or order which has been violated. The notice of violation shall state the remedy, including all restoration and mitigation measures, and the amount of any civil penalty the director seeks for redress of the violation. Factors the director may consider in seeking the appropriate remedy include the impact of the violation and whether the violation was willful, a repeat violation for which the violator had been given a prior written warning, or the violator has otherwise refused to comply with the department's lawful directives. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the director or the director's designee in a compliance conference concerning the alleged violation.

(3) Response. A written response may be required within fourteen (14) days of the receipt of the notice of violation by the person to whom it is directed. If a recipient of a notice of violation contacts the department within fourteen (14) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty-one (21) days of the receipt of the notice unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in this section.

(4) Compliance conference and consent order. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstance of the alleged violation and, where appropriate, to present a proposal for remedying the damage caused by the violation and assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty. The consent order shall be effective immediately upon signing by both parties and shall preclude a civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain in any appropriate district court, specific performance of the consent order and other relief as authorized by law. If the parties cannot agree to a consent order within fifty-six (56) days after the receipt of the notice of violation, or if the recipient does not request a compliance conference, the director may commence and prosecute a civil enforcement action in the district court in accordance with this section.

(5) Civil enforcement actions.

(a) The director may initiate a civil enforcement action through the attorney general as provided in this section. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have substantially violated any provision of title 42, Idaho Code, or any rule promulgated pursuant to that title. The action may be brought to compel compliance with provisions of title 42, Idaho Code, or rules promulgated pursuant to that title. The director

shall not be required to prosecute an administrative enforcement action before initiating a civil enforcement action.

(b) Nothing in this section shall preclude employees of the department designated by the director from issuing Idaho uniform citations or written administrative orders directing persons to cease and desist as authorized by law.

(c) If the person who is the subject of the notice of violation fails to cease and desist the activity or activities constituting the alleged violation within the time limits set in the notice of violation, the director may seek, by and through the attorney general, injunctive relief in the district court pending the outcome of the administrative enforcement action.

(d) In an action brought against a person for diverting water without having obtained a valid water right to do so, the director need not allege or prove that irreparable injury to the state or to other water users will occur should the preliminary injunction not be issued or that the remedy at law is inadequate, and the preliminary injunction or permanent injunction shall issue without those allegations and without that proof.

(6) Penalties.

(a) Any person determined in a judicial civil enforcement action to have substantially violated any provision of title 42, Idaho Code, or any rule promulgated pursuant to that title, shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) per violation or one hundred fifty dollars ($150) per day for a continuing violation, whichever is greater; except that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed:

(i) For nonirrigation uses, fifty dollars ($50.00) per one-tenth (0.1) cubic feet per second of water or part thereof, per calendar day, up to a maximum penalty of fifty thousand dollars ($50,000) per year for water illegally used or diverted;

(ii) For irrigation uses, three hundred dollars ($300) annually for each acre irrigated, in whole or in part, by the illegal use or diversion.

(b) Civil penalties shall not be assessed for violations that have occurred more than twelve (12) months prior to the issuance of the notice of violation. The court shall determine the amount of the penalty based upon the willfulness of the violation, the economic value obtained by the violator and the damage to public resources and other water right holders. A method of recovery of the penalty shall be a civil enforcement action in and for the county where the violation occurred.

(c) All civil penalties collected under this section shall be paid into the water right enforcement account established pursuant to section 42-1778, Idaho Code.

(d) Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(7) No action taken pursuant to this section shall relieve any person from any civil action and damages that may exist for injury or damage resulting to others from any violation of this chapter, or the rules promulgated pursuant to this chapter.

(8) Upon request of the director, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions pursuant to this chapter.

SECTION 9. That Section 42-1720, Idaho Code, be, and the same is hereby amended to read as follows:

42-1720. VIOLATIONS OF ~~ACT~~ CHAPTER -- PENALTIES. (1) Every person who violates any of the provisions of this ~~act~~ chapter, or of any order of the director or of any rule ~~or--regulation~~ of the water resource board where a copy of the order~~,~~ or rule ~~or--regulation~~ has been served upon said person by certified mail as herein provided, and said person fails to comply therewith within the time herein provided, 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.

(2) Any person who ~~wilfully~~ willfully obstructs, hinders, or prevents the director, the department or its agents or employees from performing the duties imposed by this ~~act~~ chapter or who ~~wilfully~~ willfully resists the exercise of the control and supervision conferred by this ~~act~~ chapter upon the director, the department or its agents or employees is guilty of a misdemeanor.

(3) Any owner or any person acting as a director, officer, agent or employee of an owner, or any contractor or agent or employee of a contractor who engages in the construction, enlargement, repair, alteration, maintenance or removal of any dam, reservoir or mine tailings impoundment structure, who knowingly does work or permits work to be executed on the dam, reservoir or mine tailings impoundment structure without an approval or in violation of or contrary to any approval as provided for in this ~~act~~ chapter, or any inspector, agent or employee of the department who has knowledge of such work being done and who fails to immediately notify the director thereof, is guilty of a misdemeanor.

(4) Whenever any party or parties feel themselves aggrieved by the determination of the director in refusing to approve any plan or specification as mentioned in this ~~act~~ chapter, or by any order of the director, such party or parties may seek a hearing before the director in accordance with section 42-1701A(3), Idaho Code, if a hearing has not already been held, and may seek judicial review in accordance with section 42-1701A(4), Idaho Code, of any final order of the director issued following a hearing.

(5) When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code.

SECTION 10. That Section 42-3809, Idaho Code, be, and the same is hereby amended to read as follows:

42-3809. PENALTY FOR VIOLATION -- ENFORCEMENT PROCEDURE -- INJUNCTIVE RELIEF. (1) Any person who violates any of the provisions of this ~~act~~ chapter, any regulation, rule, order or standard of the board promulgated pursuant to section 42-3803, Idaho Code, or of any order or condition of approval of the director issued pursuant thereto, where a copy of the order has been served upon said person in person or by certified mail and said person fails to comply therewith within the time therein provided, or within ten (10) days of such service if not otherwise provided, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred fifty dollars ($150) nor more than five hundred dollars ($500); provided further, that each day such violation of an order or condition of approval has taken place shall constitute a separate offense punishable by a fine of not less than one hundred fifty dollars ($150) for each day until such activity is abated or voluntarily ceased. Any stream channel alteration engaged in by any person without approval having been obtained therefor as prescribed in this act is hereby declared to be a public nuisance and shall be subject to proceedings for immediate abatement.

(2) When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, permit, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. The director shall have authority and it shall be his duty to seek a temporary injunction from the appropriate district court to restrain a person from altering a stream channel until approval therefor has been obtained by the person as provided in this act.

SECTION 11. That Section 42-3813, Idaho Code, be, and the same is hereby repealed.

SECTION 12. That Section 42-3916, Idaho Code, be, and the same is hereby amended to read as follows:

42-3916. ENFORCEMENT PROCEDURE -- INJUNCTIVE RELIEF. When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, permit, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. The director shall have the further authority to seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate the provisions of this chapter, of the ~~regulations~~ rules adopted thereunder, or of the permits issued by the director and mandating any person to take action appropriate under the circumstances to correct any violation. In any such action the director need not show irreparable injury for the issuance of a preliminary or permanent injunction, or both, or a temporary restraining order.

SECTION 13. That Section 42-4010, Idaho Code, be, and the same is hereby amended to read as follows:

42-4010. POWERS AND DUTIES -- PENALTIES -- ENFORCEMENT PROCEDURE. (a) The water resource board may adopt, amend, or rescind reasonable rules, regulations, and construction standards necessary to the administration of this chapter in accordance with chapter 52, title 67, Idaho Code.

(b) The board may require that owners or operators of wells or injection wells keep or cause to be kept well logs, core records, and drilling histories of such wells or injection wells. It may require that copies of such logs, records, and/or histories be filed with the director within a reasonable time after well completion. It may further require such other geologic, geochemical, or engineering plans, reports, or records as necessary for the administration of this ~~act~~ chapter. Any reports, logs, records, or histories filed with the director shall be available for public inspection subject to disclosure according to chapter 3, title 9, Idaho Code, and shall be kept as confidential by the director for a period of one (1) year from well completion, provided however, that the director may use any such reports, logs, records, or histories in any action in any court to enforce the provisions of this ~~act~~ chapter or any order or regulation adopted hereunder.

(c) The director may enter onto private land at any time to inspect any well or geothermal resource development project to determine if such well or project is being constructed, operated, or maintained according to any applicable permits or to determine if the construction, operation, or maintenance of such well or project may involve a threat to life or property or an unreasonable risk to subsurface, surface, or atmospheric resources.

(d) If the director finds that any person is constructing, operating or maintaining any well or injection well not in accordance with any applicable permit or in a fashion so as to involve an unreasonable risk of, or so as to cause, damage to life or property or subsurface, surface, or atmospheric resources, the director may issue an order to such person to correct or to stop such practices as are found to be improper and to mitigate any injury of any sort caused by such practices.

(e) The director may enforce any provision of this chapter or any order or regulation issued or adopted pursuant hereto by an appropriate action in the district court. The director may bring an action in the district court to have enjoined any threatened noncompliance with any provision of this chapter, regulations, or orders of the director, or any threatened harm to life, property, or surface, subsurface, or atmospheric resources which would be caused by such noncompliance. It shall be the duty of the attorney general to institute and prosecute civil enforcement actions or injunctive actions as provided in this chapter, and to prosecute actions or proceedings for the enforcement of any criminal provisions of this chapter. The attorney general may delegate the authority and duty under this section to prosecute criminal actions to the prosecuting attorney of the county in which such a criminal action may arise.

(f) Any willful violation of or failure to comply with any provi-

sion of this chapter, or regulation adopted or order issued pursuant to the chapter, shall be a misdemeanor punishable by a fine of up to ten thousand dollars ($10,000) for each offense or a sentence of up to six (6) months in a county jail or both; each day of a continuing violation shall be a separate offense under this subdivision. When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, permit, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code. A responsible or principal executive officer of any corporate person may be liable under this subdivision if such corporate person is not in compliance with any provision of this chapter or with any valid order or regulation adopted pursuant hereto.

(g) The director shall undertake such studies, investigations, or research programs as necessary for the proper administration of this chapter and in order to develop experience in and understanding of the entire field of geothermal resource exploration and development in both its technical and regulatory aspects. The director and board shall cooperate with other Idaho state agencies, the state institutions of higher learning, agencies of other states, and agencies of the federal government in the preparation of such investigations, studies, or research projects. The director and board may cooperate with the scientists at the Idaho national engineering laboratory in their research, development, engineering and demonstration of geothermal projects.

(h) The director may enter into cooperative agreements and memoranda of understanding with agencies of other states for the purpose of the administration of geothermal areas which are partially in Idaho and partially in one (1) or more other states.

SECTION 14. That Section 42-5244, Idaho Code, be, and the same is hereby amended to read as follows:

42-5244. PROHIBITION AGAINST PARTICIPATION IN MITIGATION PLAN WHEN SUBJECT TO DELINQUENT ASSESSMENT. A ground water user who is delinquent in the payment of any assessment against his water use under this chapter is prohibited from being a participant in any mitigation plan until such delinquent assessment is paid in full. The district shall provide the director a report of such delinquent assessments at the first of each month for purposes of enforcement. The district shall inform the director immediately upon the payment of any such delinquent assessment. This section shall be enforced by the ~~water--master~~ watermaster within water districts established under chapter 6 of this title, and by the director pursuant to sections 42-351 and 42-~~352~~1701B, Idaho Code, in areas outside of such water district.

Approved March 20, 1998.

CHAPTER 174
(S.B. No. 1495)

AN ACT

RELATING TO THE INFORMATION TECHNOLOGY RESOURCE MANAGEMENT COUNCIL; AMENDING SECTION 67-5745C, IDAHO CODE, TO PROVIDE THAT THE INFORMATION TECHNOLOGY RESOURCE MANAGEMENT COUNCIL SHALL DEVELOP COMPREHENSIVE RISK ASSESSMENT CRITERIA TO BE USED BY STATE AGENCIES AND INCLUDED BY STATE AGENCIES AS PART OF PROJECT INFORMATION TO BE PRESENTED TO THE COUNCIL WHEN SEEKING COUNCIL APPROVAL OF LARGE SCALE PROJECTS.

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

SECTION 1. That Section 67-5745C, Idaho Code, be, and the same is hereby amended to read as follows:

67-5745C. GENERAL POWERS AND DUTIES OF THE COUNCIL. The council shall:

(1) Review and evaluate the information technology and telecommunications systems presently in use by state agencies;

(2) Recommend policies and prepare statewide short-range and long-range information technology and telecommunications systems plans to meet the needs of state agencies;

(3) Within the context of its strategic plans, establish statewide information technology and telecommunications standards, guidelines, ~~and~~ conventions <u>and comprehensive risk assessment criteria</u> that will assure uniformity and compatibility of such systems within state agencies;

(4) Recommend and coordinate the use and application of state agencies' information technology and telecommunications resources;

(5) Review and approve large-scale information technology and telecommunications projects <u>including, but not limited to, risk assessment methodologies used by state agencies using council risk assessment criteria,</u> for state agencies;

(6) Review state agencies' compliance with statewide information technology and telecommunications systems plans;

(7) Recommend cost-efficient procedures for state agencies' acquisition and procurement of information technology and telecommunications systems;

(8) Upon request, provide technical expertise to state government and any other governmental entity;

(9) Maintain a continuous and comprehensive inventory of information technology and telecommunications systems within state agencies;

(10) In accordance with statutes governing the availability or confidentiality of public records and information, establish guidelines for the accessing of public information by the public;

(11) On an annual basis, publish a report of the activities of the council for provision to the governor and the legislature;

(12) Recommend the enactment or promulgation of any statutes or rules necessary to carry out the statewide information technology and telecommunications systems plans;

(13) Enter into contracts for professional services and assistance not otherwise available in state government;

(14) Encourage and promote the development and growth of the information technology industry in the state in accordance with sound business principles and practices;

(15) Encourage and promote cooperative information technology efforts and activities between the state, private enterprise and the public;

(16) Encourage and support education and training opportunities relating to information technology and telecommunications; and

(17) Perform any additional functions consistent with the purpose of this act which are necessary and appropriate for the proper conduct of the council.

Approved March 20, 1998.

CHAPTER 175
(S.B. No. 1499)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-202, IDAHO CODE, TO DEFINE TROPHY BIG GAME ANIMAL AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-1404, IDAHO CODE, TO PROVIDE AMOUNTS TO BE REIMBURSED TO THE STATE BY PERSONS WHO COMMIT A FLAGRANT VIOLATION INVOLVING THE ILLEGAL KILLING, POSSESSING OR WASTING OF A TROPHY BIG GAME ANIMAL; AND AMENDING SECTIONS 36-404, 36-409 AND 36-413, IDAHO CODE, TO PROVIDE CORRECT CITATIONS.

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

SECTION 1. That Section 36-202, Idaho Code, be, and the same is hereby amended to read as follows:

36-202. DEFINITIONS. Whenever the following words appear in title 36, Idaho Code, and orders and rules promulgated by the Idaho fish and game commission or the director of the Idaho department of fish and game, they shall be deemed to have the same meaning and terms of reference as hereinafter set forth. The present tense includes the past and future tenses, and the future, the present.

(a) "Title" shall mean all of the fish and game laws and rules promulgated pursuant thereto.

(b) "Commission" shall mean the Idaho fish and game commission. "Commissioner" shall mean a member of the Idaho fish and game commission.

(c) "Department" shall mean the Idaho department of fish and game.

(d) "Director" shall mean the director of the Idaho department of fish and game or any person authorized to act in his name.

(e) "Employee" shall mean any employee of the Idaho department of fish and game whose salary is paid entirely or in part by funds administered by the Idaho fish and game commission and whose appointment is

made in accordance with the Idaho personnel commission act and related rules.

(f) "Person" shall mean an individual, partnership, corporation, company, or any other type of association, and any agent or officer of any partnership, corporation, company, or other type of association. The masculine gender includes the feminine and the neuter. The singular, the plural, and the plural, the singular.

(g) "Wildlife" shall mean any form of animal life, native or exotic, generally living in a state of nature.

(h) "Trophy big game animal" shall mean any big game animal deemed a trophy as per Boone and Crockett standards. For the purpose of this section, the highest of the typical or nontypical scores shall be used, described as follows:

1. Mule deer: any buck scoring over one hundred fifty (150) points;
2. White-tailed deer: any buck scoring over one hundred thirty (130) points;
3. Elk: any bull scoring over three hundred (300) points;
4. Bighorn sheep: any ram;
5. Moose: any bull;
6. Mountain goat: any male or female;
7. Pronghorn antelope: any buck with at least one (1) horn exceeding fourteen (14) inches;
8. Caribou: any male or female.

(i) "Take" shall mean hunt, pursue, catch, capture, shoot, fish, seine, trap, kill, or possess or any attempt to so do.

(~~i~~j) "Hunting" shall mean chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, shooting at, stalking, or lying in wait for, any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded. Such term does not include stalking, attracting, searching for, or lying in wait for, any wildlife by an unarmed person solely for the purpose of watching wildlife or taking pictures thereof.

(~~j~~k) "Fishing" shall mean any effort made to take, kill, injure, capture, or catch any fish or bullfrog.

(~~k~~l) "Trapping" shall mean taking, killing, and capturing wildlife by the use of any trap, snare, deadfall, or other device commonly used to capture wildlife, and the shooting or killing of wildlife lawfully trapped, and includes all lesser acts such as placing, setting or staking such traps, snares, deadfalls, and other devices, whether or not such acts result in the taking of wildlife, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife with traps, snares, deadfalls, or other devices.

(~~l~~m) "Possession" shall mean both actual and constructive possession, and any control of the object or objects referred to; provided that wildlife taken accidentally and in a manner not contrary to the provisions of this title shall not be deemed to be in possession while being immediately released live back to the wild.

(~~m~~n) "Possession limit" shall mean the maximum limit in number or amount of wildlife which may be lawfully in the possession of any person. "Possession limit" shall apply to wildlife being in possession while in the field or being transported to final place of consumption

or storage.

(no) "Bag limit" shall mean the maximum number of wildlife which may be legally taken, caught, or killed by any one (1) person for any particular period of time, as provided by order of the commission. The term "bag limit" shall be construed to mean an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another.

(op) "Buy" shall mean to purchase, barter, exchange, or trade and includes any offer or attempt to purchase, barter, exchange, or trade.

(pq) "Sell" shall mean to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging or trading.

(qr) "Transport" shall mean to carry or convey or cause to be carried or conveyed from one place to another and includes an offer to transport, or receipt or possession for transportation.

(rs) "Resident" shall mean any person who has been domiciled in this state, with a bona fide intent to make this his place of permanent abode, for a period of not less than six (6) months immediately preceding the date of application for any license, tag, or permit required under the provisions of this title or orders of the commission and who, when temporarily absent from this state, continues residency with intent to return, and who does not claim any resident privileges in any other state or country for any purpose. Such privileges include, but are not limited to: state where valid driver's license is issued; state of voter registration; state where resident state income taxes are filed; state where homeowner's tax exemption is granted. Provided that, until any such person has been continuously domiciled outside the state of Idaho for a sufficient period of time to qualify for resident hunting and fishing privileges in his new state of residence, said person shall be deemed not to have lost his residency in Idaho for the purposes of this title. However, mere ownership of real property or payment of property taxes in Idaho does not establish residency. Provided further that:

1. Idaho residents shall not lose their residency in Idaho if they are absent from the state for religious (not to exceed two (2) years) or full-time educational (not to exceed five (5) years) purposes, full-time to be defined by the educational institution attended, and do not claim residency or use resident privileges in any other state or country for any purpose.

2. Idaho residents who are in the military service of the United States and maintain Idaho as their official state of residence as shown on their current leave and earnings statement, together with their spouse and children under eighteen (18) years of age living in the household, shall be eligible for the purchase of resident licenses.

3. A member of the military service of the United States or of a foreign country, together with his spouse and children under eighteen (18) years of age residing in his household, who have been officially transferred, stationed, domiciled and on active duty in this state for a period of thirty (30) days last preceding application shall be eligible, as long as such assignment continues, to purchase a resident license.

4. Any person enrolled as a corpsman at a job corps center in Idaho shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.

5. Any foreign exchange student enrolled in an Idaho high school shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.

(~~s~~t) "Senior resident" shall mean any person who is over sixty-five (65) years of age and who has been a resident of the state of Idaho as hereinbefore provided for not less than five (5) years.

(~~t~~u) "Nonresident" shall mean any person who does not qualify as a resident.

(~~u~~v) "Order, rule, regulation" are all used interchangeably and each includes the others.

(~~v~~w) "Blindness" shall mean sight that does not exceed 20/200 as provided by the administrative guidelines of section 56-213, Idaho Code.

(~~w~~x) "Public highway" shall mean the traveled portion of, and the shoulders on each side of, any road maintained by any governmental entity for public travel, and shall include all bridges, culverts, overpasses, fills, and other structures within the limits of the right-of-way of any such road.

(~~x~~y) "Motorized vehicle" shall mean any water, land or air vehicle propelled by means of steam, petroleum products, electricity, or any other mechanical power.

(~~y~~z) "Commercial fish hatchery" shall mean any hatchery, pond, lake or stream or any other waters where fish are held, raised, or produced for sale but shall not include facilities used for the propagation of fish commonly considered as ornamental or aquarium varieties.

(~~z~~aa) "License" shall mean any license, tag, permit or stamp.

(~~aa~~bb) "License vendor" shall mean any person authorized to issue or sell licenses.

SECTION 2. That Section 36-1404, Idaho Code, be, and the same is hereby amended to read as follows:

36-1404. UNLAWFUL KILLING, POSSESSION OR WASTE OF WILD ANIMALS, BIRDS AND FISH -- REIMBURSABLE DAMAGES -- SCHEDULE -- ASSESSMENT BY MAGISTRATES -- INSTALLMENT PAYMENTS -- DEFAULT JUDGMENTS -- DISPOSITION OF MONEYS. (a) In addition to the penalties provided for violating any of the provisions of title 36, Idaho Code, any person who pleads guilty, is found guilty of or is convicted of the illegal killing or the illegal possession or illegal waste of game animals or birds or fish shall reimburse the state for each animal so killed or possessed or wasted as follows:

1. Elk, five hundred dollars ($500) per animal killed, possessed or wasted.

2. Caribou, bighorn sheep, mountain goat and moose, one thousand dollars ($1,000) per animal killed, possessed or wasted.

3. Any other species of big game, two hundred dollars ($200) per animal killed, possessed or wasted.

4. Wild turkey and swan, two hundred dollars ($200) per bird killed, possessed or wasted.

5. Sturgeon, two hundred dollars ($200) per fish killed, possessed or wasted.

6. Chinook salmon, wild steelhead and bull trout, one hundred dollars ($100) per fish killed, possessed or wasted.

7. Any other game bird, game fish or furbearer, twenty-five dollars ($25.00) per animal killed, possessed or wasted.

Provided further, that any person who pleads guilty, if found guilty of, or is convicted of a flagrant violation, in accordance with section 36-1402(e), Idaho Code, involving the illegal killing, illegal possession or illegal waste of a trophy big game animal as defined in section 36-202(h), Idaho Code, shall reimburse the state for each animal so killed, possessed or wasted, as follows:

1. Trophy mule deer: two thousand dollars ($2,000) per animal killed, possessed or wasted;

2. Trophy white-tailed deer: two thousand dollars ($2,000) per animal killed, possessed or wasted;

3. Trophy elk: five thousand dollars ($5,000) per animal killed, possessed or wasted;

4. Trophy bighorn sheep: ten thousand dollars ($10,000) per animal killed, possessed or wasted;

5. Trophy moose: ten thousand dollars ($10,000) per animal killed, possessed or wasted;

6. Trophy mountain goat: ten thousand dollars ($10,000) per animal killed, possessed or wasted;

7. Trophy pronghorn antelope: two thousand dollars ($2,000) per animal killed, possessed or wasted;

8. Trophy caribou: ten thousand dollars ($10,000) per animal killed, possessed or wasted.

For each additional animal of the same category killed, possessed or wasted during any twelve (12) month period, the amount to be reimbursed shall double from the amount for each animal previously illegally killed, possessed or wasted. For example, the reimbursable damages for three (3) elk illegally killed during a twelve (12) month period would be three thousand five hundred dollars ($3,500), calculated as follows: five hundred dollars ($500) for the first elk; one thousand dollars ($1,000) for the second elk; and two thousand dollars ($2,000) for the third elk. In the case of three (3) trophy elk illegally killed in a twelve (12) month period, the reimbursable damages would be thirty-five thousand dollars ($35,000) calculated as follows: five thousand dollars ($5,000) for the first elk, ten thousand dollars ($10,000) for the second elk, and twenty thousand dollars ($20,000) for the third elk. Provided however, that wildlife possessing a twenty-five dollar ($25.00) reimbursement value shall be figured at the same rate per each animal in violation, without compounding.

(b) In every case of a plea of guilty, a finding of guilt or a conviction of unlawfully releasing any fish species into any public body of water in the state, the court before whom the plea of guilty, finding of guilt, or conviction is obtained shall enter judgment ordering the defendant to reimburse the state for the cost of the expenses, not to exceed ten thousand dollars ($10,000), incurred by the state to correct the damage caused by the unlawful release. For

purposes of this subsection, "unlawfully releasing any fish species" shall mean a release of any species of live fish, or live eggs thereof, in the state without the permission of the director of the department of fish and game; provided, that no permission is required when fish are being freed from a hook and released at the same time and place where caught or when crayfish are being released from a trap at the same time and place where caught.

(c) In every case of a plea of guilty, a finding of guilt or a conviction, the court before whom such plea of guilty, finding of guilt or conviction is obtained shall enter judgment ordering the defendant to reimburse the state in a sum or sums as hereinbefore set forth including postjudgment interest. If two (2) or more defendants are convicted of the illegal taking, killing or the illegal possession or wasting of the game animal, bird or fish, such judgment shall be declared against them jointly and severally.

(d) The judgment shall fix the manner and time of payment, and may permit the defendant to pay the judgment in installments at such times and in such amounts as, in the opinion of the court, the defendant is able to pay. In no event shall any defendant be allowed more than two (2) years from the date judgment is entered to pay the judgment.

(e) A defaulted judgment or any installment payment thereof may be collected by any means authorized for the enforcement of a judgment under the provisions of the Idaho Code.

(f) All courts ordering such judgments of reimbursement shall order such payments to be made to the department which shall deposit them with the state treasurer, and the treasurer shall place them in the state fish and game account.

(g) The court shall retain jurisdiction over the case. If at any time the defendant is in arrears ninety (90) days or more, the court may revoke the defendant's hunting, fishing or trapping privileges until the defendant completes payment of the judgment.

SECTION 3. That Section 36-404, Idaho Code, be, and the same is hereby amended to read as follows:

36-404. CLASSES OF LICENSES. The licenses required by the provisions of this title shall be of eight (8) classes. Licenses of the first five (5) classes mentioned in this section may be purchased or obtained only by persons who meet residency requirements under the provisions of section 36-202(~~r~~s) and (~~s~~t), Idaho Code, or who are valid holders of a lifetime license certificate.

Class 1: Adult Combination -- Hunting -- Fishing -- Trapping Licenses. Licenses to be issued only to persons who are residents of the state of Idaho.

Class 2: Youth Hunting -- Trapping Licenses. (a) Hunting license. Licenses to be issued only to persons who are residents of the state of Idaho and are between twelve (12) and seventeen (17) years of age, inclusive. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age.

(b) Trapping licenses. Licenses to be issued only to persons who

are residents of the state of Idaho and are seventeen (17) years of age or younger.

Class 3: Youth Combination -- Fishing Licenses. Licenses to be issued only to persons who are residents of the state of Idaho between fourteen (14) and seventeen (17) years of age, inclusive.

Class 4: Senior Resident Combination License. Licenses to be issued only to persons over sixty-five (65) years of age who have been bona fide residents of the state of Idaho for a continuous period of not less than five (5) years last preceding application.

Class 5: Resident Lifetime Combination -- Hunting -- Fishing License. Licenses to be issued only to persons who are valid holders of a lifetime license certificate.

Class 6: Nonresident Hunting -- Fishing -- Trapping -- Licenses. Licenses required of persons who are nonresidents.

Class 7: Duplicate License -- Tag. A license or tag to be issued as a replacement for an original license or tag lost or mutilated. Said license or tag shall be issued in the same class and type as the original and upon issuance of such duplicate license or tag the original license or tag shall become null and void.

Class 8: Resident Hunting and Fishing License with Tags, Permits and Stamps. Licenses to be issued only to persons who meet residency requirements under the provisions of section 36-202(~~r~~s) and (~~s~~t), Idaho Code.

SECTION 4. That Section 36-409, Idaho Code, be, and the same is hereby amended to read as follows:

36-409. GAME TAGS -- ARCHERY PERMITS -- FEES -- PENALTY. (a) Resident Game Tags. A resident who has obtained a permit to hunt, as provided in section 36-401, Idaho Code, or has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein shall be eligible to receive a resident game tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further, that the holder of a senior resident permit may be issued a bear, deer or elk tag without charge; provided further, that resident game tags may be issued only to those persons who meet residency requirements of subsection (~~r~~s) of section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a hunting license, as provided in section 36-407(a), Idaho Code, or has obtained a license to hunt, as provided in section 36-406(e), Idaho Code, upon payment of the fees provided herein, shall be eligible to receive a nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear or turkey in accordance with the laws of this state and rules promulgated by the commission.

(c) Schedule of Game Tag Fees.

Game	Resident	Nonresident
Moose	$60.00	$900.00
Bighorn Sheep	60.00	900.00
Mountain Goat	60.00	900.00
Elk	15.00	325.00

Deer	9.00	225.00
Antelope	26.50	225.00
Mountain Lion	25.00	225.00
Bear	6.00	225.00
Turkey	6.00	35.00
Deer, Elk and Bear "Pak"	29.00	not applicable

(d) Game Tags Required -- To Be Endorsed on License. The appropriate tag must be had for the hunting or taking of each and every one (1) of the aforementioned wildlife. Provided, however, that the requirements for a mountain lion tag or a bear tag, as to different periods of time and areas of the state, shall be determined and specified by the commission. All of said tags are to bear and have serial numbers to be endorsed on the purchaser's license by the vendor at the time of sale.

(e) Game Tag to Be Validated and Attached to Carcass. As soon as any person kills any wildlife for which a tag is required, said tag, belonging to him, must be validated and attached to said wildlife in a manner provided by commission regulation.

(f) Archery Permits. In addition to meeting the license and tag requirements provided in this chapter, any persons participating in any controlled or general game season which has been specifically designated as an archery hunt must have in his possession an archery hunt permit which may be purchased at a fee of seven dollars and fifty cents ($7.50).

(g) Muzzleloader Permit. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as a muzzleloader hunt must have in his possession a muzzleloader permit which may be purchased at a fee of seven dollars and fifty cents ($7.50).

(h) Upland Game Bird Stamp. The commission may, under rules as it may prescribe, issue an upland game bird stamp that must be purchased by all persons over sixteen (16) years of age prior to hunting upland game birds, provided that a stamp shall not be required to hunt forest grouse (blue, ruffed or spruce), sharp-tailed grouse, sage grouse, or turkey. The fee for such a stamp shall be five dollars ($5.00) and the proceeds from the sale of such stamps shall be utilized for the acquisition of state and federal lands or interests of less than fee simple in private lands and the development, management, improvement, sale or exchange of upland game bird habitat in accordance with Idaho fish and game commission order number 95-07. This subsection shall be null and void and of no force and effect on and after July 1, 2000.

(i) Hound Hunter Permit. Any person using a dog for the purpose of hunting or for taking, as defined in section 36-202, Idaho Code, big game or furbearing animals must have in his possession a valid hound hunter permit which may be purchased for a fee of ten dollars ($10.00).

(j) Nonresident Bird of Prey Capture Permit. The commission may, under rules as it may prescribe, issue a nonresident bird of prey capture permit. This capture permit may be purchased by any licensed, nonresident falconer for capturing birds of prey in Idaho. The fee for the permit shall be one hundred dollars ($100) and the permit shall be issued under the condition that the nonresident's home state allows

reciprocal raptor capturing privileges for Idaho falconers. Any funds in excess of those required to issue and administer nonresident capture permits shall be used to issue and administer any resident falconry program established by the commission.

(k) Wildlife Management Area (WMA) Pheasant Permit. The commission may, under rules as it may prescribe, issue a wildlife management area pheasant permit that must be purchased by all persons over sixteen (16) years of age prior to hunting pheasants on state wildlife management areas designated by the commission. The fee for the permit shall be ten dollars ($10.00).

SECTION 5. That Section 36-413, Idaho Code, be, and the same is hereby amended to read as follows:

36-413. LIFETIME LICENSE CERTIFICATE -- FEE. (a) The fish and game commission shall issue rules and regulations to administer a lifetime license certificate system.

(b) A lifetime license certificate may be sold to any person who qualifies as a resident or is granted resident license privileges as provided in subsection (r~~s~~) of section 36-202, Idaho Code.

(c) A lifetime certificate may be obtained by a person one (1) day of age through one (1) year of age possessing the qualifications therein described upon payment of twenty-five (25) times the fee prescribed for a combined hunting and fishing license in section 36-406(a), Idaho Code, for a combined hunting and fishing license certificate; twenty-five (25) times the fee prescribed for a hunting license in section 36-406(a), Idaho Code, for a hunting license certificate; or twenty-five (25) times the fee prescribed for a fishing license in section 36-406(a), Idaho Code, for a fishing license certificate.

(d) A lifetime certificate may be obtained by a person two (2) years of age through fifty (50) years of age possessing the qualifications therein described upon payment of thirty-five (35) times the fee prescribed for a combined hunting and fishing license in section 36-406(a), Idaho Code, for a combined hunting and fishing license certificate; thirty-five (35) times the fee prescribed for a hunting license in section 36-406(a), Idaho Code, for a hunting license certificate; or thirty-five (35) times the fee prescribed for a fishing license in section 36-406(a), Idaho Code, for a fishing license certificate.

(e) A lifetime certificate may be obtained by a person fifty-one (51) years of age or older possessing the qualifications therein described upon payment of twenty (20) times the fee prescribed for a combined hunting and fishing license in section 36-406(a), Idaho Code, for a combined hunting and fishing license certificate; twenty (20) times the fee prescribed for a hunting license in section 36-406(a), Idaho Code, for a hunting license certificate; or twenty (20) times the fee prescribed for a fishing license in section 36-406(a), Idaho Code, for a fishing license certificate.

(f) Holders of lifetime license certificates shall be subject to the provisions of title 36, Idaho Code.

(g) The director shall promptly transmit to the state treasurer all moneys received by him from the sale of lifetime license certifi-

cates and the state treasurer shall deposit all such moneys in the fish and game trust account. All such moneys shall be expended at the direction of the commission to carry out the purposes of the Idaho fish and game code or any law or regulation promulgated for the protection of wildlife, and shall be used for no other purpose.

Approved March 20, 1998.

CHAPTER 176
(S.B. No. 1518)

AN ACT

RELATING TO THE IDAHO CODE OF MILITARY JUSTICE; AMENDING SECTION 46-1103, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO ADD DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1104, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE THE PERSONS SUBJECT TO THE CODE; AMENDING SECTION 46-1105, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE A CODE REFERENCE, TO PROVIDE FOR VENUE FOR A COURT-MARTIAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1106, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE FOR JURISDICTION TO TRY A PERSON FOR FRAUDULENTLY OBTAINED DISCHARGE AFTER SERVICE OF CHARGES AND TO DELETE OBSOLETE LANGUAGE; AMENDING SECTION 46-1107, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR CONCURRENT JURISDICTION OF CIVIL COURTS; AMENDING SECTION 46-1108, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE FOR NONJUDICIAL PUNISHMENTS, TO PROVIDE FOR NOTICE AND OPPORTUNITY TO MAKE A PRESENTATION, TO PROVIDE THAT NONJUDICIAL PUNISHMENT IS NOT A BAR TO COURT-MARTIAL BUT MAY BE CONSIDERED IN SENTENCING, TO PROVIDE FOR DESTRUCTION OF RECORDS OF NONJUDICIAL PUNISHMENT, TO CLARIFY A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1109, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE THE PROBABLE CAUSE FOR A WARRANT OF ARREST AND TO PROVIDE FOR ARREST AND CONFINEMENT OF THE ACCUSED PENDING COURT-MARTIAL; AMENDING SECTION 46-1110, IDAHO CODE, TO REDESIGNATE THE SECTION AND PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 46-1111, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE THE PUNISHMENTS WHICH A GENERAL COURT-MARTIAL MAY ADJUDGE; AMENDING SECTION 46-1112, IDAHO CODE, TO REDESIGNATE THE SECTION, TO SPECIFY THE JURISDICTION OF SPECIAL COURTS-MARTIAL AND TO PROVIDE THE PUNISHMENTS WHICH A SPECIAL COURT-MARTIAL MAY ADJUDGE; AMENDING SECTION 46-1113, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO SPECIFY COMMANDING OFFICERS WHO MAY CONVENE SPECIAL COURTS-MARTIAL; AMENDING SECTION 46-1114, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO SPECIFY WHO MAY BE DETAILED AS MEMBERS OF A COURT-MARTIAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1115, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE WHO MAY BE MILITARY JUDGES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1116, IDAHO CODE,

TO REDESIGNATE THE SECTION, TO DELETE OBSOLETE LANGUAGE, TO PROVIDE CORRECT REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1117, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 46-1118, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 46-1119 AND 46-1120, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1121, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1122, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 46-1123, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1124, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE THAT CHARGES MUST BE SERVED ON THE ACCUSED THIRTY DAYS PRIOR TO TRIAL; AMENDING SECTION 46-1125, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 46-1126, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1127, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE THAT THE ACCUSED MAY BE REPRESENTED BY CIVILIAN COUNSEL AT HIS OWN EXPENSE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1128, IDAHO CODE, TO REDESIGNATE THE SECTION, TO DELETE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1129, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1130, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR PEREMPTORY CHALLENGES; AMENDING SECTION 46-1131, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1132, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE THE TIME LIMITATIONS WITHIN WHICH A PERSON MAY BE TRIED AND PUNISHED FOR SPECIFIED OFFENSES, TO PROVIDE WHEN THE STATUTE OF LIMITATIONS IS TOLLED AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1133, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1134, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE PROPER NOMENCLATURE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1135, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE THE PROCEDURES FOR PRETRIAL DISCOVERY, TO PROVIDE CORRECT CODE REFERENCES, TO PERMIT DISCOVERY OF CERTAIN STATEMENTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1136, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1137, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE THE PUNISHMENT FOR THE FAILURE OF PERSONS NOT SUBJECT TO THE CODE TO APPEAR OR PRODUCE EVIDENCE PURSUANT TO A SUBPOENA AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1138, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE THE PUNISHMENT FOR CONTEMPT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1139, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE THE PROCEDURES FOR TAKING DEPOSITIONS, TO AUTHORIZE THE TAKING OF A DEPOSITION BEFORE AN OFFICER AUTHORIZED BY FEDERAL LAW TO ADMINISTER OATHS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1141, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS;

AMENDING SECTION 46-1142, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE THE VOTES REQUIRED TO CONVICT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1143, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 46-1144, IDAHO CODE, TO REDESIGNATE THE SECTION, TO REQUIRE A SUMMARIZED OR VERBATIM TRANSCRIPT OF THE RECORD OF TRIAL, TO PROVIDE WHEN THE RECORD IS DEEMED SETTLED AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1145, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO REQUIRE A VERBATIM RECORD FOR A DISHONORABLE DISCHARGE, BAD CONDUCT DISCHARGE OR DISMISSAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1148, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE THE PROCEDURE IF THE SENTENCE INCLUDES CONFINEMENT; AMENDING SECTION 46-1154, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE FOR APPEAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 46-1155 AND 46-1158, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 46-1159, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1160, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1162, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE THE EFFECT IF A PERSON IS FOUND GUILTY OF A VIOLATION OF CIVIL LAW; AMENDING SECTIONS 46-1163, 46-1164 AND 46-1165, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 46-1166, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 46-1167 AND 46-1168, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 46-1169, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE WHAT CONSTITUTES DISRESPECTFUL BEHAVIOR AND TO INCLUDE WARRANT OFFICER; AMENDING SECTION 46-1170, IDAHO CODE, TO REDESIGNATE THE SECTION, TO MAKE A TECHNICAL CORRECTION AND TO INCLUDE WARRANT OFFICER WITHIN THE APPLICATION OF THE SECTION; AMENDING SECTIONS 46-1171 AND 46-1172, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 46-1173, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1174, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROHIBIT OPERATION OF A MILITARY VEHICLE WITH A BLOOD ALCOHOL CONCENTRATION OF .08; AMENDING SECTION 46-1175, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 46-1176, IDAHO CODE, TO REDESIGNATE THE SECTION, TO MAKE TECHNICAL CORRECTIONS AND TO PROVIDE THE APPLICATION OF THE SECTION; AMENDING SECTIONS 46-1177 AND 46-1178, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1179, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 46-1180, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1181, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1182, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 46-1184, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1172, IDAHO CODE, TO PROVIDE FOR THE OFFENSE OF CONSPIRACY; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1173, IDAHO CODE, TO PROVIDE FOR THE OFFENSE OF SOLICITATION;

AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1174, IDAHO CODE, TO PROVIDE FOR THE OFFENSES OF RESISTANCE, BREACH OF ARREST AND ESCAPE; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1175, IDAHO CODE, TO PROVIDE FOR THE OFFENSE OF RELEASING A PRISONER WITHOUT PROPER AUTHORITY; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1176, IDAHO CODE, TO PROVIDE FOR THE OFFENSE OF UNLAWFUL DETENTION; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1177, IDAHO CODE, TO PROVIDE FOR THE OFFENSES OF WRONGFUL USE, POSSESSION, MANUFACTURE OR DISTRIBUTION OF CONTROLLED SUBSTANCES AND TO SPECIFY CONTROLLED SUBSTANCES; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1178, IDAHO CODE, TO PROVIDE FOR THE OFFENSES OF FRAUDS AGAINST THE GOVERNMENT; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1179, IDAHO CODE, TO PROVIDE FOR THE OFFENSE OF AIDING THE ENEMY; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1180, IDAHO CODE, TO PROVIDE FOR THE OFFENSE OF CONDUCT UNBECOMING AN OFFICER; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1181, IDAHO CODE, TO PROVIDE ADDITIONAL OFFENSES FOR WHICH A PERSON MAY BE SUBJECT TO COURT-MARTIAL; AMENDING SECTION 46-1187, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE PROPER TERMINOLOGY; AMENDING SECTION 46-1191, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 46-1192, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR PAYMENT OF EXPENSES TO ADMINISTER THE PROVISIONS OF THE CHAPTER; AMENDING SECTION 46-1193, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1186, IDAHO CODE, TO PROVIDE THAT PERSONS ACTING UNDER THE PROVISIONS OF THE CHAPTER SHALL BE IMMUNE FROM PERSONAL LIABILITY; REPEALING SECTION 46-1194, IDAHO CODE; AND AMENDING CHAPTER 11, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1187, IDAHO CODE, TO PROVIDE SEVERABILITY.

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

SECTION 1. That Section 46-1103, Idaho Code, be, and the same is hereby amended to read as follows:

46-110~~3~~2. DEFINITIONS. The definitions used in the command, administration, supply, training, discipline and employment of the armed forces of the United States, unless clearly inapplicable or contradictory, are adopted with respect to the Idaho ~~national guard~~ military except as otherwise provided in this act. As used in this act:

(~~a~~1) "Idaho military" and "~~M~~military" refers to all components of the Idaho national guard and the militia of the state of Idaho, as defined in section 46-103, Idaho Code.

(~~b~~2) "Idaho national guard" means both the Idaho army national guard and the Idaho air national guard.

(~~c~~3) "In federal service" and "not in federal service" mean the same as those terms are used and construed in federal laws and regulations.

(~~d~~4) "Officer" means both a commissioned officer and a warrant officer of the Idaho military, unless a distinction between commissioned officer and warrant officer is clearly evident.

(~~e~~5) "Superior officer" means an officer superior in rank or command.

(~~f~~6) "Enlisted person" means any person who is serving in an enlisted grade in any ~~force~~ unit of the Idaho ~~national guard~~ military.

(~~g~~7) "Military court" means a court-martial.

(~~h~~8) "Commanding officer" means a commissioned officer or warrant officer who is in command of any unit of the Idaho military other than a platoon.

(~~i~~9) "Command" means any unit of the Idaho military other than a platoon.

(~~j~~10) "Legal officer" means any legally trained commissioned officer of the Idaho national guard who is certified by the ~~state~~ judge advocate general of his respective service to perform legal duties ~~under this code~~ in the military.

(~~k~~11) "Duty status" includes periods when a military member is on duty or is lawfully ordered to duty.

(~~l~~12) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused.

(~~m~~13) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer ~~commanding for the time being,~~ acting in the capacity of the convening authority, even if in a temporary status, or a successor in command.

(~~n~~14) "May" is used in a permissive sense. The words "no person may ...." mean that no person is required, authorized, or permitted to do the act prescribed.

(~~o~~15) "Shall" is used in a mandatory sense.

(~~p~~16) "Code" means this chapter.

(~~q~~17) "Arrest" is the taking of a person into custody.

(18) "Military judge" means that individual, either military or civilian, appointed pursuant to section 46-1114(2), Idaho Code, to preside over courts-martial or to perform other judicial duties under this chapter.

(19) "Manual for courts-martial" means that document prescribed by Presidential Executive Order 12473, August 1, 1984; as currently amended (1995 Edition).

(20) "Uniform code of military justice" means 10 U.S.C. section 801, et seq., as amended.

(21) "Enemy" includes organized armed forces of a party hostile to the state or the United States in time of war, any hostile body that the forces of the state or the United States may be opposing, such as a rebellious mob or a band of renegades, and includes civilians as well as members of military organizations.

SECTION 2. That Section 46-1104, Idaho Code, be, and the same is hereby amended to read as follows:

46-110~~4~~3. PERSONS SUBJECT TO THE CODE. The Idaho ~~C~~code of ~~M~~military ~~J~~justice applies to all members of the Idaho ~~national guard~~

military not in federal service when they are in or lawfully ordered to be in a duty status and to all members of the military forces of any other state when in or ordered to be in a duty status while they are assigned or attached to any command within the Idaho military, unless jurisdiction has been exclusively reserved by the other state's general court-martial convening authority, and at any time any of the aforesaid members engage in activities which tend to bring discredit upon the Idaho national guard or disrupt the good order and discipline thereof.

SECTION 3. That Section 46-1105, Idaho Code, be, and the same is hereby amended to read as follows:

46-110~~5~~4. APPLICATION OF CODE -- ALL PLACES WITHIN STATE -- PERSONS SERVING OUTSIDE THE STATE -- WHEN JURISDICTION ATTACHES -- VENUE. (~~a~~1) This code shall be applicable in all places within the state. It shall also apply to all persons subject to this code while serving outside the state and while going to and returning from such service outside the state in like manner and to the same extent as when such persons are serving within the state.

(~~b~~2) Courts-martial may be convened and held in units of the Idaho ~~national guard~~ military while serving outside the state with the same jurisdiction and powers as if held within the state, and offenses committed outside the state may be tried and punished either within the state or outside the state.

(~~c~~3) Court-martial jurisdiction ~~over an accused for any offense~~ attaches only upon the preferral of charges pursuant to the provisions of section 46-111~~9~~8, Idaho Code, for an offense punishable under this code which occurred during a period when ~~an accused~~ a person subject to the code was ordered to or did actually perform duty with the Idaho ~~national guard~~ military under state or federal law. Once jurisdiction is properly attached, the convening and holding of a court-martial may be accomplished at any subsequent ~~period of authorized duty~~ time, subject to the limitations of section 46-1131, Idaho Code.

(4) Venue for a court-martial shall be determined by the convening authority, considering factors including, but not limited to, location of the offense, residence of the accused, unit of assignment and availability of witnesses. An accused is not relieved from amenability to this code for an offense to which jurisdiction has properly attached by virtue of his separation or transfer from the Idaho military after the date of the alleged offense, and such an accused shall, from the time of apprehension or the service of charges required by section 46-1123, Idaho Code, whichever occurs first, be subject to this code and trial by court-martial on that charge and for any other offenses committed while awaiting trial or completing any sentence imposed for that offense.

SECTION 4. That Section 46-1106, Idaho Code, be, and the same is hereby amended to read as follows:

46-110~~6~~5. JURISDICTION TO TRY PERSONS WHO FRAUDULENTLY OBTAINED DISCHARGE. Each person discharged from the Idaho ~~national guard~~ military who is later charged with having fraudulently obtained his dis-

charge is, subject to the applicable statute of limitations, subject to trial by court-martial on that charge and is, after apprehension or the service of charges required by section 46-1123, Idaho Code, whichever occurs first, subject to this code ~~while in the custody of the military~~ for that trial. ~~Upon conviction of that charge he is subject to trial by court-martial for all offenses under this code committed before the fraudulent discharge.~~

SECTION 5. That Section 46-1107, Idaho Code, be, and the same is hereby amended to read as follows:

46-110~~7~~6. CONCURRENT JURISDICTION OF CIVIL COURTS, MILITARY COMMISSIONS, BOARDS, OR OTHER MILITARY TRIBUNALS. The provisions of this act conferring jurisdiction upon courts-martial shall ~~not~~ neither bar nor be construed as depriving civil courts, military commissions, boards, ~~or~~ other military tribunals or other administrative actions, civil or military, of concurrent jurisdiction.

SECTION 6. That Section 46-1108, Idaho Code, be, and the same is hereby amended to read as follows:

46-110~~8~~7. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT. (~~a~~1) Any commanding officer, not necessarily the accused's immediate commanding officer, may, in addition to or in lieu of admonition or reprimand, impose one (1) or more of the following disciplinary punishments for minor offenses punishable under this code, without the intervention of a court-martial.

(~~1~~a) ~~u~~Upon officers of his command:

(~~A~~i) ~~r~~Restriction to certain specified limits, with or without suspension from duty, for not more than seven (7) consecutive duty days during any period or periods of duty;

(~~B~~ii) ~~i~~If imposed by a general officer:

~~(i)~~1. ~~r~~Restriction to quarters for not more than seven (7) consecutive duty days during any period or periods of duty;

~~(ii)~~2. ~~r~~Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) duty days during any period or periods of duty;

3. Fine, not to exceed two hundred dollars ($200).

(~~2~~b) ~~u~~Upon other personnel of his command:

(~~A~~i) ~~r~~Reduction to the next inferior grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(~~B~~ii) ~~e~~Extra duties, including fatigue or other duties for not more than ~~fourteen (14)~~ seven (7) consecutive duty days during any period or periods of duty;

(~~C~~iii) ~~r~~Restriction to certain specified limits, with or without suspension from duty for not more than ~~fourteen (14)~~ seven (7) consecutive duty days during any period or periods of duty;

(~~D~~iv) Fine, not to exceed seventy-five dollars ($75.00);

(v) ~~i~~If imposed by a commander of the ~~grade~~ rank of major or above:

~~(i)~~1. ~~r~~Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction, but an enlisted member above the grade of E-4 may not be reduced more than two (2) grades;

~~(ii)~~2. ~~e~~Extra duties, including fatigue or other duties, for not more than ~~seven (7)~~ fourteen (14) consecutive duty days during any period or periods of duty;

~~(iii)~~3. ~~r~~Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) consecutive duty days during any period or periods of duty;

4. Fine, not to exceed one hundred dollars ($100).

No two (2) or more of the punishments of extra duties and restrictions may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment so that the total period for both punishments will not exceed the maximum imposable for either punishment.

(~~b~~2) The member shall be given written notification of a commander's intention to impose punishment under this section and an opportunity to make a personal presentation to the commander proposing to impose the punishment ~~imposed~~ prior to imposition of punishment and of his right to appeal within ~~forty-eight (48) hours~~ two (2) duty days to the next higher authority.

(~~c~~3) The officer who imposes the punishment authorized in subsection (~~a~~1) of this section, or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade imposed under subsection (~~a~~1) of this section, whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights and privileges affected. When mitigating extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment ~~mitigated~~ originally imposed.

(~~d~~4) A person punished under this ~~law~~ section who considers his punishment unjust or disproportionate to the offense may appeal to the next higher authority by delivering written notice of the appeal within ~~forty-eight (48) hours~~ two (2) duty days after receipt of written notification of the punishment. The appeal shall be promptly decided, but the person punished shall not in the meantime be required to undergo the punishment adjudged. The higher authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (~~c~~3) of this section by the officer who imposed the punishment.

(~~e~~5) The imposition and enforcement of disciplinary punishment under this section for any act or omission shall not be a bar to trial by court-martial for a serious offense growing out of the same act or omission, and not properly punishable under this section, but shall be considered in imposing any sentence for a court-martial conviction

arising out of the same act or omission.

(~~f~~6) All records of nonjudicial punishment under this section shall be destroyed upon the termination of the person's current period of enlistment or after two (2) years of honorable service in the military without further disciplinary action under this section or a conviction by court-martial, whichever occurs first.

(~~g~~7) The term "minor offenses," as used in this ~~code;--includes only--those~~ section, means any acts or omissions constituting offenses under the punitive sections of this code, unless deemed to be a serious offense by the convening authority.

SECTION 7. That Section 46-1109, Idaho Code, be, and the same is hereby amended to read as follows:

46-11098. ARREST. Arrest of members of the Idaho ~~national--guard~~ military not in federal service by members of the Idaho ~~national-guard~~ military while acting in their military capacity ~~as-national-guardsmen~~ is prohibited, except in the following circumstances:

(1) If any member of the Idaho ~~national-guard~~ military fails or refuses to report to his appointed place of duty upon adequate notice of an emergency declared by the governor, the commanding officer of the member's unit is authorized to arrest such member or cause him to be arrested and have him brought before the commanding officer at his unit headquarters. If military personnel are not available for the purpose of making the arrest, or if the commanding officer deems it advisable, he may issue a warrant, based upon a finding that probable cause exists that the member has failed or refused to report as ordered after receiving adequate notice of such order during a declared emergency, to any sheriff or peace officer authorized to serve such warrant in the same manner as other warrants of arrest and make return thereof to the commanding officer issuing the warrant.

(2) If any member of the Idaho military has had charges preferred against him under this code, and the convening authority to whom the charges have been forwarded has found that probable cause exists that the offense was committed by the accused and that the incarceration of the accused pending court-martial is required because of special circumstances found to exist which warrant such incarceration, then the convening authority is authorized to arrest such member or cause him to be arrested and have him confined pending trial. If military personnel are not available for the purpose of making the arrest, or if the convening authority deems it advisable, he may issue a warrant to any sheriff or peace officer authorized to serve such warrant in the same manner as other warrants of arrest, and said sheriff or peace officer shall effect the arrest and hold the accused in the county jail of the county in which the arrest is effected. The arresting officer shall return said warrant to the convening authority and notify him of the arrest and the location of the arrestee so that the convening authority may further process the charges against the accused. Upon receipt of the notification of arrest, the commanding officer shall direct that the arrestee be retrieved and brought before him within twenty-four (24) hours.

(3) If any member of the Idaho ~~national-guard~~ military is accused of an offense against a civil authority, any other member of the Idaho

~~national--guard~~ military may, on request by a civil authority, arrest such accused member, but in such case, immediate steps must be taken to deliver such member forthwith to the appropriate civil authorities.

SECTION 8. That Section 46-1110, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~1~~09. TYPES OF COURTS-MARTIAL. In the Idaho ~~national--guard~~ military not in federal service, there shall be two (2) types of courts-martial:

(1) ~~g~~General courts-martial, consisting of:

(a) ~~a~~A military judge and not fewer than five (5) members; or

(b) ~~o~~Only a military judge if, before the court is assembled, the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge;

(2) ~~s~~Special courts-martial consisting of:

(a) ~~a~~A military judge and not fewer than three (3) members; or

(b) ~~o~~Only a military judge if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge.

SECTION 9. That Section 46-1111, Idaho Code, be, and the same is hereby amended to read as follows:

46-111~~1~~0. JURISDICTION OF GENERAL COURTS-MARTIAL. Each command of the Idaho ~~national-guard~~ military has court-martial jurisdiction over all persons subject to this code.

General courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may adjudge any of the following punishments:

(1) ~~r~~Reprimand;

(2) ~~f~~Fine of not more than two hundred dollars ($200);

(3) ~~f~~Forfeiture of all pay and allowances; ~~not-to-exceed-two-hundred-dollars-($200)-in-lieu-of-fine;~~

(4) ~~d~~Dismissal, bad conduct discharge, or dishonorable discharge~~, or-discharge-under-other-than-honorable-conditions~~;

(5) ~~r~~Reduction in rank of an enlisted ~~man~~ member to the lowest enlisted grade; or

(6) Confinement in lieu of fine of not more that one hundred (100) days; or

(7) ~~a~~any combination of the above.

SECTION 10. That Section 46-1112, Idaho Code, be, and the same is hereby amended to read as follows:

46-111~~2~~1. JURISDICTION OF SPECIAL COURTS-MARTIAL. ~~(a)-Subject-to section-46-1111,-Idaho-Code,-s~~Special courts-martial have jurisdiction to try persons subject to this code, other than commissioned or warrant officers, for any offense for which they may be punished under this code and may adjudge any of the following punishments:

(1) ~~r~~Reprimand;

(2) ~~f~~Fine of not more than one hundred dollars ($100);

(3) ~~f~~Forfeiture of all pay and allowances; ~~not to exceed one hundred dollars ($100) in lieu of a fine;~~

(4) ~~r~~Reduction in rank of an enlisted man by not more than two (2) grades;

(5) ~~dismissal;--dishonorable--discharge;-or-discharge-under-other than-honorable-conditions;-or~~ Bad conduct discharge;

(6) Confinement in lieu of fine of not more than one hundred (100) days; or

(7) ~~A~~any combination of the above.

~~(b)--A-special-court-martial-may-not-try-a-commissioned-or-warrant officer.~~

SECTION 11. That Section 46-1113, Idaho Code, be, and the same is hereby amended to read as follows:

46-111~~3~~2. CONVENING OF GENERAL AND SPECIAL COURTS-MARTIAL. (1) In the Idaho ~~national-guard~~ military not in ~~the~~ federal service, general courts-martial may be convened by ~~the-president-of-the--United--States or~~ the governor. The governor may, after ~~covening~~ convening a general court-martial, delegate to the adjutant general authority to take any or all further actions which the convening authority can take under this code.

(2) In the Idaho ~~national-guard~~ military not in ~~the~~ federal service, special courts-martial may be convened by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where Idaho military troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron~~,-wing,~~ or equivalent detached command, or any superior authority.

SECTION 12. That Section 46-1114, Idaho Code, be, and the same is hereby amended to read as follows:

46-111~~4~~3. COMPOSITION OF COURTS-MARTIAL. (~~a~~1) Any commissioned officer in the Idaho ~~national-guard~~ military is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(~~b~~2) Any warrant officer in the Idaho ~~national-guard~~ military is eligible to serve on courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(~~c~~3) (~~1~~a) Any enlisted member who is not a member of the same unit as the accused is eligible to serve on courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a court-martial the membership of which does not include enlisted members in a number comprising at least one-third (1/3) of the total membership of the court.

(~~2~~b) In this section, the word "unit" means any regularly organized body not larger than a company or equivalent size organiza-

tion.

(~~d~~4) (~~1~~a) When it can be avoided, no person may be tried by a court-martial any member of which is junior to him in rank or grade.

(~~2~~b) When convening a court-martial, the convening authority shall detail as members thereof such members of the Idaho ~~national guard~~ military who are of the same service and component as the accused, e.g., Idaho army national guard, as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No person is eligible to serve as a member of a court-martial when he is the accuser or a witness ~~for the prosecution~~ or has acted as investigating officer or as counsel in the same case.

SECTION 13. That Section 46-1115, Idaho Code, be, and the same is hereby amended to read as follows:

46-111~~5~~4. MILITARY JUDGES. (~~a~~1) The authority convening a general or special court-martial shall detail a military judge to preside over each open session of the court-martial. The military judge shall:

(~~1~~a) ~~r~~Rule finally on all matters of law;

(~~2~~b) ~~r~~Rule finally on all motions; and

(~~3~~c) ~~e~~Except as otherwise provided, decide all other questions raised at the trial of the accused.

(~~b~~2) A military judge shall be:

(a) ~~A~~a commissioned officer who is a member of the bar of this state or a member of the bar of a federal court, and who is ~~selected--for--such--duty--by-the-state-judge-advocate~~ or has been certified or recognized as a military judge by any branch of the armed forces and appointed to those duties by the adjutant general, to be compensated at the equivalent rate for his military grade from the general fund; or

(b) Any magistrate or district court judge of the state of Idaho, currently sitting or retired, who is a member of the bar of this state and who has been appointed to act as a military judge in Idaho by the Idaho supreme court upon the written request of the adjutant general, to be compensated in an amount determined by the Idaho supreme court from the general fund.

(~~c~~3) No person is eligible to act as a military judge in a case if he is the accuser, a witness, ~~for the prosecution,~~ a counsel, or has acted as investigating officer in the same case.

SECTION 14. That Section 46-1116, Idaho Code, be, and the same is hereby amended to read as follows:

46-1116~~5~~. DETAIL OF TRIAL COUNSEL AND DEFENSE COUNSEL. (~~a~~1) For each general and special court-martial the convening authority shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel or assistant trial counsel in the same case. No person who has acted for the prosecution may later act in the same case for the defense or vice versa.

(~~b~~2) Trial counsel and defense counsel detailed for a court-martial must be:

(~~1~~a) Members of the bar of this state~~;or members of the bar of a federal court~~; and

(~~2~~b) Certified as competent to perform such duties by the ~~state~~ convening authority's staff judge advocate or legal counsel.

SECTION 15. That Section 46-1117, Idaho Code, be, and the same is hereby amended to read as follows:

46-111~~7~~6. DETAIL OR EMPLOYMENT OF REPORTERS AND INTERPRETERS. The convening authority of a court-martial shall detail or employ a reporter who shall record the proceedings of the court. The convening authority of a military court may, if he deems it necessary, detail or employ interpreters who shall interpret for the court.

SECTION 16. That Section 46-1118, Idaho Code, be, and the same is hereby amended to read as follows:

46-1118~~7~~. ABSENT AND ADDITIONAL MEMBERS. (~~a~~1) No member of a court-martial shall be absent or excused after the court has been assembled for the trial of the accused except for a physical disability, as a result of a challenge, or by order of the convening authority for a good cause.

(~~b~~2) A general court-martial shall be composed of at least five (5) members and at least one (1) alternate member.

(~~c~~3) A special court-martial shall be composed of at least three (3) members and at least one (1) alternate member.

(~~d~~4) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence had previously been introduced or a stipulation ~~thereof~~ to its use is read in court in the presence of the new military judge, the accused, and counsel for both sides, and such is consented to by the accused and both trial and defense counsel. If not consented to, the convening authority may order a new trial.

SECTION 17. That Section 46-1119, Idaho Code, be, and the same is hereby amended to read as follows:

46-1119~~8~~. PREFERRAL OF CHARGES. (~~a~~1) Any person subject to this code may prefer charges, even if he is under charges, in arrest, or in confinement.

(~~b~~2) A person subject to this code cannot be ordered to prefer charges to which he is unable truthfully to make the required oath on his own responsibility.

(~~c~~3) A person preferring charges shall sign such charges under oath before a commissioned officer or before any person authorized under the laws of the state of Idaho to administer oaths, and shall state:

(~~1~~a) ~~t~~That the signer has personal knowledge of or has investi-

gated the matters set forth therein; and

(~~2~~b) ~~t~~That they are true in fact to the best of his knowledge and belief.

(~~d~~4) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as possible.

SECTION 18. That Section 46-1120, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~20~~19. COMPULSORY SELF-INCRIMINATION PROHIBITED. (~~a~~1) No person subject to this code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(~~b~~2) No person subject to this code may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial, that he has a right to consult with a lawyer, that he has a right to have a lawyer present during questioning, that he has a right to request a lawyer and that upon his request one will be provided him without cost or, if he prefers, that he may retain counsel of his choice at his own expense.

(~~c~~3) No person subject to this code may compel any person to make a statement or produce evidence before any court-martial if the statement or evidence is not material to the issue and may tend to incriminate him.

(~~d~~4) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

(~~e~~5) The requirements of this section are binding on all persons administering this code, but failure to follow them does not divest a military court of jurisdiction.

SECTION 19. That Section 46-1121, Idaho Code, be, and the same is hereby amended to read as follows:

46-112~~1~~0. INVESTIGATION. (~~a~~1) No charge or specification shall be referred to any court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. The convening authority will appoint an investigating officer. The investigating officer shall ascertain and impartially weigh all available facts in arriving at his conclusions. The investigating officer will submit a formal report to the ~~state~~ convening authority's staff judge advocate or legal counsel. This report will include, but need not be limited to, the following:

(~~1~~a) A statement of the name, organization or address of counsel, and information as to the presence or absence of counsel through-

out the proceedings in all cases in which counsel has been requested by the accused.

(~~2~~b) A statement of the substance of the testimony taken on both sides, including any stipulated facts, a copy of which shall be provided to the accused.

(~~3~~c) Any other statements, documents, or matters considered by him in reaching his conclusions or making his recommendations, or recitals of the substance or nature of these items.

(~~4~~d) A statement of any reasonable ground for the belief that the accused is, or was at the time of an offense, mentally defective, deranged, or abnormal.

(~~5~~e) A statement as to whether essential witnesses will be available in the event of trial. If essential witnesses will not be available, the reasons for nonavailability will be stated.

(~~b~~2) The ~~state~~ reviewing staff judge advocate or legal counsel will review the report for legal sufficiency and forward the report with his recommendations to the ~~covening~~ convening authority.

(~~c~~3) At the outset of the investigation, the accused will be informed of the following:

(~~1~~a) The offense charged against him;

(~~2~~b) The name of the accuser and of the witnesses against him as far as are then known by the investigating officer;

(~~3~~c) The fact that charges are about to be investigated;

(~~4~~d) His right to counsel to represent him at the investigation, if he so desires, including the several alternatives available to him as set forth in section 46-11~~10~~26, Idaho Code;

(~~5~~e) His right to have the investigating officer examine available witnesses requested by him;

(~~6~~f) His right to make a statement in any form, and further that, if he elects to make a statement in any form, it may be used against him in a court-martial.

(~~d~~4) Unless he expressly and voluntarily states that he does not desire counsel and that he is willing to make a statement, he will not be interrogated until counsel is present. If, during questioning, the accused declines to make any further statement or requests to consult with counsel before answering further questions, then questioning shall cease.

(~~e~~5) The requirements of this section are binding on all persons administering this code, but failure to follow them does not divest a military court of jurisdiction.

SECTION 20. That Section 46-1122, Idaho Code, be, and the same is hereby amended to read as follows:

46-112~~2~~1. FORWARDING OF CHARGES FOR GENERAL COURT-MARTIAL. When a person is held for a trial by general court-martial, the commanding officer shall, within a reasonable time, forward the charges together with the investigation report to the convening authority.

SECTION 21. That Section 46-1123, Idaho Code, be, and the same is hereby amended to read as follows:

46-112~~3~~2. REFERENCE FOR TRIAL -- CHANGING THE CHARGE TO CONFORM

TO EVIDENCE OR CORRECT DEFECTS. (~~a~~1) The convening authority may not refer any charge to a court-martial for trial unless an investigating officer properly appointed pursuant to section 46-112~~1~~0, Idaho Code, has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

(~~b~~2) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and changes in the charges and specifications needed to make them conform to the evidence may be made.

SECTION 22. That Section 46-1124, Idaho Code, be, and the same is hereby amended to read as follows:

46-112~~4~~3. SERVICE OF CHARGES. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had at least thirty (30) days prior to trial.

SECTION 23. That Section 46-1125, Idaho Code, be, and the same is hereby amended to read as follows:

46-112~~5~~4. RULES OF EVIDENCE. The ~~M~~military ~~R~~rules of ~~E~~evidence prescribed by the president of the United States shall apply in all cases tried under this code.

SECTION 24. That Section 46-1126, Idaho Code, be, and the same is hereby amended to read as follows:

46-112~~6~~5. UNLAWFULLY INFLUENCING ACTION OF COURT. (~~a~~1) No person subject to this code may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or his functions in the conduct of the proceeding.

(~~b~~2) No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any member thereof in reaching the findings or sentence on any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

(~~c~~3) In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the ~~national guard~~ military is qualified to be advanced in grade, or in determining the assignment or transfer of a member or in determining whether a member should be retained, no person subject to this code may, in preparing such report: (~~1~~a) consider or evaluate performance of duty of any member as a member of a court-martial~~,~~; or (~~2~~b) give a less favorable rating or evaluation of any member because of the zeal with which such member, as counsel, represented any accused before a court-martial. This section shall not apply to evaluations made by ~~the state~~ any staff judge advocate on the performance of his personnel.

SECTION 25. That Section 46-1127, Idaho Code, be, and the same is hereby amended to read as follows:

46-112~~7~~6. DUTIES OF TRIAL COUNSEL AND DEFENSE COUNSEL. (~~a~~1) The trial counsel of a court-martial shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

(~~b~~2) The accused has the right to be represented in his defense before a court-martial by civilian counsel if provided by him at his own expense or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under section 46-1116~~5~~, Idaho Code. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused.

SECTION 26. That Section 46-1128, Idaho Code, be, and the same is hereby amended to read as follows:

46-1128~~7~~. SESSIONS. (~~a~~1) At any time after the service of charges which have been referred for trial to a court-martial, the military judge may~~, subject to section 46-1124, Idaho Code,~~ call the court into session without the presence of the members for the following purposes:

(~~1~~a) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(~~2~~b) Hearing and ruling upon any matter which may be ruled upon by the military judge under this code, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(~~3~~c) Holding the arraignment and receiving the pleas of the accused;

(~~4~~d) Performing any other procedural function which may be performed by the military judge under this code or under rules prescribed by the adjutant general and which does not require the presence of the members of the court.

(~~b~~2) The proceedings described in ~~paragraph (a)~~ subsection (1) of this section shall be conducted in the presence of the accused, the defense counsel, and the trial counsel, and shall be made a part of the record.

(~~c~~3) When the members of a court-martial deliberate or vote, only the members may be present.

SECTION 27. That Section 46-1129, Idaho Code, be, and the same is hereby amended to read as follows:

46-1129~~8~~. CONTINUANCES. The military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

SECTION 28. That Section 46-1130, Idaho Code, be, and the same is hereby amended to read as follows:

46-113~~0~~29. CHALLENGES. (~~a~~1) The military judge and members of a court-martial may be challenged by the accused or trial counsel for cause stated to the court. The military judge shall determine the relevancy and validity of challenges for cause. Challenges by trial counsel shall ~~ordinarily~~ be presented and decided before those by the accused are offered.

(~~b~~2) Each accused is entitled to one (1) peremptory challenge and the trial counsel is entitled to one (1) peremptory challenge per defendant of court members in a court-martial, but the military judge may not be challenged except for cause.

SECTION 29. That Section 46-1131, Idaho Code, be, and the same is hereby amended to read as follows:

46-113~~1~~0. OATHS. (~~a~~1) Before performing their respective duties, military judges, interpreters, members of courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, and reporters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(~~b~~2) All witnesses before military courts shall be examined on oath or affirmation.

SECTION 30. That Section 46-1132, Idaho Code, be, and the same is hereby amended to read as follows:

46-113~~2~~1. STATUTE OF LIMITATIONS. (~~a~~1) A person charged with desertion, absent without leave during time of war or during an emergency declared by the governor, aiding the enemy, mutiny, or fraudulent discharge, ~~as defined by the punitive articles of this code, is not liable to be tried by court-martial, or punished, if the offense was committed more than three (3) years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command, or before the imposition of punishment under the nonjudicial punishment provisions of this code~~ may be tried and punished at any time without limitation.

(~~b~~2) ~~Except as otherwise provided in subsection (a), a~~A person charged with any other offense~~, as defined in~~ under this code~~,~~ is not liable to be tried by court-martial ~~or punished under section 46-1108, Idaho Code,~~ if the offense was committed more than ~~two~~ three (~~2~~3) years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command~~, or before the imposition of punishment under section 46-1108, Idaho Code~~.

(3) A person may not be punished under section 46-1107, Idaho Code, if the offense was committed more than two (2) years before the imposition of punishment under section 46-1107, Idaho Code.

(4) If a person is convicted of fraudulent discharge, the individual may be tried at court-martial for all prior offenses committed under this code and the statute of limitations for those offenses shall be tolled for the period between the date of the fraudulent discharge and date of conviction for fraudulent discharge.

(5) The statute of limitation set forth above, shall also be tolled under the following circumstances:

(a) Periods in which the accused was absent from the state of

Idaho, or in the custody of civil authorities, or in the hands of the enemy;

(b) For an offense which is certified by the adjutant general to be detrimental to the prosecution of war or inimical to state or national security, the period of limitation prescribed in this section is extended to six (6) months after the termination of any hostilities proclaimed by the president or by a joint resolution of congress;

(c) The statute of limitations applicable to any offense under this chapter:

(i) Involving fraud or attempted fraud against the state of Idaho or any agency thereof in any manner, whether by conspiracy or not;

(ii) Committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the state of Idaho or the United States; or

(iii) Committed in connection with the negotiation, procurement, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of war, or any disposition of termination inventory by a defense contractor or governmental agencies;

is tolled until three (3) years after the termination of hostilities proclaimed by the president or by a joint resolution of congress.

SECTION 31. That Section 46-1133, Idaho Code, be, and the same is hereby amended to read as follows:

46-113~~3~~2. FORMER JEOPARDY. (1) No person may be tried a second time in a court-martial for the same offense~~;~~.

(2) No person may be tried by court-martial for any offense if he has been tried for substantially the same offense in any state court or in any United States court~~;~~.

(3) No proceeding in which an accused has been found guilty by a court-martial upon any charge is a trial in the sense of this article until the finding of guilty has become final after review of the case and all available appeals have been fully completed.

SECTION 32. That Section 46-1134, Idaho Code, be, and the same is hereby amended to read as follows:

46-113~~4~~3. PLEAS OF ACCUSED. (~~a~~1) If an accused arraigned before a court-martial makes an irregular ~~pleading~~ plea, or after a plea of guilty sets up matter inconsistent with his plea, or if it appears that he has entered a plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had ~~pleaded~~ pled not guilty.

(~~b~~2) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, a finding of guilty of the charge or specification shall be

entered immediately. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn and such withdrawal is permitted by the military judge prior to announcement of the sentence, in which event the proceeding shall continue as though the accused had ~~pleaded~~ pled not guilty.

SECTION 33. That Section 46-1135, Idaho Code, be, and the same is hereby amended to read as follows:

46-113~~5~~4. DISCOVERY. Pretrial discovery for any court-martial shall be in accordance with the procedures for discovery set out in the manual for courts-martial and this section.

(~~a~~1) At any session convened pursuant to section 46-1128~~7~~, Idaho Code, and for good cause shown at trial, the military judge shall, upon a motion of the accused, order the trial counsel to divulge to the accused, and, where necessary, permit the accused to inspect, copy or photograph:

(~~1~~a) Any statement made by the accused relevant to the offense charged which is in the possession, custody or control of the state, the existence of which is known or may become known to the trial counsel by the exercise of due diligence;

(~~2~~b) Written or recorded statements, or the substance of an oral statement made by a coaccused~~, which the trial counsel intends to offer into evidence at trial~~;

(~~3~~c) The prior military record, as is then available to the trial counsel, of the accused or of any coaccused;

(~~4~~d) The names and current addresses, if known, together with any relevant prior statement of all persons, civilian or military, whom the trial counsel intends to call as witnesses at trial;

(~~5~~e) The report of any nonjudicial or quasi-judicial investigation conducted by the state relevant to the offense charged unless the military judge finds, on good cause shown, that the disclosure would be inimical to the state or national security;

(~~6~~f) The results and reports of any physical or mental examinations, or of scientific tests or experiments, made in connection with the case, within the possession, custody, or control of the trial counsel, the existence of which is known to the trial counsel, or which may become known by the exercise of due diligence; and

(~~7~~g) The report of the investigating officer made pursuant to section 46-112~~1~~0, Idaho Code.

(~~b~~2) At any session convened pursuant to section 46-1128~~7~~, Idaho Code, and, for good cause shown at trial, the military judge may, upon a motion of the accused, order the trial counsel to permit the accused to inspect, copy, or photograph books, papers, documents, tangible objects, buildings, or places or copies or portions thereof, which are within the possession, custody, or control of the state, upon a showing that they are material to the preparation of the defense and that the request is reasonable. If the relief requested hereunder is granted, the military judge may, upon motion of the trial counsel, inspect, copy, or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof which the accused intends to introduce into evidence at trial, which

are related to the discovery sought by the accused and which are within the possession, custody, or control of the defense upon a showing that they are material to the preparation of the state's case and that the request is reasonable.

(~~c~~3) Notwithstanding any other provisions of this section, the trial counsel shall disclose to the accused, as soon as it is discovered, all material, exculpatory evidence actually known to the trial counsel, whether or not a request for such evidence has been made by the accused.

(~~d~~4) Except as provided in subsections (~~a~~1) and (~~c~~3) of this section, discovery or inspection is not authorized of reports, memoranda or other internal documents made by state agents in connection with the investigation or prosecution of the case, or to statements made by state witnesses or prospective state witnesses to agents of the state except as provided in 18 USC sec. 3500.

(~~e~~5) The military judge in granting relief under this article, shall, if necessary, specify the time, place, and manner of making the discovery and inspection permitted, under such terms and conditions as are just.

(~~f~~6) Whenever discovery is ordered or required under this article, a continuing duty to disclose exists, and whenever a party discovers additional material previously requested or ordered which is subject to discovery or inspection, he shall promptly notify the other party or his counsel and the military judge of the existence of such additional material. In the event that either party fails to comply with this article or with an order issued pursuant to this article, the military judge may grant a continuance or prohibit the party from introducing into evidence the material not disclosed or it may enter such other order, including dismissal of all charges, as it deems just under the circumstances.

(~~g~~7) Upon a sufficient showing by either party the military judge may at any time order that discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate.

SECTION 34. That Section 46-1136, Idaho Code, be, and the same is hereby amended to read as follows:

46-1136~~5~~. OPPORTUNITY TO OBTAIN WITNESSES AND OTHER EVIDENCE. (~~a~~1) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be the same as that which the courts of this state having criminal jurisdiction may lawfully issue and shall ~~run~~ apply to any part of the state and to any other state in which the court-martial may be sitting.

(~~b~~2) (~~1~~a) The authority to issue orders to conduct searches and seizures of persons and property subject to the provisions of this chapter in connection with any offense prohibited by this code may be exercised by a military judge or by a judge or magistrate of a district court of this state.

(~~2~~b) No search or seizure of persons or property shall be ordered except in writing upon probable cause supported by written affidavits and particularly describing the person or place to be searched ~~or~~ and the person or thing to be seized.

(~~3~~c) Nothing in this code shall limit commanding officers in the exercise of their authority to conduct reasonable searches and seizures pursuant to law or military regulation, whether state or federal.

SECTION 35. That Section 46-1137, Idaho Code, be, and the same is hereby amended to read as follows:

46-113~~7~~6. PROCESS -- MANDATES -- SUBPOENAS DUCES TECUM -- ATTACHMENT OF WITNESSES AND BOOKS AND RECORDS -- FORM -- EXECUTION -- SERVICE WITHOUT CHARGE. (~~a~~1) Military courts are empowered to issue all process and mandates necessary and proper to carry into full effect the powers vested in such courts. Such courts shall have power to issue subpoenas duces tecum and to enforce by attachment attendance of witnesses, the accused, and production of books and records.

(~~b~~2) Such process and mandates may be issued by the military judge of a court-martial and may be directed to any military officer or peace officer as defined in the laws of this state.

(~~c~~3) It shall be the duty of all officers to whom such process or mandates may be directed to execute the same and make return of their acts thereunder according to the requirements of the same.

(~~d~~4) Any person not subject to this code who:

(~~1~~a) ~~h~~Has been duly subpoenaed to appear as a witness before a court-martial or before any military or civil officer designated to take a deposition to be read in evidence before such a court or board;

(~~2~~b) ~~h~~Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the state of Idaho; and

(~~3~~c) ~~w~~Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce;

commits an offense under this act and may be tried by complaint and information in an Idaho district court, jurisdiction hereby being conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than ~~two~~ five hundred dollars ($~~2~~500), or imprisonment for not more than thirty (30) days, or both. The prosecuting attorney or the officer prosecuting for the state of Idaho in the district court shall, upon certification of the facts to him by the military judge, file an affidavit against and prosecute any person violating this section.

SECTION 36. That Section 46-1138, Idaho Code, be, and the same is hereby amended to read as follows:

46-113~~8~~7. CONTEMPTS. (~~a~~1) A military judge may punish for contempt any person subject to this code who uses any disrespectful word, sign or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

(~~b~~2) Any person not subject to this code who engages in conduct described in subsection (~~a~~1) of this section, may be fined not more than ~~two~~ five hundred dollars ($~~2~~500) or imprisoned not more than thirty (30) days, or both. Upon certification of the facts by the mil-

itary court to the prosecuting attorney of the county where the offense occurred, the prosecuting attorney shall prosecute the accused in any court of record, jurisdiction hereby being conferred upon such courts for this purpose.

SECTION 37. That Section 46-1139, Idaho Code, be, and the same is hereby amended to read as follows:

46-113~~9~~8. DEPOSITIONS. Depositions may be taken in accordance with the procedures set forth in the manual for courts-martial and this section.

(~~a~~1) At any time after charges have been signed, as provided in section 46-111~~9~~8, Idaho Code, any party may take oral or written depositions unless the military judge or, if a military judge has not yet been appointed, the convening authority forbids it for good cause. If a deposition is to be taken before charges are referred for trial, the convening authority shall designate trial and defense counsel for the purpose of taking the deposition of any witness.

(~~b~~2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(~~c~~3) Depositions shall be taken before and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken or by federal law to administer oaths.

(~~d~~4) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read into evidence before any court-martial, if it appears:

(~~1~~a) ~~t~~That the witness resides or is beyond the state in which the court-martial is ordered to sit, or beyond the distance of one hundred (100) miles from the place of trial or hearing.

(~~2~~b) ~~t~~That the witness, by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(~~3~~c) ~~t~~That the present whereabouts of the witness is unknown.

SECTION 38. That Section 46-1141, Idaho Code, be, and the same is hereby amended to read as follows:

46-114~~1~~39. VOTING AND RULINGS. (~~a~~1) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall, in each case, count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(~~b~~2) The military judge shall rule upon all questions of law and all interlocutory questions. Such ruling made by the military judge upon any question of law or any interlocutory question, other than the factual issue of mental responsibility of the accused, is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial.

(~~c~~3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court:

(~~1~~a) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

(~~2~~b) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused, and he must be acquitted; and

(~~3~~c) That the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the state.

(~~d~~4) Subsections (~~a~~1), (~~b~~2), and (~~c~~3) of this section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and in addition shall, on request, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

SECTION 39. That Section 46-1142, Idaho Code, be, and the same is hereby amended to read as follows:

46-114~~2~~0. NUMBER OF VOTES REQUIRED. (~~a~~1) No person shall be convicted of any offense, except by the concurrence of ~~two-thirds (2/3)~~ at least three-fourths (3/4) of the members.

(~~b~~2) All sentences shall be determined by the concurrence of ~~two thirds (2/3)~~ at least three-fourths (3/4) of the members.

SECTION 40. That Section 46-1143, Idaho Code, be, and the same is hereby amended to read as follows:

46-114~~3~~1. COURT TO ANNOUNCE ACTION. A court-martial shall announce its findings and sentence to the parties as soon as determined.

SECTION 41. That Section 46-1144, Idaho Code, be, and the same is hereby amended to read as follows:

46-114~~4~~2. RECORD OF TRIAL. (~~a~~1) A court-martial shall keep a record, by summarized or verbatim transcript, as may be ordered by the convening authority, of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence.

(~~b~~2) A copy of the record of the proceedings of a court-martial shall be given to the accused as soon as it is authenticated. The record shall be deemed settled when authenticated, absent objection made within twenty-one (21) days of receipt of the authenticated

record by the accused.

SECTION 42. That Section 46-1145, Idaho Code, be, and the same is hereby amended to read as follows:

46-1145~~3~~. DISHONORABLE DISCHARGE, BAD CONDUCT DISCHARGE ~~UNDER LESS-THAN-HONORABLE-CONDITIONS~~ OR DISMISSAL -- PROCEDURE. (~~a~~1) A dishonorable discharge, bad conduct discharge ~~under-less-than-honorable conditions,~~ or dismissal may not be adjudged by any court-martial unless a complete verbatim record of the proceedings and testimony before the court has been made.

(~~b~~2) A sentence of dishonorable discharge, bad conduct discharge or dismissal may not be executed until it is approved by the governor.

SECTION 43. That Section 46-1148, Idaho Code, be, and the same is hereby amended to read as follows:

46-1148~~4~~. EFFECTIVE DATE OF SENTENCES. Sentences of courts-martial shall become effective on the date when all reviews provided by this code have been completed. If the sentence includes confinement, the member shall be remanded to the custody of the sheriff of the county wherein the member's military unit of assignment, or attachment, for duty, is located; when the sentence becomes effective, for service of the period of confinement to which the member has been sentenced.

SECTION 44. That Section 46-1154, Idaho Code, be, and the same is hereby amended to read as follows:

46-1154~~5~~. REVIEW OF RECORD BY ~~STATE~~ STAFF JUDGE ADVOCATE -- APPEAL. (~~a~~1) The convening authority shall forward the record to ~~the state~~ his staff judge advocate for review.

(~~b~~2) The ~~state~~ staff judge advocate shall review the record of trial in every case forwarded to him for review as provided in this section.

(~~c~~3) The ~~state~~ staff judge advocate shall have authority to:

(~~1~~a) Affirm only such findings of guilty, and the sentence or such part or amount of the sentence as he finds correct in law and fact and determines on the basis of the entire record should be approved;

(~~2~~b) Order a rehearing if he sets aside the findings and sentence, except where the setting aside is based on lack of sufficient evidence to support the findings;

(~~3~~c) Order that the charges be dismissed if he sets aside the findings and sentence based on lack of sufficient evidence to support the findings.

(4) Following completion of the staff judge advocate's review a copy will be provided to the defense and trial counsels and an aggrieved party may appeal to the district court of the judicial district wherein the court-martial was conducted within forty-two (42) days from the date of receipt of such review. Such appeal shall be conducted in accordance with the Idaho criminal rules governing appeals and this code. For courts-martial held outside the state of

Idaho, venue for appeal purposes shall be in the district court of the fourth judicial district, Ada County, Idaho.

SECTION 45. That Section 46-1155, Idaho Code, be, and the same is hereby amended to read as follows:

46-115~~5~~46. PREJUDICIAL ERROR. A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

SECTION 46. That Section 46-1158, Idaho Code, be, and the same is hereby amended to read as follows:

46-115~~8~~47. PETITION FOR NEW TRIAL -- NEWLY DISCOVERED EVIDENCE -- FRAUD. At any time within one (1) year after sentence is imposed the accused may petition the adjutant general for a new trial on the grounds of newly discovered evidence or fraud on the court-martial.

SECTION 47. That Section 46-1159, Idaho Code, be, and the same is hereby amended to read as follows:

46-115~~9~~48. UNEXECUTED SENTENCE -- REMISSION -- SUSPENSION. (~~a~~1) The governor or the adjutant general may remit or suspend any part or amount of the unexecuted portion of any sentence.

(~~b~~2) Administrative discharge. The governor or the adjutant general may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

SECTION 48. That Section 46-1160, Idaho Code, be, and the same is hereby amended to read as follows:

46-116~~0~~49. RESTORATION. (~~a~~1) Under such regulations as may be prescribed pursuant to this act, all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the accused by a new trial or rehearing.

(~~b~~2) Where a previously executed sentence of dishonorable discharge or bad conduct discharge ~~under less than honorable conditions~~ is not sustained ~~on~~ at a new trial, the adjutant general shall substitute therefor a form of honorable discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(~~c~~3) Where a previously executed sentence of dismissal is not sustained on a new trial, the adjutant general shall substitute therefor a form of honorable discharge authorized for administrative issuance or the officer dismissed by such sentence may be reappointed by the governor alone to such commissioned rank as in the opinion of the governor such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be made

effective as of the date of dismissal and he shall be carried on an unassigned list until a position vacancy shall occur. All time between the dismissal and such reappointment shall be considered as service for all state purposes.

SECTION 49. That Section 46-1162, Idaho Code, be, and the same is hereby amended to read as follows:

46-116~~2~~50. OFFENSES SUBJECT TO COURT-MARTIAL -- RESOLUTION OF CONF~~LICT WITH~~ CIVIL COURTS. The jurisdiction of courts-martial shall be limited to violations of the punitive articles in this code. Any person subject to this code who is charged with the commission of an offense which is not ~~a military offense~~ included in a punitive article under this code shall be surrendered to civil authorities for process in accordance with civil law. Any person so surrendered shall be considered properly absent from his military duties unless said person is found guilty of a violation of civil law. If said person is convicted of a civil offense, he shall be considered absent without leave from the time of such surrender, unless he has requested and been granted authorized leave by his commander. Conflicts over jurisdiction ~~of persons~~ over offenses shall be resolved in favor of civil jurisdiction.

SECTION 50. That Section 46-1163, Idaho Code, be, and the same is hereby amended to read as follows:

46-116~~3~~51. PRINCIPAL. Any person subject to this code who:

(1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this code, is a principal.

SECTION 51. That Section 46-1164, Idaho Code, be, and the same is hereby amended to read as follows:

46-116~~4~~52. ACCESSORY AFTER THE FACT. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment, is an accessory after the fact.

SECTION 52. That Section 46-1165, Idaho Code, be, and the same is hereby amended to read as follows:

46-1165~~3~~. INCLUDED OFFENSES -- ATTEMPT. An attempt to commit an offense punishable by this code is an included offense in the charge of the main offense, but no one shall be convicted of both the offense and attempt.

SECTION 53. That Section 46-1166, Idaho Code, be, and the same is hereby amended to read as follows:

46-116~~6~~54. PERJURY. Any person subject to this code who ~~wilfully~~ willfully gives false testimony under oath in the course of a judicial

proceeding on the issue under inquiry shall be punished as a court-martial may direct.

SECTION 54. That Section 46-1167, Idaho Code, be, and the same is hereby amended to read as follows:

46-116~~7~~55. FRAUDULENT ENLISTMENT -- APPOINTMENT -- SEPARATION. Any person subject to this code who:

(1) Procures his own enlistment in or appointment to the Idaho ~~national guard~~ military by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the Idaho ~~national--guard~~ military by knowingly false representation or deliberate concealment as to his eligibility for that separation,

shall be punished as a court-martial may direct.

SECTION 55. That Section 46-1168, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~5~~68. EFFECTING UNLAWFUL ENLISTMENT -- APPOINTMENT -- SEPARATION. Any person subject to this code who effects an enlistment or appointment in or a separation from the Idaho ~~national guard~~ military of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

SECTION 56. That Section 46-1169, Idaho Code, be, and the same is hereby amended to read as follows:

46-116~~9~~57. DISRESPECTFUL BEHAVIOR TO A SUPERIOR OFFICER, WARRANT OFFICER ~~OR NON~~COMMISSIONED OFFICER. Any person subject to this code who behaves ~~in the line of duty~~ with disrespect toward a superior ~~with intent--to--embarrass,--degrade-or-provoke-that-superior-in-a-way-that directly-interferes-with-the--superior's--performance--of--his--duties~~ officer, warrant officer or noncommissioned officer shall be punished as a court-martial may direct.

SECTION 57. That Section 46-1170, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~7~~058. ASSAULTING OR ~~WILFULLY~~ WILLFULLY DISOBEYING SUPERIOR OFFICER, WARRANT OFFICER OR NONCOMMISSIONED OFFICER. Any person subject to this code who:

(1) Strikes his superior commissioned, warrant or noncommissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) ~~Wilfully~~ Willfully disobeys a lawful command of his superior commissioned, warrant or noncommissioned officer;

shall be punished as a court-martial may direct.

SECTION 58. That Section 46-1171, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~71~~59. CRUELTY, OPPRESSION OR MALTREATMENT OF SUBORDINATES. Any person subject to this code who acts cruelly or oppressively toward or maltreats any person subject to his orders shall be punished as a court-martial may direct.

SECTION 59. That Section 46-1172, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~72~~60. FALSE RECORD OR DOCUMENT. Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document knowing the same to be false, or makes any other false official statement knowing the same to be false shall be punished as a court-martial may direct.

SECTION 60. That Section 46-1173, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~73~~61. SALE -- NEGLECT -- DAMAGE OF MILITARY PROPERTY. Any person subject to this code who, without proper authority:

(~~a~~1) Sells or otherwise disposes of; or

(~~b~~2) ~~Wilfully~~ Willfully or through neglect damages, destroys, or loses; or

(~~c~~3) ~~Wilfully~~ Willfully or through neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of;

any military property of the United States or of this state shall be punished as a court-martial may direct.

SECTION 61. That Section 46-1174, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~74~~62. UNAUTHORIZED, DRUNK OR RECKLESS OPERATION OF A MILITARY VEHICLE OR AIRCRAFT. Any person subject to this code who operates any military vehicle or aircraft while drunk, or when the alcohol concentration in the person's blood or breath is 0.08 grams of alcohol per 100 milliliters of blood or 0.08 grams of alcohol per 210 liters of breath or in a reckless or wanton manner, or without authority, shall be punished as a court-martial may direct.

SECTION 62. That Section 46-1175, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~75~~63. DRUNK ON DUTY. Any person subject to this code, other than a sentinel or lookout, who is found drunk on duty, shall be punished as a court-martial may direct.

SECTION 63. That Section 46-1176, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~76~~64. MUTINY. Any person subject to this code who, with intent to usury or override lawful military authority, refuses, in concert with any other person or persons subject to this code, to obey orders or otherwise do his duty, shall be punished as a court-martial may direct.

SECTION 64. That Section 46-1177, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~77~~65. FAILURE TO OBEY ORDERS -- DERELICTION IN DUTY. Any person subject to this code who, without justifying circumstances:

(~~a~~1) Violates or fails to obey any lawful order or regulation; or

(~~b~~2) Is derelict in the performance of his duties,

shall be punished as a court-martial may direct.

SECTION 65. That Section 46-1178, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~78~~66. ABSENCE WITHOUT LEAVE. Any person subject to this code who, without prior authority or justifying reason:

(~~a~~1) Fails to go to his appointed place of duty at the time prescribed; or

(~~b~~2) Goes from that place; or

(~~c~~3) Absents himself and remains absent from his unit, organization, or other place of duty at which he is required to be at the time prescribed,

shall be punished as a court-martial may direct.

SECTION 66. That Section 46-1179, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~6~~79. MISSING MOVEMENT. Any person subject to this code who, through neglect or design, misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

SECTION 67. That Section 46-1180, Idaho Code, be, and the same is hereby amended to read as follows:

46-11~~80~~68. DESERTION. Any person subject to this code who:

(1) ~~w~~Without proper authority goes or remains absent from his place of service, organization, or place of duty with intent to remain away therefrom permanently; or

(2) ~~q~~Quits his unit or organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) ~~w~~Without being regularly separated from the ~~national guard~~ state military enlists or accepts an appointment in the same or another military component or organization without fully disclosing the fact that he has not been so regularly separated,

is guilty of desertion and shall be punished as a court-martial may direct, provided, however, that no member of the Idaho ~~national guard~~ military shall be, in time of peace or order, prohibited from accepting bona fide employment in another state or leave the boundaries of this state in pursuance of his vocation, education or profession, if before so doing, he fully informs his commanding officer of his absence from the state and the reasons therefor, provided, however, that the said commanding officer may waive the requirement that he be informed.

SECTION 68. That Section 46-1181, Idaho Code, be, and the same is hereby amended to read as follows:

46-118~~1~~69. FEIGNING ILLNESS, DISABLEMENT, MENTAL LAPSE OR DERANGEMENT -- SELF-INJURY. Any person subject to this code who, for the purpose of avoiding work, duty, or service:

(~~a~~1) Feigns illness, physical disablement, mental lapse or derangement; or

(~~b~~2) Intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

SECTION 69. That Section 46-1182, Idaho Code, be, and the same is hereby amended to read as follows:

46-118~~2~~70. DRUNK OR ASLEEP AT POST -- LEAVING POST BEFORE REGULAR RELIEF. Any sentinel or guard subject to this code who is found drunk or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

SECTION 70. That Section 46-1184, Idaho Code, be, and the same is hereby amended to read as follows:

46-118~~4~~71. PUBLIC PROPERTY -- CAPTURED OR ABANDONED PROPERTY -- PRIVATE DISPOSAL FOR PROFIT -- LOOTING. (~~a~~1) All persons subject to this code shall secure all public property taken for the service of the state of Idaho and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

(~~b~~2) Any person subject to this code who, while on duty:

(~~1~~a) Fails to carry out the duties prescribed in subsection (~~a~~1) of this section; or

(~~2~~b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or another directly or indirectly concerted with himself; or

(~~3~~c) Engages in looting or pillaging,

shall be punished as a court-martial may direct.

SECTION 71. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1172, Idaho Code, and to read as follows:

46-1172. CONSPIRACY. Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one (1) or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

SECTION 72. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1173, Idaho Code, and to read as follows:

46-1173. SOLICITATION. Any person subject to this code who solicits or advises another or others to commit an offense under this code shall be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

SECTION 73. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1174, Idaho Code, and to read as follows:

46-1174. RESISTANCE, BREACH OF ARREST, AND ESCAPE. Any person subject to this code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

SECTION 74. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1175, Idaho Code, and to read as follows:

46-1175. RELEASING PRISONER WITHOUT PROPER AUTHORITY. Any person subject to this code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

SECTION 75. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1176, Idaho Code, and to read as follows:

46-1176. UNLAWFUL DETENTION. Any person subject to this code who, except as provided by law, apprehends, arrests or confines any person shall be punished as a court-martial may direct.

SECTION 76. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1177, Idaho Code, and to read as follows:

46-1177. WRONGFUL USE, POSSESSION, ETC., OF CONTROLLED SUBSTANCES. (1) Any person subject to this code who wrongfully uses, possesses, manufactures or distributes, on an installation, vessel, vehicle, or aircraft used by or under the control of the military a substance described in subsection (2) of this section shall be punished as a court-martial may direct.

(2) The substances referred to in subsection (1) of this section are the following:

(a) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana, and any compound or derivative of any such substance.

(b) Any other substance not specified in paragraph (a) of this subsection that is listed in schedules I through V of the uniform controlled substances act, chapter 27, title 37, Idaho Code.

SECTION 77. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1178, Idaho Code, and to read as follows:

46-1178. FRAUDS AGAINST THE GOVERNMENT. Any person subject to this code,

(1) Who knowingly:

(a) Makes any false claim or fraudulent claim against the state of Idaho or the United States or any officer thereof; or

(b) Presents to any person in the civil or military service thereof, for approval or payment, any false or fraudulent claim against the state of Idaho or the United States or any officer thereof; or

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the state of Idaho or the United States or any officer thereof:

(a) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(b) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(c) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited; or

(3) Who, having charge, possession, custody, or control of any money, or other property of the state of Idaho or the United States, furnished or intended for the military thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper, certifying the receipt of any property of the state of Idaho or the United States furnished or intended for the military thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the state of Idaho or the Unites States;

shall be punished as a court-martial may direct.

SECTION 78. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1179, Idaho Code, and to read as follows:

46-1179. AIDING THE ENEMY. Any person subject to this code who:

(1) Aids or attempts to aid, the enemy with arms, ammunition, supplies, money or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to or communicates or corresponds with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

SECTION 79. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1180, Idaho Code, and to read as follows:

46-1180. CONDUCT UNBECOMING AN OFFICER. Any commissioned officer, warrant officer, or cadet who is convicted of conduct unbecoming an officer, as explained in the manual for courts-martial under article 133 of the uniform code of military justice, shall be punished as a court-martial may direct.

SECTION 80. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1181, Idaho Code, and to read as follows:

46-1181. GENERAL ARTICLE. Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the military, all conduct of a nature to bring discredit upon the military, and crimes and offenses not capital, or which persons subject to this chapter may be guilty, shall be taken cognizance of by a general or special court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. Offenses which may be punished under this section include, but are not limited to, those offenses set out in the manual for courts-martial as punishable under article 134 of the uniform code of military justice.

SECTION 81. That Section 46-1187, Idaho Code, be, and the same is hereby amended to read as follows:

46-118~~7~~2. TRIAL OF CIVIL-TYPE OFFENSES BY ~~GUARDSMEN~~ MILITARY MEMBERS IN EVENT OF PROLONGED STATEWIDE SUSPENSION OF CIVIL COURTS. In the event that the civil judiciary is not functioning to try cases for long periods of time statewide so that there is no forum in which to try allegations against ~~guardsmen~~ military members of felonious civil offenses, this code incorporates 10 U.S.C. secs. 916, 918-930 and 932 for trial by courts-martial, pursuant to the provisions of ~~section 46-1183, Idaho~~ this code.

SECTION 82. That Section 46-1191, Idaho Code, be, and the same is hereby amended to read as follows:

46-119~~1~~83. ADMINISTRATION OF OATHS -- AFFIDAVITS. Commissioned officers shall have the power to administer oaths for the purpose of military administration, including military justice, and affidavits may be taken for such purposes before such officers.

SECTION 83. That Section 46-1192, Idaho Code, be, and the same is hereby amended to read as follows:

46-119~~2~~84. FINES -- PAYMENT INTO STATE GENERAL FUND. Fines may be paid to a military court or to an officer executing its process. The

amount of any such fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until the said fine is liquidated. Any sum so deducted from any state pay or allowance shall be turned into the military court which imposed the fine and shall be paid over by the officer receiving the same within thirty (30) days to the state treasurer and credited to the general fund. Any expense incurred to administer or carry out the provisions of this chapter shall be paid out of the general fund.

SECTION 84. That Section 46-1193, Idaho Code, be, and the same is hereby amended to read as follows:

46-119385. REGULATORY AUTHORITY. The adjutant general shall have authority to promulgate such regulations as he deems necessary and proper to carry out the intent of this code.

SECTION 85. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1186, Idaho Code, and to read as follows:

46-1186. IMMUNITY. All persons acting under the provisions of this chapter, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of their acts or omissions which they did or failed to do as part of their duties under this chapter.

SECTION 86. That Section 46-1194, Idaho Code, be, and the same is hereby repealed.

SECTION 87. That Chapter 11, Title 46, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 46-1187, Idaho Code, and to read as follows:

46-1187. SEVERABILITY. 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.

Approved March 20, 1998.

CHAPTER 177
(S.B. No. 1448)

AN ACT

RELATING TO LICENSING PHYSICIAN ASSISTANTS; AMENDING SECTION 54-1803, IDAHO CODE, TO DEFINE THE TERM "PHYSICIAN ASSISTANT"; AMENDING SECTION 54-1804, IDAHO CODE, TO AUTHORIZE A PHYSICIAN ASSISTANT

LICENSED BY THE BOARD OF MEDICINE TO ENGAGE IN CERTAIN ACTIVITIES; AMENDING SECTION 54-1807, IDAHO CODE, TO REQUIRE LICENSURE OF PHYSICIAN ASSISTANTS; AMENDING SECTION 54-1813, IDAHO CODE, TO PROVIDE APPLICATION TO A PHYSICIAN ASSISTANT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-1814, IDAHO CODE, TO DELETE REFERENCE TO PHYSICIAN'S ASSISTANT, TO PROVIDE THAT PHYSICIAN ASSISTANTS LICENSED BY THE BOARD OF MEDICINE ARE SUBJECT TO DISCIPLINARY PROCEDURES BY THE BOARD AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-1803, Idaho Code, be, and the same is hereby amended to read as follows:

54-1803. DEFINITIONS. (1) The "practice of medicine" means:

(a) To investigate, diagnose, treat, correct, or prescribe for any human disease, ailment, injury, infirmity, deformity, or other condition, physical or mental, by any means or instrumentality, or

(b) To apply principles or techniques of medical science in the prevention of any of the conditions listed in subsection (a) of this section, or

(c) To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in subsections (a) and (b) of this section.

(2) The word "board" means the state board of medicine.

(3) The term "physician" means any person who holds a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine, provided further, that others authorized by law to practice any of the healing arts shall not be considered physicians for the purposes of this chapter.

(4) A "license to practice medicine and surgery" means a license issued by the board to a person who was graduated from an acceptable school of medicine and who has fulfilled the licensing requirements of this chapter.

(5) A "license to practice osteopathic medicine and surgery" means a license issued by the board to a person who either graduated from an acceptable osteopathic school of medicine subsequent to January 1, 1963, or who has been licensed by endorsement of a license issued by another state where a composite examining board exists and where physicians licensed to practice medicine and surgery and osteopathic physicians take the same examination and hold equal licenses, and who has fulfilled the licensing requirements of this chapter.

(6) A "license to practice osteopathic medicine" means a license issued by the state board of medicine to a person who graduated from an acceptable osteopathic school of medicine and who prior to January 1, 1963 has fulfilled the licensing requirements of this chapter.

(7) The word "person," the word "he" and the word "his" means a natural person.

(8) An "acceptable school of medicine" means any school of medicine or school of osteopathic medicine which meets the standards or requirements of a national medical school accrediting organization

acceptable to the board.

(9) The word "extern" means a bona fide student enrolled in an acceptable school of medicine who has not received his degree.

(10) The word "intern" or "resident" means any person who has completed a course of study at an acceptable school of medicine and who is enrolled in a post-graduate medical training program.

(11) The ~~word~~ term "physician~~'s~~ assistant" means any person who is a graduate of an acceptable training program and who is qualified by general education, training, experience and personal character to render patient services under the direction of a physician. Nothing in this act shall be construed to authorize physician~~'s~~ assistants to perform those specific functions and duties specifically delegated by law to those persons licensed as pharmacists under chapter 17, title 54, Idaho Code, as dentists or dental hygienists under chapter 9, title 54, Idaho Code, or as optometrists under chapter 15, title 54, Idaho Code.

SECTION 2. That Section 54-1804, Idaho Code, be, and the same is hereby amended to read as follows:

54-1804. UNLICENSED PRACTICE -- PENALTIES AND REMEDIES RELATING TO UNLICENSED PRACTICE. (1) Under the circumstances described and subject in each case to limitations stated, the following persons, though not holding a license to practice medicine in this state, may engage in activities included in the practice of medicine:

(a) A medical officer of the armed forces of the United States, of the United States public health service, or of the veteran's administration, while engaged in the performance of his official duties;

(b) A person residing in another state or country and authorized to practice medicine there, who is called in consultation by a person licensed in this state to practice medicine, or who for the purpose of furthering medical education is invited into this state to conduct a lecture, clinic, or demonstration, while engaged in activities in connection with the consultation, lecture, clinic, or demonstration, so long as he does not open an office or appoint a place to meet patients or receive calls in this state;

(c) A person authorized to practice medicine in another state or country while rendering medical care in a time of disaster or while caring for an ill or injured person at the scene of an emergency and while continuing to care for such person;

(d) An extern, intern~~,~~ or resident ~~or physician's assistant~~ who is registered with the board as provided in this chapter and while engaged in programs authorized pursuant to rules ~~and regulations~~ of the board or a physician assistant licensed by the board;

(e) A person authorized or licensed by this state to engage in activities which may involve the practice of medicine;

(f) A person engaged in good faith in the practice of the religious tenets of any church or religious beliefs;

(g) A person administering a remedy, diagnostic procedure or advice as specifically directed by a physician;

(h) A person rendering aid in an emergency, where no fee for the service is contemplated, charged or received;

(i) A person administering a family remedy to a member of the family;

(j) A person who administers treatment or provides advice regarding the human body and its functions that:

(i) Does not use legend drugs or prescription drugs in such practice;

(ii) Uses natural elements such as air, heat, water and light;

(iii) Only uses class I or class II nonprescription, approved, medical devices as defined in section 513 of the federal food, drug and cosmetic act;

(iv) Only uses vitamins, minerals, herbs, natural food products and their extracts, and nutritional supplements; and who

(v) Does not perform surgery;

(vi) Requires each person receiving services to sign a declaration of informed consent which includes an overview of the health care provider's education which states that the health care provider is not an "M.D." or "D.O."; and is not licensed under the provisions of this chapter.

(2) Except as provided in subsection (1) of this section, it shall constitute a felony for any person to practice medicine in this state without a license and upon conviction thereof shall be imprisoned in the state prison for a period not to exceed five (5) years, or shall be fined not more than ten thousand dollars ($10,000), or shall be punished by both such fine and imprisonment.

(3) Except as provided in subsections (1)(a), (1)(b), and (1)(c) above, it is unlawful for any person to assume or use the title or designation "medical doctor," "medical physician," "osteopathic doctor," "osteopathic physician," "M.D." or "D.O." or any other title, designation, words, letters, abbreviation, sign, card, or device to indicate to the public that such person is licensed to practice medicine pursuant to this chapter unless such person is so licensed, and upon conviction thereof, such person shall be imprisoned not to exceed one (1) year, or shall be fined not more than three thousand dollars ($3,000), or shall be punished by both fine and imprisonment.

(4) When a person has been the recipient of services constituting the unlawful practice of medicine, whether or not he knew the rendition of the services was unlawful, proof of the rendition of such unlawful services by the recipient or his personal representative in an action against the provider of such services for damages allegedly caused by the services constitutes prima facie evidence of negligence shifting the burden of proof to such provider of unlawful services. The following damages in addition to any other remedies provided by law may be recovered in such an action:

(a) The amount of any fees paid for the unlawful services.

(b) Reasonable attorney fees and court costs.

(5) The board shall refer all violations of this section made known to it to appropriate prosecuting attorneys. The board may render assistance to a prosecuting attorney in the prosecution of a case pursuant to this section.

SECTION 3. That Section 54-1807, Idaho Code, be, and the same is hereby amended to read as follows:

54-1807. STATE BOARD OF MEDICINE -- REGISTRATION. (1) Externs, interns and residents must register with the board prior to the commencement of any activities constituting the practice of medicine in this state. Registration shall include disclosure of the applicant's prior education and training, the program or course of study the extern, intern or resident intends to follow, the physicians or group of physicians who will supervise the program or course of study, and such other information as the board deems relevant. The board shall reserve the right to approve any such program or course of study and shall require registration by the supervising physician. A registration fee shall be fixed by the board, and registration must be renewed annually.

(2) Physician~~'s~~ assistants must ~~register with the~~ be licensed by the board prior to the commencement of activities which may involve the practice of medicine in this state. The ~~registration~~ licensure requirements shall include passage of an examination acceptable to the board. The board shall determine and limit the scope of activities of physician~~'s~~ assistants on the basis of completed courses of study or programs of instruction they have received. Upon completion of ~~registration~~ licensure, the board shall authorize physician~~'s~~ assistants to assist a physician or group of physicians who are qualified and approved by the board to ~~employ~~ supervise physician~~'s~~ assistants to engage in activities as limited by the board. The board shall fix a ~~registration~~ license fee, and ~~registration~~ the license must be renewed annually.

SECTION 4. That Section 54-1813, Idaho Code, be, and the same is hereby amended to read as follows:

54-1813. TEMPORARY LICENSE AND REGISTRATION. (1) The board may by ~~regulation~~ rule provide for the issuance of a temporary license to a person licensed to practice medicine and surgery or osteopathic medicine and surgery in some other state, territory or district of the United States or Canada or to a person who is a diplomate of the national board of medical examiners or a diplomate of the national board of examiners for osteopathic physicians and surgeons or to a physician assistant, provided that such temporary license shall be issued only to persons who have made an application for a permanent license in this state. The board shall fix and collect a fee for a temporary license and it shall be valid from the date of issuance to the next regular meeting of the board, unless extended by the board.

(2) The board may by ~~regulation~~ rule provide for temporary registration of externs, interns, residents. ~~and--physician's--assistants.~~ The board shall fix and collect a fee for the temporary registration and it shall specify the time period of the temporary registration.

SECTION 5. That Section 54-1814, Idaho Code, be, and the same is hereby amended to read as follows:

54-1814. GROUNDS FOR MEDICAL DISCIPLINE. Every person licensed to practice medicine, licensed to practice as a physician assistant or registered as an extern, intern~~,~~ or resident ~~or physician's--assistant~~ in this state is subject to discipline by the board pursuant to the

procedures and powers set forth in section 54-1806A, Idaho Code, upon any of the following grounds:

(1) Conviction of a felony, or a crime involving moral turpitude, or the entering of a plea of guilty or the finding of guilt by a jury or court of commission of a felony or a crime involving moral turpitude.

(2) Use of false, fraudulent or forged statements or documents, diplomas or credentials in connection with any licensing or other requirements of this act.

(3) Practicing medicine under a false or assumed name in this or any other state.

(4) Advertising the practice of medicine in any unethical or unprofessional manner.

(5) Knowingly aiding or abetting any person to practice medicine who is not authorized to practice medicine as provided in this chapter.

(6) Performing or procuring an unlawful abortion or aiding or abetting the performing or procuring of an unlawful abortion.

(7) The provision of health care which fails to meet the standard of health care provided by other qualified physicians in the same community or similar communities, taking into account his training, experience and the degree of expertise to which he holds himself out to the public.

(8) Division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for referral.

(9) Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.

(10) Inability to obtain or renew a license to practice medicine, or revocation of, or suspension of a license to practice medicine by any other state, territory, district of the United States or Canada, unless it can be shown that such action was not related to the competence of the person to practice medicine or to any conduct designated herein.

(11) Prescribing or furnishing narcotic or hallucinogenic drugs to addicted persons to maintain their addictions and level of usage without attempting to treat the primary condition requiring the use of narcotics.

(12) Prescribing or furnishing narcotic, hypnotic, hallucinogenic, stimulating or dangerous drugs for other than treatment of any disease, injury or medical condition.

(13) Failure to safeguard the confidentiality of medical records or other medical information pertaining to identifiable patients, except as required or authorized by law.

(14) The direct promotion by a physician of the sale of drugs, devices, appliances or goods to a patient that are unnecessary and not medically indicated.

(15) Abandonment of a patient.

(16) Willfully and intentionally representing that a manifestly incurable disease or injury or other manifestly incurable condition can be permanently cured.

(17) Failure to supervise the activities of externs, interns, residents, nurse practitioners or physician's assistants as required by

the registration documentation of this chapter.

(18) Practicing medicine when a license pursuant to this chapter is suspended, revoked or inactive.

(19) Practicing medicine in violation of a voluntary restriction or terms of probation pursuant to this chapter.

(20) Refusing to divulge to the board upon demand the means, method, device or instrumentality used in the treatment of a disease, injury, ailment, or infirmity.

(21) Commission of any act constituting a felony or commission of any act constituting a crime involving moral turpitude.

(22) Engaging in any conduct which constitutes an abuse or exploitation of a patient arising out of the trust and confidence placed in the physician by the patient.

Approved March 20, 1998.

CHAPTER 178
(S.B. No. 1416)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-122, IDAHO CODE, TO PROVIDE THAT MEMBERS OF THE FISH AND GAME ADVISORY COMMITTEE SHALL BE APPOINTED FOR THREE YEAR TERMS BY THE RESPECTIVE DIRECTORS OF THE DEPARTMENT OF FISH AND GAME AND THE DEPARTMENT OF AGRICULTURE AND SHALL SERVE AT THE PLEASURE OF THE DIRECTORS.

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

SECTION 1. That Section 36-122, Idaho Code, be, and the same is hereby amended to read as follows:

36-122. ADVISORY COMMITTEE. (a) There is hereby created the fish and game advisory committee. The committee shall consist of twelve (12) members. Six (6) members of the committee shall be appointed by the director of the department of fish and game to generally represent wildlife interests. Six (6) members of the committee shall be appointed by the director of the department of agriculture to generally represent agricultural interests. At the beginning of each odd-numbered year, the director of the department of agriculture shall appoint a chairman from among his appointees, and the director of the department of fish and game shall appoint a vice-chairman from among his appointees. At the beginning of each even-numbered year, the director of the department of fish and game shall appoint a chairman from among his appointees, and the director of the department of agriculture shall appoint a vice-chairman from among his appointees. The committee shall meet at such times as appropriate, but not less frequently than annually.

(b) ~~Commencing--July--1,-1994,-two-(2)-of-the-members-of-the-committee-appointed-by-the-director-of-the-department-of-agriculture--and two--(2)-of-the-members-appointed-by-the-director-of-the-department-of fish-and-game-shall-serve-one-(1)-year-terms,-two-(2)-of--the--members~~

~~appointed-by-the-director-of-the-department-of-agriculture-and-two-(2)-of-the-members-appointed-by-the-director-of-the-department-of-fish-and-game--shall--serve--two--(2)--year--terms--and--two-(2)-of-the-members-appointed-by-the-director-of-the-department-of-agriculture-and-two-(2)-of-the-members-appointed-by-the-director-of-the-department-of-fish-and-game-shall-serve-three-(3)-year-terms.-Thereafter-a~~All members shall be appointed to serve three (3) year terms. Appointments to fill vacancies shall be for the balance of the unexpired term. ~~A--member may--serve---seven-(7)-consecutive-years-or-two-(2)-consecutive-terms, whichever-is-less.~~ All members shall be appointed by and serve at the pleasure of the respective directors of the department of agriculture or the department of fish and game. Members shall be compensated as provided in section 59-509(b), Idaho Code, and such expenses shall be paid from the big game primary depredation account.

(c) The department of fish and game shall provide staff assistance and support for the committee.

(d) The committee shall have the authority to:

1. Act as a liaison between the commission, landowners, the department of agriculture, the department of fish and game, and wildlife, outdoor recreation and sportsmen's organizations;

2. Act as an independent resource to give advice and recommendations on administration of the programs authorized in sections 36-1108 and 36-1109, Idaho Code.

Approved March 20, 1998.

CHAPTER 179
(S.B. No. 1440)

AN ACT

RELATING TO WATER DISTRICTS; AMENDING SECTION 42-612, IDAHO CODE, TO PROVIDE PROCEDURES FOR COMPUTING THE RESPECTIVE AMOUNTS TO BE PAID BY EACH WATER USER, TO PROVIDE FOR AN ANNUAL MINIMUM CHARGE, TO MAKE GRAMMATICAL CORRECTIONS AND TO PROVIDE THAT WATER USERS AT THE ANNUAL MEETING MAY PROVIDE BY RESOLUTION THAT THE RESPECTIVE AMOUNTS OWED BY EACH WATER USER AS SHOWN IN THE ADOPTED BUDGET SHALL CONSTITUTE A FINAL DETERMINATION OF THE AMOUNT DUE FOR THAT YEAR WITHOUT THE NEED TO CARRY FORWARD ANY WATER USER DEBITS OR CREDITS TO THE FOLLOWING YEAR.

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

SECTION 1. That Section 42-612, Idaho Code, be, and the same is hereby amended to read as follows:

42-612. BUDGET OF WATER DISTRICT -- ADOPTION AND CONTENTS -- DEBT OF WATER USER. (1) At any annual meeting the water users must adopt a budget covering the estimated expenses of delivering the water of ~~said~~ the district for the ensuing year, and by resolution determine that ~~said~~ the budget shall be collected.~~,-and-t~~The compensation of the watermaster and the watermaster's assistants and any other expenses of

delivering the water of ~~said~~ the district to the users thereof, including the costs of the advisory committee in implementing resolutions adopted by the water users of the district for activities other than the payment of the salary and operating expenses of the watermaster and assistants, shall be paid in the manner hereinafter, in this section, provided.

(2) To the extent possible, funding for advisory committee expenses associated with implementing resolutions adopted by the water users for other than the payment of the salary and operating expenses of the watermaster and assistants shall come from funds available pursuant to section 42-613A, Idaho Code.

(3) ~~Said~~ The budget shall show the aggregate amount to be collected from all the water users in ~~said~~ the district, and the amount to be paid by each ditch, canal company, irrigation district or other water user.~~;--and--f~~For the purpose of computing ~~said~~ the respective amounts, to be paid by each water user, the water delivered to the various ditches, canal companies, irrigation districts or other users during the past season or seasons, not exceeding five (5) seasons, shall be used as a basis.

(4) Upon the adoption of ~~said~~ the budget the amount payable by each ditch, canal company, irrigation district or other water user, as shown by ~~said~~ the budget, shall become the debt of each respectively and shall become due and payable as hereinafter provided. Other provisions of chapter 6, title 42, Idaho Code, notwithstanding, water users may at the annual meeting by resolution provide for an annual minimum charge not to exceed twenty dollars ($20.00) per water user for watermaster services. ~~Said~~ The minimum charge is applicable whenever the prorated charge against any ditch, canal company, irrigation district or other water user is less than the minimum charge.

(5) Other provisions of chapter 6, title 42, Idaho Code, notwithstanding, water users at the annual meeting may provide by resolution that the respective amounts owed by each water user as shown in the adopted budget shall constitute a final determination of the amount due for that year without the need to carry forward any water user debits or credits to the following year.

Approved March 20, 1998.

CHAPTER 180
(S.B. No. 1414)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-412, IDAHO CODE, TO INCREASE HUNTER EDUCATION FEES.

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

SECTION 1. That Section 36-412, Idaho Code, be, and the same is hereby amended to read as follows:

36-412. EDUCATION PROGRAMS -- INSTRUCTOR QUALIFICATIONS -- FEE.

(a) The fish and game commission shall prescribe and administer education programs in hunting and archery. Such programs shall provide instruction in the safe handling of lawful hunting equipment. The programs shall also include instruction on wildlife and natural resource conservation, good conduct and respect for the rights and property of others, and survival in the outdoors. The commission may enter into agreements with public or private agencies and individuals in carrying out the provisions of this subsection.

(b) The department of fish and game shall recruit competent volunteer instructors. The department shall provide training for the instructors in the safe handling of legal hunting equipment, conservation of wildlife and natural resources, good conduct and respect for the rights and property of others, outdoor survival, and other appropriate subjects for training instructors. Instructors shall be issued certificates and shall on a voluntary basis, give instruction in education programs as established by the department of fish and game, to all eligible applicants.

(c) The commission shall establish fees for each program not to exceed ~~three~~ eight dollars ($~~3~~8.00) for persons who are seventeen (17) years and under and not to exceed ~~five~~ eight dollars ($~~5~~8.00) for persons age eighteen (18) years and older, to be assessed each individual obtaining instruction in hunter education for reimbursement for furnished materials. All students successfully completing the course of instruction shall be issued a certificate of completion in hunter safety and good hunting conduct.

Approved March 20, 1998.

CHAPTER 181
(S.B. No. 1412)

AN ACT

RELATING TO THE STATE HIGHWAY ACCOUNT; AMENDING SECTION 40-701A, IDAHO CODE, TO CLARIFY THAT MONEYS TRANSFERRED TO THE STATE HIGHWAY ACCOUNT FROM THE RESTRICTED HIGHWAY FUND SHALL BE USED FOR THE STATE AND LOCAL MATCH TO REPAIR AND RESTORE ROADS DAMAGED BY THE NATURAL DISASTERS OF 1996 AND 1997, AS DEFINED BY FEDERAL REGULATION; AMENDING SECTION 41-4909A, IDAHO CODE, TO COMBINE ALL MONEYS TRANSFERRED TO THE STATE HIGHWAY ACCOUNT FROM THE IDAHO PETROLEUM CLEAN WATER TRUST FUND SUSPENSE ACCOUNT THAT WILL BE USED FOR THE STATE AND LOCAL MATCH TO REPAIR ROADS DAMAGED BY NATURAL DISASTERS OCCURRING IN 1997, TO MERGE THE LIST OF ALL COUNTIES SO AFFECTED AND TO DELETE THE TIME RESTRICTION ON USE OF THE MONEYS; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 40-701A, Idaho Code, be, and the same is hereby amended to read as follows:

40-701A. RESTRICTED HIGHWAY FUND. (1) In order to insure that

authorized increases in highway user taxes and fees are expended exclusively on the construction and maintenance of highways, bridges and railroad crossings, there is established in the state treasury the "Restricted Highway, Bridge and Railroad Crossing Maintenance, Repair and Construction Fund" hereafter referred to as the restricted highway fund, to which shall be credited:

(a) Moneys as provided by sections 49-402(1) and 40-701(2)(a), Idaho Code; and

(b) All other moneys as may be provided by law; and

(c) Interest earned on the investment of idle moneys in the restricted fund shall be paid to the restricted highway fund.

(2) Moneys in the fund shall be apportioned as follows:

(a) Beginning April 1, 1996, all moneys accruing to the fund in an amount not to exceed six million dollars ($6,000,000) shall be transferred to the state highway account to be administered by the Idaho transportation department for use as the state and local match for federal highway administration (FHWA) and federal emergency management agency (FEMA) road and bridge projects. Such moneys shall be used exclusively for repair and restoration of local and state roads damaged by the 1996 and by the 1997 ~~flooding~~ natural disasters as defined by federal law and regulation under title 23, code of federal regulations, section 668.103(f), in the counties of Adams, Benewah, Boise, Bonner, Boundary, Clearwater, Elmore, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, Owyhee, Payette, Shoshone, Valley and Washington. When apportionment of moneys to the state highway account is sufficient to meet the purposes for which the moneys are designated, but not exceeding six million dollars ($6,000,000), no additional transfers shall be made as provided in this subsection, and moneys accruing to the fund shall thereafter be apportioned as provided in subsections (2)(b) and (2)(c) of this section. Any unused moneys transferred to the state highway account under the provisions of this subsection shall be returned to the restricted highway fund.

(b) Fifty percent (50%) to the state highway account; and

(c) Fifty percent (50%) to local highway jurisdictions in accordance with the provisions of section 40-709, Idaho Code.

(3) Subsequent to apportionment of moneys as required in subsection (2)(a) of this section, the state controller shall remit moneys apportioned to the state highway account, and shall cause the remittance of moneys apportioned to the local highway jurisdictions not later than January 25, April 25, July 25 and October 25 of each year.

(4) Moneys apportioned from the fund as provided in subsections (2)(b) and (2)(c) of this section shall be used exclusively for the construction, repair and maintenance of the roads, highways, bridges and railroad crossings within the state.

(5) On or before February 1 of each year, the Idaho transportation department and the local highway technical assistance council shall each submit a report to both the senate transportation committee and the house transportation and defense committee of the Idaho legislature, which provides a detailed accounting of the moneys apportioned, the projects for which moneys from the fund were expended, and the effect such expenditures have had on addressing the backlog of highway, bridge and railroad crossing needs.

SECTION 2. That Section 41-4909A, Idaho Code, be, and the same is hereby amended to read as follows:

41-4909A. APPORTIONMENT OF MONEYS TRANSFERRED TO THE STATE HIGHWAY ACCOUNT FROM THE IDAHO PETROLEUM CLEAN WATER TRUST FUND SUSPENSE ACCOUNT ON APRIL 1, 1997. ~~(1)~~ Of the moneys transferred to the state highway account pursuant to the distribution in section 41-4909(4)(c)(i), Idaho Code, an amount not to exceed ~~three~~ <u>six</u> million dollars ($~~3~~<u>6</u>,000,000) shall be administered by the Idaho transportation department for use as the state and local match for federal highway administration (FHWA) and federal emergency management agency (FEMA) road and bridge projects. Such moneys shall be used exclusively for repair and restoration of local and state roads and bridges damaged by the 1997 ~~flooding~~ <u>natural disasters</u> in the counties of Adams, Benewah, <u>Bingham,</u> Boise, Bonner, <u>Bonneville,</u> Boundary, <u>Butte,</u> Clearwater, <u>Custer,</u> Elmore, <u>Fremont,</u> Gem, Idaho, <u>Jefferson,</u> Kootenai, Latah, <u>Madison,</u> Nez Perce, Owyhee, Payette, Shoshone, Valley and Washington. When apportionment of moneys under this ~~subsection~~ is sufficient to meet the purposes for which the moneys are designated, but not to exceed ~~three~~ <u>six</u> million dollars ($~~3~~<u>6</u>,000,000), any remaining amounts shall be returned to the restricted highway fund established in section 40-701A, Idaho Code.

~~(2)--As-extensive-and-severe-flooding-has-occurred-in-the-state-in both--fiscal-years-1996-and-1997-and-a-high-potential-exists-for-additional-flooding-to-occur-due-to-the-heavy-snow-pack-levels-accumulated in-1997,-an-amount-not-to-exceed-three--million--dollars--($3,000,000) shall--be--administered-by-the-Idaho-transportation-department-for-use as-the-state-and-local-match-for-federal-highway-administration-(FHWA) and-federal-emergency-management-agency-(FEMA)-road-and--bridge--projects.-Such-moneys-shall-be-used-exclusively-for-repair-and-restoration of--any--local--and-state-roads-and-bridges-damaged-by-any-flooding-in the-state.-When-apportionment-of-moneys-under-this-subsection-is--sufficient--to-meet-the-purposes-for-which-the-moneys-are-designated,-but not-to--exceed--three--million--dollars--($3,000,000),--any--remaining amounts,--or--any--amounts--remaining--after-January-1,-1998,-shall-be returned--to--the--restricted--highway--fund--established--in--section 40-701A,-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, and retroactively to December 31, 1997.

Approved March 20, 1998.

CHAPTER 182
(S.B. No. 1404)

AN ACT

RELATING TO SALES TAX EXEMPTIONS; AMENDING SECTION 63-3622O, IDAHO CODE, TO EXPAND THE SALES TAX EXEMPTION FOR DONATIONS TO, SALES

AND PURCHASES BY FOOD BANKS OR SOUP KITCHENS TO INCLUDE GROWING OF FOOD AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 63-3622O, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622O. EXEMPT PRIVATE AND PUBLIC ORGANIZATIONS. (1) There are exempted from the taxes imposed by this chapter:

(a) Sales to or purchases by hospitals, health-related entities, educational institutions, forest-protective associations and canal companies which are nonprofit organizations; and

(b) Donations to, sales to, and purchases by the Idaho Foodbank Warehouse, Inc.; and

(c) Donations to, sales to, and purchases by food banks or soup kitchens of food or other tangible personal property used by food banks or soup kitchens in the growing, storage, preparation or service of food, but not including licensed motor vehicles or trailers; and

(d) Sales of clothes to, donations of clothes to, and purchases of clothes by nonsale clothiers; and

(~~5~~e) Sales to or purchases by centers for independent living; and

(~~e~~f) Sales to or purchases by the state of Idaho and its agencies and its political subdivisions.

(2) As used in this section, these words shall have the following meanings:

(a) "Educational institution" shall mean 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.

(b) "Hospital" shall include nonprofit institutions licensed by the state for the care of ill persons. It shall not extend to nursing homes or similar institutions.

(c) "Health-related entities" shall mean the Idaho Cystic Fibrosis Foundation, Idaho Epilepsy League, Idaho Lung Association, March of Dimes, American Cancer Society, Mental Health Association, The Arc, Idaho Heart Association, Idaho Ronald McDonald House, United Cerebral Palsy, Arthritis Foundation, Muscular Dystrophy Foundation, National Multiple Sclerosis Society, Rocky Mountain Kidney Association, American Diabetes Association, Easter Seals, and Idaho Special Olympics, together with said entities' local or regional chapters or divisions.

(d) "Canal companies" 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.

(e) "Forest protective associations" shall mean associations whose purpose is the furnishing, operating and maintaining of a protective system for the detection, prevention and suppression of forest or range fires. Forest protective associations shall include only those associations with which the state of Idaho has contracted or become a member of pursuant to chapter 1, title 38, Idaho Code.

(f) "Food banks or soup kitchens" shall mean any nonprofit corporation or association, other than the Idaho Foodbank Warehouse, Inc., one of whose regular activities is the furnishing or providing of food or food products to others without charge.

(g) "Nonsale clothier" shall mean any nonprofit corporation or association one of whose primary purposes is the furnishing or providing of clothes to others without charge.

(h) "Clothes" shall mean garments in general, designed or intended to be worn by humans and shall include footwear in addition to wearing apparel.

(9i) "Center for independent living" shall mean a private, nonprofit, non-residential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

(i) Is designed and operated within a local community by individuals with disabilities;

(ii) Provides an array of independent living services and programs; and

(iii) Is cross-disability.

(~~i~~j) "Political subdivision" means:

(i) A governmental organization which:

1. Embraces a certain territory,

2. Is organized for public advantage and not in the interest of private individuals or classes,

3. Has been delegated functions of government, and

4. Has the statutory power to levy taxes; or

(ii) A public health district created by section 39-408, Idaho Code; or

(iii) A soil conservation district as defined in section 22-2717, Idaho Code; or

(iv) A drainage district created pursuant to chapter 29, title 42, Idaho Code; or

(v) An irrigation district created pursuant to title 43, Idaho Code; or

(vi) A state grazing board created by section 57-1204, Idaho Code; or

(vii) A water measurement district created pursuant to section 42-705 or 42-706, Idaho Code; or

(viii) A ground water management district created pursuant to chapter 51, title 42, Idaho Code.

(ix) An agency of the state of Idaho is an office or organization created by the constitution or statutes of this state and constituting a component part of the executive, judicial or legislative branch of the government of this

state.

(3) The exemption granted by subsection (1)(~~e~~f) of this section does not include any association or other organization whose members are political subdivisions or state agencies unless the organization is expressly created under the joint powers provision of sections 67-2328 through 67-2333, Idaho Code.

(4~~e~~) The exemption granted by subsection (1)(~~e~~f) of this section does not include the use of tangible personal property by a contractor used to improve real property of an exempt entity when such use is within the definition provided by section 63-3615(b), Idaho Code, whether the use tax liability is included in a contract total or stated separately in a contract.

(5) There is exempted from the taxes imposed in this chapter, the renting of a place to sleep to an individual by the Idaho Ronald McDonald House.

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, 1998.

CHAPTER 183
(S.B. No. 1385)

AN ACT

RELATING TO INCOME TAX CREDIT FOR REHABILITATION FACILITIES; AMENDING SECTION 63-3029C, IDAHO CODE, TO PROVIDE THAT THE INCOME TAX CREDIT AVAILABLE FOR CONTRIBUTIONS TO CERTAIN REHABILITATION FACILITIES SHALL ALSO APPLY TO FOUNDATIONS OF THOSE FACILITIES.

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

SECTION 1. That Section 63-3029C, Idaho Code, be, and the same is hereby amended to read as follows:

63-3029C. INCOME TAX CREDIT FOR REHABILITATION FACILITIES -- LIMITATION. At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to the anchor house <u>or its foundation,</u> to the Idaho youth ranch <u>or its foundation</u>, to the north Idaho childrens' home <u>or its foundation,</u> or to a nonprofit rehabilitation facility located within the state of Idaho <u>or its foundation.</u>

(1) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer's total income tax liability imposed by section 63-3024, Idaho Code, for the year, or one hundred dollars ($100), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or five hundred dollars ($500), whichever is less.

For the purposes of this section, "nonprofit rehabilitation facility" means only a facility that is accredited by the commission on accreditation of rehabilitation facilities.

Approved March 20, 1998.

CHAPTER 184
(S.B. No. 1367)

AN ACT

RELATING TO PUBLIC RIGHTS-OF-WAY; AMENDING SECTION 40-202, IDAHO CODE, TO PROVIDE THAT BY JULY 1, 2000, AND EVERY FIVE YEARS THEREAFTER, THE BOARD OF COUNTY OR HIGHWAY DISTRICT COMMISSIONERS SHALL HAVE PUBLISHED IN MAP FORM AND MADE READILY AVAILABLE THE LOCATION OF ALL PUBLIC RIGHTS-OF-WAY UNDER ITS JURISDICTION AND TO PROVIDE FOR AN EXTENSION OF TIME; AMENDING SECTION 40-604, IDAHO CODE, TO PROVIDE BY JULY 1, 2000, AND EVERY FIVE YEARS THEREAFTER THAT COMMISSIONERS SHALL HAVE PUBLISHED IN MAP FORM AND MADE READILY AVAILABLE THE LOCATION OF ALL PUBLIC RIGHTS-OF-WAY UNDER THEIR JURISDICTION, TO PROVIDE FOR AN EXTENSION OF TIME AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 40-1310, IDAHO CODE, TO PROVIDE BY JULY 1, 2000, AND EVERY FIVE YEARS THEREAFTER THAT THE COMMISSIONERS OF A HIGHWAY DISTRICT SHALL HAVE PUBLISHED IN MAP FORM AND MADE READILY AVAILABLE THE LOCATION OF ALL PUBLIC RIGHTS-OF-WAY UNDER ITS JURISDICTION AND TO PROVIDE FOR AN EXTENSION.

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

SECTION 1. That Section 40-202, Idaho Code, be, and the same is hereby amended to read as follows:

40-202. DESIGNATION OF HIGHWAYS AND PUBLIC RIGHTS-OF-WAY. (1) The initial selection of the county highway system and highway district system may be accomplished in the following manner:

(a) The board of county or highway district commissioners shall cause a map to be prepared showing each highway and public right-of-way in their jurisdiction, and the commissioners shall cause notice to be given of intention to adopt the map as the official map of that system, and shall specify the time and place at which all interested persons may be heard.

(b) After the hearing, the commissioners shall adopt the map, with any changes or revisions considered by them to be advisable in the public interest, as the official map of the respective highway system.

(2) If a county or highway district acquires an interest in real property for highway or public right-of-way purposes, the respective

commissioners shall:

(a) Cause any order or resolution enacted, and deed or other document establishing an interest in the property for their highway system purposes to be recorded in the county records; or

(b) Cause the official map of the county or highway district system to be amended as affected by the acceptance of the highway or public right-of-way.

Provided, however, a county with highway jurisdiction or highway district may hold title to an interest in real property for public right-of-way purposes without incurring an obligation to construct or maintain a highway within the right-of-way until the county or highway district determines that the necessities of public travel justify opening a highway within the right-of-way. The lack of an opening shall not constitute an abandonment, and mere use by the public shall not constitute an opening of the public right-of-way.

(3) Highways laid out, recorded and opened as described in subsection (2) of this section, by order of a board of commissioners, and all highways used for a period of five (5) years, provided they shall have been worked and kept up at the expense of the public, or located and recorded by order of a board of commissioners, are highways. If a highway created in accordance with the provisions of this subsection is not designated on the official map of the respective highway system or is not opened as described in subsection (2) of this section, there shall be no duty to maintain that highway, nor shall there be any liability for any injury or damage for failure to maintain it or any highway signs, until the highway is designated as a part of the county or highway district system by inclusion on the official map as a highway and opened to public travel as a highway.

(4) When a public right-of-way is created in accordance with the provisions of subsection (2) of this section, or section 40-203 or 40-203A, Idaho Code, there shall be no duty to maintain that public right-of-way, nor shall there be any liability for any injury or damage for failure to maintain it or any highway signs.

(5) Nothing in this section shall limit the power of any board of commissioners to subsequently include or exclude any highway or public right-of-way from the county or highway district system.

(6) By July 1, 2000, and every five (5) years thereafter, the board of county or highway district commissioners shall have published in map form and made readily available the location of all public rights-of-way under its jurisdiction. Any board of county or highway district commissioners may be granted an extension of time with approval of the legislature by adoption of a concurrent resolution.

SECTION 2. That Section 40-604, Idaho Code, be, and the same is hereby amended to read as follows:

40-604. DUTIES AND POWERS OF COMMISSIONERS. Commissioners shall:

(1) Exercise general supervision over all highways in the county highway system, including their location, design, construction, reconstruction, repair and maintenance, and develop general policies regarding highway matters.

(2) Cause to be surveyed, viewed, laid out, recorded, opened and worked, any highways or public rights-of-way as are necessary for pub-

lic convenience under the provisions of sections 40-202 and 40-203A, Idaho Code.

(3) Cause to be recorded all highways and public rights-of-way within their highway system.

(4) Have authority to abandon and vacate any highway or public right-of-way within their highway system under the provisions of section 40-203, Idaho Code.

(5) Designate county highways, or parts of them, as controlled-access highways and regulate, restrict or prohibit access to those highways so as best to serve the traffic for which the facility is intended.

(6) Have authority to make agreements with any incorporated city, other county, a highway district, the state, or the United States, its agencies, departments, bureaus, boards, or any government owned corporation for the construction, reconstruction, or maintenance of the county's highway system by those entities or for the construction, reconstruction, or maintenance of the highway systems of those entities by the county's highway organization. The county shall compensate or be compensated for the fair cost of the work except as otherwise specifically provided in this title.

(7) Let out by contract the improvement of highways, the construction and repair of bridges or other adjuncts to highways, when the amount of work to be done by contract exceeds five hundred dollars ($500). At least twenty-five percent (25%) of the fund collected in any highway division must be expended within the division in which the fund was collected.

(8) Contract, purchase, or otherwise acquire the right-of-way over private property for the use of county highways and for this purpose may institute proceedings under the code of civil procedure.

(9) Levy an ad valorem tax to be paid into the county highway fund and cause the tax collected each year to be paid into that fund and kept by the treasurer as a separate fund. When all of the territory of a county is included in one (1) or more highway districts the commissioners shall not make any levy for general highway purposes.

(10) Audit and draw warrants on the county highway fund required for payment for rights-of-way improvement.

(11) Rename any highway within the county, excepting those situated within the territorial limits of incorporated cities, when the renaming will eradicate confusion.

(12) Cause guide posts properly inscribed to be erected and maintained on designated highways.

(13) Exercise other powers as may be prescribed by law.

(14) By July 1, 2000, and every five (5) years thereafter, the commissioners shall have published in map form and made readily available the location of all public rights-of-way under their jurisdiction. The commissioners of a district may be granted an extension of time with approval of the legislature by adoption of a concurrent resolution.

SECTION 3. That Section 40-1310, Idaho Code, be, and the same is hereby amended to read as follows:

40-1310. POWERS AND DUTIES OF HIGHWAY DISTRICT COMMISSIONERS. (1)

The commissioners of a highway district have, except as provided in section 40-1323, Idaho Code, exclusive general supervision and jurisdiction over all highways within their highway system, with full power to construct, maintain, repair and improve all highways within their highway system, whether directly or by their own agents and employees or by contract. Except as otherwise provided in this chapter in respect to the highways within their highway system, a highway district shall have all of the powers and duties that would by law be vested in the commissioners of the county and in the district directors of highways if the highway district had not been organized. Where any highway within the limits of the highway district has been designated as a state highway, then the board shall have exclusive supervision, jurisdiction and control over the designation, location, maintenance, repair and reconstruction of it. The highway district shall have power to manage and conduct the business and affairs of the district; establish and post speed and other regulatory signs; make and execute all necessary contracts; have an office and employ and appoint agents, attorneys, officers and employees as may be required, and prescribe their duties and fix their compensation. Highway district commissioners and their agents and employees have the right to enter upon any lands to make a survey, and may locate the necessary works on the line of any highways on any land which may be deemed best for the location.

(2) The highway district shall also have the right to acquire either by purchase, or other legal means, all lands and other property necessary for the construction, use, maintenance, repair and improvement of highways in their system. The highway district may change the width or location, or straighten lines of any highway in their system, and if in the constructing, laying out, widening, changing, or straightening of any highways, it shall become necessary to take private property, the district director of highways, with the consent and on order of the highway district commissioners, shall cause a survey of the proposed highway to be made, together with an accurate description of the lands required. He shall endeavor to agree with each owner of property, resident of the county in which the district is situated, for the purchase of a right-of-way over the lands included within the description. If the director is able to agree with the owner of the lands, the highway district commissioners may purchase the land and pay for it out of the funds of the highway district, and the lands purchased shall then be conveyed to the highway district for the use and purpose of highways.

(3) Whenever the director of highways shall be unable to agree with any person for the purchase of land, or that person shall be unknown or a nonresident of the county in which the highway district is situated, or a minor, or an insane or incompetent person, the director shall have the right, subject to the order of the highway district commissioners, to begin action in the name of the highway district in the district court of the county in which the district is situated, to condemn the land necessary for the right-of-way for the highway, under the provisions of chapter 7, title 7, Idaho Code. An order of the highway district commissioners entered upon its minutes that the land sought to be condemned is necessary for a public highway and public use shall be prima facie evidence of the fact.

(4) The highway district has the power to contract for and pay out any special rewards and bounties as may appear expedient or useful in securing proper highway construction and maintenance, and to accept, on behalf of the district, aid or contributions in the construction or maintenance of any highway; to construct or repair, with the consent of the corporate authorities of any city within the district, any highway within a city, upon the division of the cost as may be agreed upon; or to join with the state or any body politic or political subdivision, or with any person in the construction or repair of any highway and to contract for an equitable division of the cost; and all counties, cities, highway districts and other bodies politic and political subdivisions are authorized to contract with any highway district acting through its highway district commissioners in exercise of the powers granted.

(5) The highway district has the power to receive highway petitions and lay out, alter, create and abandon and vacate public highways and public rights-of-way within their respective districts under the provisions of sections 40-202, 40-203 and 40-203A, Idaho Code. Provided however, when a public highway, public street and/or public right-of-way is part of a platted subdivision which lies within an established county/city impact area or within one (1) mile of a city if a county/city impact area has not been established, consent of the city council of the affected city, when the city has a functioning street department with jurisdiction over the city streets, shall be necessary prior to the granting of acceptance or vacation of said public street or public right-of-way by the highway district board of commissioners.

(6) The highway district is empowered to take conveyance or other assurances, in the name of the highway district, for all property acquired by it under the provisions of this chapter for the purposes of this title. The highway district may institute and maintain any and all actions and proceedings, suits at law and in equity, necessary or proper in order to carry out the provisions of this chapter, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities provided in this chapter. In all courts, actions, suits or proceedings, the highway district may sue, appear and defend, in person or by attorneys, and in the name of the highway district.

(7) The highway district is empowered to hold, use, acquire, sell, manage, occupy and possess property. The highway district may create highway divisions, which must be carefully and distinctly defined and described. Highway divisions may be altered, changed, created or modified by the highway district commissioners, as the need requires.

(8) The highway district board of commissioners shall have the exclusive general supervisory authority over all public highways, public streets and public rights-of-way under their jurisdiction, with full power to establish design standards, establish use standards, establish regulations in accordance with the provisions of title 49, Idaho Code, and control access to said public highways, public streets and public rights-of-way.

(9) By July 1, 2000, and every five (5) years thereafter, the highway district board of commissioners shall have published in map form and made readily available the location of all public rights-of-

way under its jurisdiction. Any highway district board of commissioners may be granted an extension of time with the approval of the legislature by adoption of a concurrent resolution.

Approved March 20, 1998.

CHAPTER 185
(S.B. No. 1357)

AN ACT

RELATING TO THE POWERS AND DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTION 67-5761, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR HAS AUTHORITY TO SELF-INSURE CERTAIN HEALTH INSURANCE COVERAGE AND TO PROVIDE THE DIRECTOR FLEXIBILITY TO DETERMINE TO SELF-INSURE GROUP COVERAGE.

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

SECTION 1. That Section 67-5761, Idaho Code, be, and the same is hereby amended to read as follows:

67-5761. POWERS AND DUTIES -- GROUP INSURANCE. (1) The director of the department of administration shall have the authority to:

(a) Establish an advisory committee to be comprised of program participants. The advisory committee may include employee representatives. The director shall consult with the advisory committee in the performance of those duties as enumerated in subsection (2) of this section.

(b) Fix and promulgate rules for determining eligibility of personnel for participation in any group plans.

(c) Determine the nature and extent of needs for group life insurance, group annuities, group disability insurance, and group health care service coverages with respect to personnel, including elected or appointed officers and employees, of all offices, departments, divisions, boards, commissions, institutions, agencies and operations of the government of the state of Idaho and retired personnel, the premiums or prepayments for which are payable in whole or in part from funds of the state. "Disability" insurance includes all personal accident, health, hospital, surgical, and medical coverages, and "health care service" includes all services rendered for maintenance of good health and diagnosis, relief, or treatment of any injury, ailment, or bodily condition.

(d) Determine the types, terms, conditions, and amounts of group insurance, group annuities, or group coverage by health care service organizations, as the case may be, required by such needs.

(e) Negotiate and contract for, and have placed or continued in effect all such insurance and coverages as may reasonably be obtainable from insurers and health care service organizations, as the case may be, duly authorized to transact such business in this state. The director may negotiate deductibles to any group plan or

coverage. Alternatively, the director may self-insure any insurance or coverage and may contract with any insurance company or third party administrator duly authorized to transact business in this state or administer such plan.

(f) Prepare or otherwise obtain and make available to all personnel affected thereby, printed information concerning all such group plans currently in effect, together with the rules governing eligibility, payment of premium or prepayment where applicable, claims procedures, and other matters designed to facilitate utilization and administration of such plans.

(g) Administer all such group plans on behalf of the ~~policyholder or contract-holder~~ insured, including but not limited to:

(i) Enrollment and reporting to the insurer or health care service organization of individuals eligible for coverage and covered under particular policies or contracts, and termination of such enrollment upon termination of eligibility;

(ii) Collection or p~~P~~ayment of premiums or prepayments for such coverage, policies and contracts and accounting for the same;

(iii) Establishment of reasonable procedures for handling claims arising under such coverage, policies and contracts, and rendering assistance to claimants, as may be required in the presentation and consideration of claims;

(iv) Effectuation of changes in such coverage, policies and contracts and renewal or termination thereof;

(v) Making and settlement of claims.

(2) Nothing herein shall be deemed to prohibit any such coverage, policy or contract providing coverage also for dependents of personnel under terms and conditions formulated and negotiated by the director. The director shall formulate and negotiate a plan of health care service coverage which includes retired personnel and dependents eligible for a retirement benefit through the Idaho public employee retirement system which benefit equals or exceeds the retiree medical insurance premium in effect for that retiree at the date of retirement. Coverage for retired personnel shall parallel the coverage provided to active state employees to the extent necessary, and shall include a medicare credit for retirees who are covered by medicare. Any increased cost on the health care plan for active employees as a result of such coverage costs shall be paid for by the state and by active state employees in equal shares. Retired personnel shall be responsible for paying their own premiums for any plan of health care service insurance coverage provided pursuant to this section. No coverage, policy or contract ~~negotiated by the director~~ which provides coverage or benefits for personnel, dependents of personnel, or retired personnel shall create any vested right or benefit for the retired personnel in retiree group insurance coverages.

Approved March 20, 1998.

CHAPTER 186
(H.B. No. 710)

AN ACT

RELATING TO SCHOOL ATTENDANCE; AMENDING SECTION 33-205, IDAHO CODE, TO PROVIDE THAT ENROLLMENT MAY BE DENIED TO A STUDENT FOR CERTAIN ACTS COMMITTED IN THIS STATE OR ANY STATE; AND AMENDING SECTION 33-209, IDAHO CODE, TO REQUIRE IF REQUESTED THE PARENT OR GUARDIAN OF A STUDENT TRANSFERRING FROM ANOTHER STATE TO FURNISH COPIES OF STUDENT RECORDS INCLUDING RECORDS CONTAINING INFORMATION CONCERNING VIOLENT OR DISRUPTIVE BEHAVIOR OR DISCIPLINARY ACTION INVOLVING THE STUDENT, TO PROVIDE FOR TREATMENT OF THE RECORDS AND TO PROVIDE THAT FAILURE OF A PARENT OR GUARDIAN TO FURNISH REQUIRED RECORDS OR TO REQUEST REQUIRED RECORDS FROM A PREVIOUS SCHOOL SHALL BE ADEQUATE GROUNDS TO DENY ENROLLMENT OR TO SUSPEND OR EXPEL A STUDENT ALREADY ENROLLED.

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

SECTION 1. That Section 33-205, Idaho Code, be, and the same is hereby amended to read as follows:

33-205. DENIAL OF SCHOOL ATTENDANCE. The board of trustees may deny enrollment, or may deny attendance at any of its schools by expulsion, to any pupil who is an habitual truant, or who is incorrigible, or whose conduct, in the judgment of the board, is such as to be continuously disruptive of school discipline, or of the instructional effectiveness of the school, or whose presence in a public school is detrimental to the health and safety of other pupils, or who has been expelled from another school district in this state or any other state. Any pupil having been denied enrollment or expelled may be enrolled or readmitted to the school by the board of trustees upon such reasonable conditions as may be prescribed by the board; but such enrollment or readmission shall not prevent the board from again expelling such pupil for cause.

Provided however, the board shall expel from school for a period of not less than one (1) year, twelve (12) calendar months, or may deny enrollment to, a student who has been found to have carried a weapon or firearm on school property in this state or any other state, except that the board may modify the expulsion or denial of enrollment order on a case-by-case basis. Discipline of students with disabilities shall be in accordance with the requirements of federal law part B of the individuals with disabilities education act and section 504 of the rehabilitation act. An authorized representative of the board shall report such student and incident to the appropriate law enforcement agency.

No pupil shall be expelled nor denied enrollment without the board of trustees having first given written notice to the parent or guardian of the pupil, which notice shall state the grounds for the proposed expulsion or denial of enrollment and the time and place where such parent or guardian may appear to contest the action of the board to deny school attendance, and which notice shall also state the

rights of the pupil to be represented by counsel, to produce witnesses and submit evidence on its own behalf, and to cross-examine any adult witnesses who may appear against him. Within a reasonable period of time following such notification, the board of trustees shall grant the pupil and his parents or guardian a full and fair hearing on the proposed expulsion or denial of enrollment. However, the board shall allow a reasonable period of time between such notification and the holding of such hearing to allow the pupil and his parents or guardian to prepare their response to the charge. Any pupil who is within the age of compulsory attendance, who is expelled or denied enrollment as herein provided, shall come under the purview of the youth rehabilitation law, and an authorized representative of the board shall file a petition with the magistrate division of the district court of the county of the pupil's residence, in such form as the court may require under the provisions of section 16-1807, Idaho Code.

The superintendent of any district or the principal of any school may temporarily suspend any pupil for disciplinary reasons or for other conduct disruptive of good order or of the instructional effectiveness of the school. A temporary suspension by the principal shall not exceed five (5) school days in length; and the school superintendent may extend the temporary suspension an additional ten (10) school days. Provided, that on a finding by the board of trustees that immediate return to school attendance by the temporarily suspended student would be detrimental to other pupils' health, welfare or safety, the board of trustees may extend the temporary suspension for an additional five (5) school days. Prior to suspending any student, the superintendent or principal shall grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any pupil who has been suspended may be readmitted to the school by the superintendent or principal who suspended him upon such reasonable conditions as said superintendent or principal may prescribe. The board of trustees shall be notified of any temporary suspensions, the reasons therefor, and the response, if any, thereto.

The board of trustees of each school district shall establish the procedure to be followed by the superintendent and principals under its jurisdiction for the purpose of effecting a temporary suspension, which procedure must conform to the minimal requirements of due process.

SECTION 2. That Section 33-209, Idaho Code, be, and the same is hereby amended to read as follows:

33-209. TRANSFER OF STUDENT RECORDS -- DUTIES. Whenever a student transfers from one (1) school to another, within the district, within the state, or elsewhere, and the sending school is requested to forward student records, the sending school shall respond by forwarding a certified copy of the transferred student's record within ten (10) days, except as provided in section 18-4511, Idaho Code. When the school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information shall be included in the transfer of records but shall be contained in a sealed envelope, marked to indicate the confidential nature of the contents, and addressed to the principal or other admin-

istrative officer of the school.

The parent or guardian of a student transferring from out-of-state to a school within the state of Idaho is required, if requested, to furnish the school within this state accurate copies of the student's school records, including records containing information concerning violent or disruptive behavior or disciplinary action involving the student. This information shall be contained in a sealed envelope, marked to indicate the confidential nature of the contents, and addressed to the principal or other administrative officer of the school.

Failure of the parent or guardian to furnish the required records, or failure to request of the administration of the previous school to provide the required records, shall constitute adequate grounds to deny enrollment to the transferring student or to suspend or expel the student if already enrolled.

Approved March 20, 1998.

CHAPTER 187
(H.B. No. 707)

AN ACT

RELATING TO PHARMACY REIMBURSEMENT; AMENDING SECTION 56-209g, IDAHO CODE, TO ESTABLISH PHARMACY REIMBURSEMENT RATES AND TO AUTHORIZE ADJUSTMENT OF RATES THROUGH NEGOTIATED RULEMAKING.

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

SECTION 1. That Section 56-209g, Idaho Code, be, and the same is hereby amended to read as follows:

56-209g. PHARMACY REIMBURSEMENT. ~~From January 1, 1991, through December 31, 1994, pursuant to federal action, a moratorium on reduction of pharmacy reimbursement levels for medicaid under title XIX of the social security act has been in effect~~ Medicaid pharmacy reimbursement levels are a combination of the cost of the drug and a dispensing fee which includes such pharmaceutical care services as counseling, obtaining a patient history, documentation, and dispensing. From and after January 1, 1995, through June 30, 1998, it shall be the policy of the state of Idaho that there be no reduction of pharmacy reimbursement levels for medicaid under title XIX of the social security act except as necessary to comply with federal regulations, 42 CFR 447.331 through 447.334, as implemented in the state of Idaho. Effective July 1, 1998, pharmacy reimbursement levels may be adjusted in accordance with rules promulgated by the director through negotiated rulemaking with interested parties including representatives of the pharmacy profession.

Approved March 20, 1998.

CHAPTER 188
(H.B. No. 705, As Amended)

AN ACT

RELATING TO RESIDENTIAL CARE FACILITIES AND RESIDENTIAL CARE FACILITIES FOR THE ELDERLY; AMENDING CHAPTER 33, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-3354A, IDAHO CODE, TO AUTHORIZE A WAIVER OF THE REQUIREMENTS FOR LICENSURE AS A RESIDENTIAL CARE FACILITY UNDER CONDITIONS SPECIFIED; AND AMENDING CHAPTER 35, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-3554A, IDAHO CODE, TO AUTHORIZE A WAIVER OF THE REQUIREMENTS FOR LICENSURE AS A RESIDENTIAL CARE FACILITY FOR THE ELDERLY UNDER THE CONDITIONS SPECIFIED.

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

SECTION 1. That Chapter 33, 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 39-3354A, Idaho Code, and to read as follows:

39-3354A. SPECIAL WAIVER PERMITTED. The department may grant a special waiver of the requirement for licensure as a residential care facility when it is deemed in the best interests of individuals and with due consideration of the following criteria:

(1) The individuals are residents of a facility operated by a nonprofit health care and/or housing organization established as such in the state of Idaho and satisfying the requirements of U.S. Internal Revenue Code section 501(c);

(2) The support services required by the individuals are furnished by an entity approved to provide such services in the state of Idaho in good standing as demonstrated by routine inspections required for the type of entity providing services;

(3) Facilities seeking such waivers and providing meal service shall be inspected and licensed as a food service establishment by the district health department unless the meal service is provided by a kitchen already part of a facility licensed by the department;

(4) The costs of obtaining the needed services from another source are significantly greater and/or would pose a significant hardship on these individuals.

Any waiver granted under this section shall be reviewed annually and is subject to inspection by the department to ensure safety and sanitation.

SECTION 2. That Chapter 35, 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 39-3554A, Idaho Code, and to read as follows:

39-3554A. SPECIAL WAIVER PERMITTED. The department may grant a special waiver of the requirement for licensure as a residential care facility for the elderly when it is deemed in the best interests of

individuals and with due consideration of the following criteria:

(1) The individuals are residents of a facility operated by a nonprofit health care and/or housing organization established as such in the state of Idaho and satisfying the requirements of U.S. Internal Revenue Code section 501(c);

(2) The support services required by the individuals are furnished by an entity approved to provide such services in the state of Idaho in good standing as demonstrated by routine inspections required for the type of entity providing services;

(3) Facilities seeking such waivers and providing meal service shall be inspected and licensed as a food service establishment by the district health department unless the meal service is provided by a kitchen already part of a facility licensed by the department;

(4) The costs of obtaining the needed services from another source are significantly greater and/or would pose a significant hardship on these individuals.

Any waiver granted under this section shall be reviewed annually and is subject to inspection by the department to ensure safety and sanitation.

Approved March 20, 1998.

CHAPTER 189
(H.B. No. 698)

AN ACT

RELATING TO ALLOWABLE GROSS LOADS; AMENDING SECTION 49-1001, IDAHO CODE, TO PROVIDE THAT THE MANUFACTURER'S GROSS AXLE WEIGHT RATING OF EACH AXLE SHALL NOT BE LESS THAN THE ACTUAL LOADING OF THE AXLE, TO PROVIDE THAT THE MANUFACTURER'S GROSS TIRE WEIGHT RATING OF EACH TIRE SHALL NOT BE LESS THAN THE ACTUAL LOADING OF THE TIRE, AND TO DELETE THE REQUIREMENT THAT THE PRESSURE REGULATOR VALVE WHICH CONTROLS OPERATION OF A VARIABLE LOAD SUSPENSION AXLE SHALL BE SET AND SEALED.

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

SECTION 1. That Section 49-1001, Idaho Code, be, and the same is hereby amended to read as follows:

49-1001. ALLOWABLE GROSS LOADS. The gross load imposed on the highway by any vehicle or combination of vehicles shall not exceed the limits in this section. The maximum single axle gross weight shall be twenty thousand (20,000) pounds, the maximum single wheel gross weight shall be ten thousand (10,000) pounds and the maximum gross vehicle or combination weight shall be one hundred five thousand five hundred (105,500) pounds, provided that maximum gross vehicle or combination weight on United States federal interstate and defense highways of this state shall not exceed eighty thousand (80,000) pounds, except as permitted under the provisions of section 49-1004, Idaho Code.

(1) The total gross weight imposed on the highway by any group of

consecutive axles shall be determined by the following formula:

$$W=500((LN/N-1)+12N+36)$$

Where W is the maximum weight in pounds (to the nearest 500 pounds) carried on any group of two (2) or more consecutive axles. L is the distance in feet between the extremes of any group of two (2) or more consecutive axles, and N is the number of axles under consideration.

The formula is modified as illustrated in the following table:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Maximum load in pounds carried on any group of 2 or more consecutive axles							
	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles
4	34,000							
5	34,000			WHEN NO ALLOWABLE WEIGHT IS				
6	34,000			LISTED FOR ANY AXLE SPACING,				
7	34,000			APPLY THE ALLOWABLE WEIGHT AS				
8	34,000			LISTED IN THE FIRST COLUMN TO				
8+	38,000	42,000		THE LEFT				
9	39,000	42,500						
10	40,000	43,500						
11		44,000						
12		45,000	50,000					
13		45,500	50,500					
14		46,500	51,500					
15		47,000	52,000					
16		48,000	52,500	58,000				
17		48,500	53,500	58,500				
18		49,500	54,000	59,000				
19		50,000	54,500	60,000				
20		51,000	55,500	60,500	66,000			
21		51,500	56,000	61,000	66,500			
22		52,500	56,500	61,500	67,000			
23		53,000	57,500	62,500	68,000			
24		54,000	58,000	63,000	68,500	74,000		
25		54,500	58,500	63,500	69,000	74,500		
26		55,500	59,500	64,000	69,500	75,000		
27		56,000	60,000	65,000	70,000	75,500		
28		57,000	60,500	65,500	71,000	76,500	82,000	
29		57,500	61,500	66,000	71,500	77,000	82,500	
30		58,500	62,000	66,500	72,000	77,500	83,000	
31		59,000	62,500	67,500	72,500	78,000	83,500	
32		60,000	63,500	68,000	73,000	78,500	84,500	90,000
33			64,000	68,500	74,000	79,000	85,000	90,500
34			64,500	69,000	74,500	80,000	85,500	91,000
35			65,500	70,000	75,000	80,500	86,000	91,500
36			66,000	70,500	75,500	81,000	86,500	92,000
37			66,500	71,000	76,000	81,500	87,000	93,000
38			67,500	71,500	77,000	82,000	87,500	93,500
39			68,000	72,500	77,500	82,500	88,500	94,000
40			68,500	73,000	78,000	83,500	89,000	94,500
41			69,500	73,500	78,500	84,000	89,500	95,000
42			70,000	74,000	79,000	84,500	90,000	95,500
43			70,500	75,000	80,000	85,000	90,500	96,000

44	71,500	75,500	80,500	85,500	91,000	96,500
45	72,000	76,000	81,000	86,000	91,500	97,500
46	72,500	76,500	81,500	87,000	92,500	98,000
47	73,500	77,500	82,000	87,500	93,000	98,500
48	74,000	78,000	83,000	88,000	93,500	99,000
49	74,500	78,500	83,500	88,500	94,000	99,500
50	75,500	79,000	84,000	89,000	94,500	100,000
51	76,000	80,000	84,500	89,500	95,000	100,500
52	76,500	80,500	85,000	90,500	95,500	101,000
53	77,500	81,000	86,000	91,000	96,500	102,000
54	78,000	81,500	86,500	91,500	97,000	102,500
55	78,500	82,500	87,000	92,000	97,500	103,000
56	79,500	83,000	87,500	92,500	98,000	103,500
57	80,000	83,500	88,000	93,000	98,500	104,000
58		84,000	89,000	94,000	99,000	104,500
59		85,000	89,500	94,500	99,500	105,000
60		85,500	90,000	95,000	100,500	105,500
61		86,000	90,500	95,500	101,000	
62		87,000	91,000	96,000	101,500	
63		87,500	92,000	96,500	102,000	
64		88,000	92,500	97,500	102,500	
65		88,500	93,000	98,000	103,000	
66		89,500	93,500	98,500	103,500	
67		90,000	94,000	99,000	104,500	
68		90,500	95,000	99,500	105,000	
69		91,000	95,500	100,000	105,500	
70		92,000	96,000	101,000		
71		92,500	96,500	101,500		
72		93,000	97,000	102,000		
73		93,500	98,000	102,500		
74		94,500	98,500	103,000		
75		95,000	99,000	103,500		
76		95,500	99,500	104,500		
77		96,000	100,000	105,000		
78		97,000	101,000	105,500		
79		97,500	101,500			
80		98,000	102,000			
81		98,500	102,500			
82		99,000	103,000			
83		100,000	104,000			
84			104,500			
85			105,000			
86 or more			105,500			

(a) A public highway agency may limit the application of the weights authorized in this section as to certain highways within its jurisdiction which it determines have limited structural capacity of pavements, bridges, or other appurtenances. In designating such highways, it may specify a minimum wheelbase for combinations to be operated thereon. It may also designate specific highways or portions on which operation of a combination of vehicles with seven (7), eight (8) or nine (9) axle vehicles will be subject to specified lesser allowable gross weights.

(b) Notwithstanding the figures shown in the table in this subsection (1), two (2) consecutive sets of tandem axles may carry a gross load of thirty-four thousand (34,000) pounds each, providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more.

(2) The weight limitations set forth in the table in subsection (1) of this section shall not apply to any vehicle, or combination of vehicles when a greater allowed weight in pounds would be permitted such vehicles under the table provided in this subsection, except that with regard to transportation on the United States federal interstate and defense highways of this state, the following table of allowable weights shall apply only to vehicles engaged in the transportation of logs, pulp wood, stull, rough lumber, poles or piling; or to any such vehicle engaged in the transportation of ores, concentrates, sand and gravel and aggregates thereof, in bulk; or to any such vehicle engaged in the transportation of agricultural commodities, including livestock:

Distance in feet between the extremes of any group of 2 ~~of~~ or more consecutive axles	Allowed Load in Pounds	
	Vehicles with Three or Four axles	Vehicles with Five or more axles
3 through 12	37,800	37,800
13	56,470	56,470
14	57,940	57,940
15	59,400	59,400
16	60,610	60,610
17	61,820	61,820
18	63,140	63,140
19	64,350	64,350
20	65,450	65,450
21	66,000	66,330
22	66,000	67,250
23	66,000	67,880
24	66,000	68,510
25	66,000	69,150
26	66,000	69,770
27	66,000	70,400
28	66,000	70,950
29	66,000	71,500
30	66,000	72,050
31		72,600
32		73,150
33		73,700
34		74,250
35		74,800
36		75,350
37		75,900
38		76,450
39		77,000
40		77,550
41		78,100
42		78,650
43 and over		79,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles is intended to exceed seventy-nine thousand (79,000) pounds as declared by the operator. When the provisions of this subsection are applicable to a vehicle or combination of vehicles, it shall be a violation of the provisions of this subsection if that vehicle or combination of vehicles exceeds the weights specified in this table.

(3) In determining the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles under subsection (1) or (2) or (9) of this section, the total gross weight of the vehicle or combination of vehicles or the gross weight of any two (2) or more consecutive axles shall be the sum of the axle weights.

For the purposes of this chapter the gross weight of a vehicle or the gross weight of any two (2) or more consecutive axles may be determined by accumulatively adding the separate weights of individual axles and tandem axles or groups of axles to determine gross weight. The results of any weighing at a temporary or permanent port of entry and the records relating to the calibration and accuracy of any scale at a temporary or permanent port of entry shall be admissible in any proceeding in this state. In order to prove a violation of the provisions of this section the state must show that:

(a) The sum of the axle weights exceeds what is allowable under the provisions of subsection (1) or (2) or (9) of this section;

(b) The scale involved in the weighing was at the time of weighing calibrated in conformity with and met the accuracy requirements of the standards for the enforcement of traffic and highway laws as set forth in the latest edition of handbook 44 of the national institute of standards and technology;

(c) Weights of individual axles or axles within a commonly suspended group of axles supported by a mechanical system designed to distribute equal wheel loads to individual axles in the group were utilized only to determine gross weights of that group of axles, and that any further evaluation of gross weights of combinations of axles considered only the accumulated gross weight of each such commonly suspended group of axles.

(4) In applying the weight limitations imposed in this section, a vehicle or combination of vehicles must comply exclusively with the weight limitations in either subsection (1) or (2) or (9) of this section.

(5) In applying the weight limitations imposed in this section, the distance between axles shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

(6) The limitations imposed in this section are in addition and supplemental to all other laws imposing limitations upon the size and weight of vehicles. Further, single axles within groups of axles are subject to the provisions and limitations of this chapter. Single axles within groups of axles may be weighed and evaluated separately, or single axles may be prequalified in accordance with rules or ordinances established by the board or other public road jurisdiction, if any of the following conditions exist regarding the single axle within a group of axles:

(a) A suspension system common to all axles in the group of axles

does not exist.

(b) One (1) or more axles in the group of axles is equipped with separate variable load suspension controls to regulate the weight carried by individual axles.

(c) One (1) or more axles in a group of axles is equipped with more or fewer tires than other axles in the group of axles.

(d) All tires in the group of axles are not the same size as determined by the manufacturer's sidewall rating.

(7) Notwithstanding the other provisions of this chapter, no vehicle, motor vehicle, trailer and/or semitrailer, or combination thereof, may be operated on the public highways of the state under loads which would result in the withholding of funds by operation of controlling federal law as provided in the Federal Aid Highway Act of 1956, as amended.

(8) Except as provided herein, no vehicle or combination of vehicles may proceed past the place of weighing at temporary or permanent ports of entry or checking stations when: the weight of a single axle exceeds the maximum limitations set forth herein by two thousand (2,000) pounds or more; the weight of a combination of axles, or gross vehicle weight exceeds the maximum allowable weight as set forth herein by seven percent (7%) or more. Vehicles or combinations of vehicles which exceed the weight limitations set forth herein shall be required to be brought into compliance with applicable weight limitations contained within this subsection at the place of weighing prior to continuing, except those vehicles or combinations of vehicles which are transporting loads which, in the determination of the board or other proper authorities in charge of or having jurisdiction over a highway, are deemed unsafe or impractical to bring into compliance at the place of weighing, and except those vehicles which do not exceed fifteen percent (15%) over maximum axle and axle group weights set forth in this section. Vehicles or combinations of vehicles transporting loads in this latter category shall obtain a travel authorization to the nearest place of safe unloading, load adjustment or other means of legalization.

(a) Neither the state of Idaho or its employees, nor any authority and its employees in charge of or having jurisdiction over a highway, shall be held liable for personal injury or property damage resulting from the requirements of section 49-1001(8), Idaho Code.

(b) The fee for a travel authorization as set forth above shall be fifty dollars ($50.00) and shall be on a form prescribed by the board or other proper authorities, and shall not be construed as contributing to a reduction in the penalties prescribed in section 49-1013, Idaho Code.

(c) The board or other proper authorities in charge of or having jurisdiction over a highway shall adopt and enforce administrative rules as may be necessary to carry out the provisions of this section.

(9) For vehicles on all highways except the United States federal interstate and defense highways of this state, the following table shall apply:

Distance in feet between the extremes of any group of 2 ~~of~~ or more consecutive axles	Allowed Load in Pounds Vehicles with Three or Four axles	Vehicles with Five or more axles
3 through 12	37,800	37,800
13	56,470	56,470
14	57,940	57,940
15	59,400	59,400
16	60,610	60,610
17	61,820	61,820
18	63,140	63,140
19	64,350	64,350
20	65,450	65,450
21	66,000	66,330
22	66,000	67,250
23	66,000	67,880
24	66,000	68,510
25	66,000	69,150
26	66,000	69,770
27	66,000	70,400
28	66,000	70,950
29	66,000	71,500
30	66,000	72,050
31		72,600
32		73,150
33		73,700
34		74,250
35		74,800
36		75,350
37		75,900
38		76,450
39		77,000
40		77,550
41		78,100
42		78,650
43 and over		80,000

The weight allowances provided in this subsection do not apply if the total gross weight of a vehicle or combination of vehicles is intended to exceed eighty thousand (80,000) pounds as declared by the operator. When the provisions of this subsection are applicable to a vehicle or combination of vehicles, it shall be a violation of the provisions of this subsection if that vehicle or combination of vehicles exceeds the weights specified in this table.

(10) When owned by or under contract to or under authority of a city, county, or state agency, refuse/sanitation trucks transporting refuse may be operated on public highways in accordance with the weights allowed in subsection (9) of this section, except that such trucks equipped with single rear axles are allowed twenty-four thousand (24,000) pounds on that single rear axle when specifically authorized by the public highway agency governing the highways over which the refuse/sanitation truck is operating and provided the following conditions are met:

(a) The weight allowances provided for in this subsection shall

not apply to the United States federal interstate and defense highways of the state; and

(b) The owner or operator has paid an annual operating fee for a permit, not to exceed fifty dollars ($50.00) per refuse/sanitation truck to each public agency governing the public highways over which the refuse/sanitation truck operates. The permit shall be carried in the refuse/sanitation truck. The permit fee may be waived by a public agency for refuse/sanitation trucks operated over public highways under that agency's jurisdiction.

(11) Variable load suspension axles shall meet the following criteria in order to be included in the computation of gross vehicle or axle weight limits for vehicles under the provisions of this section:

(a) The deployment control switch for such axles may be located inside of the driver's compartment but the pressure regulator valve for the operation of pressure on the pavement shall be located outside of and inaccessible to the driver's compartment.

(b) The manufacturer's gross axle weight rating of each such axle must not be less than the actual loading of the axle. ~~and shall not be less than nine thousand (9,000) pounds.~~

(c) All variable load suspension axles mounted on a vehicle after January 1, 1990, shall be designed to be self-steering in a manner that will guide or direct the variable load suspension mounted wheels through a turning movement without undue tire scrubbing or pavement scuffing.

(d) The manufacturer's gross tire weight rating of each tire must not be less than the actual loading of the tire.

(e) Variable load suspension axles must be fully deployed or fully raised. ~~The pressure regulator valve which governs the load distribution to the variable load suspension axle(s) shall be set and sealed by the owner of the vehicle(s) in accordance with rules or ordinances established by the board or other public road jurisdiction.~~ For applicable definitions, see sections 49-117 and 49-123, Idaho Code.

(12) Any person who operates a motor vehicle with a variable load suspension axle in violation of the provisions of this section shall be subject to the penalties provided in section 49-1013, Idaho Code.

Approved March 20, 1998.

CHAPTER 190
(H.B. No. 694)

AN ACT

RELATING TO FIRE PROTECTION DISTRICTS; AMENDING SECTION 31-1408, IDAHO CODE, TO PROVIDE IF A BOARD IS COMPRISED OF FIVE MEMBERS THAT NOT MORE THAN THREE OF THE COMMISSIONERS SHALL BE FROM THE SAME COUNTY; AMENDING CHAPTER 14, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-1408A, IDAHO CODE, TO PROVIDE THAT SUBSEQUENT TO THE CREATION OF A FIRE PROTECTION DISTRICT AND THE APPOINTMENT OF THE FIRST BOARD OF FIRE PROTECTION COMMISSIONERS, THE FIRE PROTECTION BOARD MAY BY A MAJORITY VOTE OF ALL OF THE FIRE PROTECTION

BOARD MEMBERS ELECT TO INCREASE THE SIZE OF THE BOARD TO FIVE MEMBERS, TO PROVIDE FOR TERMS AND TO PROVIDE FOR SUBDISTRICTS; AMENDING SECTION 31-1410, IDAHO CODE, TO PROVIDE AT THE JANUARY MEETING OF THE BOARD OF FIRE PROTECTION COMMISSIONERS PRECEDING ANY REGULARLY SCHEDULED ELECTION, THE SUBDISTRICTS SHALL BE REVISED AND TO PROVIDE THAT THE REVISION OF SUBDISTRICTS SHALL NOT DISQUALIFY ANY ELECTED COMMISSIONER FROM THE COMPETITION OF THE TERM FOR WHICH HE OR SHE HAS BEEN DULY ELECTED; AND AMENDING SECTION 31-1411A, IDAHO CODE, TO PROVIDE IF FIVE MEMBERS ARE ON THE BOARD OF THE FIRE PROTECTION DISTRICT, TO PROVIDE FOR TERMS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 31-1408, Idaho Code, be, and the same is hereby amended to read as follows:

31-1408. FIRE PROTECTION BOARD -- APPOINTMENT OF COMMISSIONERS -- OATH. There shall be three (3) fire protection commissioners in each district, who shall constitute the fire protection board. The first fire protection commissioners of such fire protection district shall be appointed by the governor. The certificate of such appointment shall be made in triplicate; one (1) certificate shall be filed in the office of the county recorder of the county; one (1) with the clerk of the board of county commissioners, and one (1) with the assessor and tax collector of the county. Every fire protection commissioner shall take and subscribe the official oath, which oath shall be filed in the office of the board of fire protection commissioners. If the district is situated in two (2) or more counties, not more than two (2) of the fire protection district commissioners shall be from the same county, unless the board is comprised of five (5) members, in which event not more than three (3) of the commissioners shall be from the same county.

SECTION 2. That Chapter 14, 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 31-1408A, Idaho Code, and to read as follows:

31-1408A. DECISION TO INCREASE THE SIZE OF THE BOARD. Subsequent to the creation of a fire protection district and the appointment of the first board of fire protection commissioners, the fire protection board may, by a majority vote of all of the fire protection district board members elect to increase the size of the board to five (5) members.

If the board of fire protection commissioners elect to expand the board to five (5) members, the existing board members shall subdivide the district into five (5) subdivisions as nearly equal in population, area and mileage as practicable to be known as subdistricts one, two, three, four and five.

At the first election following the decision of the board of fire protection commissioners to expand the board from three (3) to five (5) members, five (5) commissioners shall be elected. Commissioners

from fire protection subdistricts one, three and five shall be elected for terms of four (4) years and the commissioners from subdistricts two (2) and four (4) shall be elected for a term of two (2) years. Thereafter, the term of all commissioners shall be four (4) years.

SECTION 3. That Section 31-1410, Idaho Code, be, and the same is hereby amended to read as follows:

31-1410. ELECTION OF COMMISSIONERS. On the first Tuesday following the first Monday of November, following the organization of a fire protection district, three (3) fire protection district commissioners shall be elected. Every alternate year thereafter, one (1) or two (2) commissioners shall be elected in the manner following: The board of fire protection commissioners shall have power to make such regulations for the conduct of such election as are consistent with the statutory provisions of chapter 14, title 34, Idaho Code. At their meeting next preceding such election, the board of fire protection commissioners shall divide the district into three (3) ~~subdivisions~~ subdistricts as nearly equal in population, area and mileage as practicable, to be known as fire protection commissioners subdistricts one, two and three. Thereafter, at the January meeting of the board of fire protection commissioners preceding any regularly scheduled election, such ~~subdivisions may~~ subdistricts shall be revised but, of the commissioners comprising the board, not more than one (1) commissioner shall be an elector of the same fire protection commissioners subdistrict. The revision of subdistricts shall not disqualify any elected commissioner from the completion of the term for which he or she has been duly elected. At the first election following organization of a fire protection district commissioners from fire protection subdistricts one and two shall be elected for terms of four (4) years, and the commissioner from fire protection subdistrict three shall be elected for a term of two (2) years; thereafter the term of office of all commissioners shall be four (4) years. Such elections and all other elections held under this law, shall be held in conformity with the general laws of the state including chapter 14, title 34, Idaho Code.

In any election for fire protection district commissioner, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that only one (1) qualified candidate has been nominated for a subdistrict to be filled, it shall not be necessary for the candidate of that subdistrict to stand for election, and the board of the fire protection district shall declare such candidate elected as commissioner, and the secretary of the district shall immediately make and deliver to such person a certificate of election.

The results of any election for fire protection district commissioner shall be certified to the county clerk of the county or counties in which the district is located.

SECTION 4. That Section 31-1411A, Idaho Code, be, and the same is hereby amended to read as follows:

31-1411A. CONSOLIDATION OF DISTRICTS -- HEARING -- PROTEST -- ELECTION. Any fire protection district may consolidate with one (1) or

more existing fire protection districts subject to the following procedure, or pursuant to an election for consolidation as provided in section 31-1411B, Idaho Code, and with the following effects:

(a) If, in the opinion of the board of any fire protection district, it would be to the advantage of said district to consolidate with one (1) or more other existing fire protection districts, the said board shall cause to be prepared an agreement for consolidation which shall among other things provide:

(1) The name of the proposed consolidated fire protection district.

(2) That all property of the districts to be consolidated shall become the property of the consolidated district.

(3) That all debts of the districts to be consolidated shall become the debts of the consolidated district.

(4) That the existing commissioners of the districts to be consolidated shall be the commissioners of the consolidated district until the next election, said election to be held pursuant to the terms of section 31-1410, Idaho Code, at which three (3) commissioners shall be elected~~.~~, unless the agreement of consolidation establishes a five (5) member board, in which case five (5) commissioners shall be elected. If the board consists of three (3) members, ~~C~~commissioners from fire protection subdistricts one ~~(1)~~ and two ~~(2)~~ shall be elected for terms of four (4) years, and the commissioner from fire protection subdistrict three ~~(3)~~ shall be elected for a term of two (2) years. If the board consists of five (5) commissioners, commissioners from fire protection subdistricts one, three and five shall be elected for terms of four (4) years, and the commissioners from fire protection subdistricts two and four shall be elected for an initial term of two (2) years. Thereafter the term of all commissioners shall be four (4) years.

(5) That the employees of the consolidated fire protection district shall be selected from the employees of the fire protection districts being consolidated, which employees shall retain the seniority rights under their existing employment contracts.

(b) After approval of said agreement of consolidation by each of the fire protection district boards involved, the boards of commissioners of each fire protection district shall hold a hearing not less than ten (10) or more than thirty (30) days thereafter, and shall cause notice of said hearing, designating the time and place, to be published in at least one (1) issue of a newspaper of general circulation within the district not less than five (5) days prior to such hearing. Any person supporting or objecting to such petition shall be heard at such meeting, if in attendance, and at the close of such hearing said board shall approve or reject the agreement of consolidation. If each board approves the agreement of consolidation, the agreement shall become effective and the consolidation of said district complete thirty (30) days after such approval unless within such thirty (30) days a petition signed by five per cent (5%) of the qualified electors of one of the fire protection districts objecting to such consolidation be filed with the secretary of such district. In the event of such objection, election shall be held as provided in section 31-1405, Idaho Code, except that the question shall be "consolidation of .... fire protection district, yes", or

"consolidation of .... fire protection district, no", or words equivalent thereto. If more than one-half (1/2) of the votes cast are yes, the agreement shall become effective. If more than one-half (1/2) of the votes cast are no, the agreement shall be void and of no effect; and no new consolidation shall be proposed for at least six (6) months following the date of the consolidation election.

(c) Upon the agreement of consolidation becoming effective, the board of the consolidated fire protection district shall file a certified copy of the agreement with the county recorder of each county in which such district is situated, and shall comply with the provisions of section 63-215, Idaho Code. The consolidated district shall thereafter have the same rights and obligations as any other fire protection district organized under the statutes of this state.

Approved March 20, 1998.

CHAPTER 191
(H.B. No. 691)

AN ACT

RELATING TO ANNEXATION OF ADJACENT TERRITORY BY MUNICIPAL CORPORATIONS; AMENDING SECTION 50-222, IDAHO CODE, TO PROVIDE A CONDITION UNDER WHICH A LAND SPLIT PRIOR TO JANUARY 1, 1975, SHALL NOT BE CONSIDERED AN INTENT TO DEVELOP THE LAND, TO PROVIDE THAT A SINGLE SALE UNDER SPECIFIED CONDITIONS SHALL NOT CONSTITUTE A SALE WITHIN THE MEANING OF THIS SECTION, TO DEFINE "FAMILY MEMBER" AND TO MAKE TECHNICAL CORRECTIONS.

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. (1) On and after January 1, 1995, any land lying contiguous or adjacent to any city in the state of Idaho, or to any addition or extension thereof may be annexed by the city only if the land is lying in the area of city impact as determined by procedures contained in section 67-6526, Idaho Code, and the land is 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. Provided however, that any land split that occurred prior to January 1, 1975, and was the result of the placement of public utilities, public roads or highways, or railroad lines through the property shall not be considered an intent to develop such land and shall not be sufficient evidence that the land by present owner has been laid off or subdivided in lots or blocks, and provided further that a single sale of five (5) acres or less to a family member of the

owner for the purpose of constructing a residence shall not constitute a sale within the meaning of this section. For the purposes of this section, "family member" means a natural person or the spouse of a natural person who is related to the owner by blood, adoption or marriage within the first degree of consanguinity. If a city has not adopted an area of city impact prior to January 1, 1995, the city shall not be prohibited from annexing adjacent territory if an area of city impact has been adopted in accordance with the provisions of section 67-6526, Idaho Code, prior to annexation and all other requirements for annexation have been met. An owner of land of any size may request that the tract of land be annexed by the city whether the land is or is not contained in the city's area of impact by submitting such request in writing to the city council. If the tract of land is surrounded by or borders the city, the council may, by ordinance, declare the land by proper legal description thereof to be a part of such city. In any annexation of adjacent territory, the annexation shall include all portions of highways lying wholly or partially within the annexed area.

(2) 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.

(3) Notwithstanding any other provision of law, no city council shall have authority to annex property owned by a county or any entity within the county which property is used as a fairgrounds area under the provisions of chapter 8, title 31, or chapter 2, title 22, Idaho Code, without the consent of a majority of the board of county commissioners of the county in which said property lies.

(4) Notwithstanding any other provision of law, no city council shall have authority to annex property owned by a nongovernmental entity used to provide outdoor recreational activities to the public which has been designated as a planned unit development of fifty (50) acres or more and does not require or utilize any city services without the express written permission of the nongovernmental entity whose property is subject to annexation.

Approved March 20, 1998.

CHAPTER 192
(H.B. No. 683)

AN ACT

RELATING TO STATE EMPLOYEE INCENTIVE AWARDS; REPEALING CHAPTER 61, TITLE 67, IDAHO CODE.

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

SECTION 1. That Chapter 61, Title 67, Idaho Code, be, and the same is hereby repealed.

Approved March 20, 1998.

CHAPTER 193
(H.B. No. 681)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO; AMENDING SECTION 59-1306, IDAHO CODE, TO INCLUDE AN ADDITIONAL PROVISION OF THE FEDERAL TAX CODE WITH WHICH THE PUBLIC EMPLOYEE RETIREMENT SYSTEM MUST COMPLY AND TO CORRECT TERMINOLOGY; AMENDING SECTION 59-1359, IDAHO CODE, TO PROVIDE THAT ANY MEMBER MAY ELECT TO HAVE ELIGIBLE ROLLOVER DISTRIBUTIONS PAID DIRECTLY TO A SPECIFIED ELIGIBLE RETIREMENT PLAN AS REQUIRED BY THE FEDERAL TAX CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 59-1306, Idaho Code, be, and the same is hereby amended to read as follows:

59-1306. CONFORMITY WITH FEDERAL TAX CODE TO MAINTAIN QUALIFIED PLAN TAX STATUS. Chapter 13, title 59, and chapter 14, title 72, Idaho Code, shall be administered in a manner so as to comply with the requirements of 26 U.S.C. section 401(a)(8), (9), (16), ~~and~~ (25) and (31). The public employees retirement system board shall promulgate ~~regulations~~ rules and amend or repeal conflicting ~~regulations~~ rules in order to assure compliance with the requirements of this section. This chapter shall be in full force and effect on and after January 1, 1989, and thereafter only so long as conformity to section 401(a) of the internal revenue code, 26 U.S.C., section 401(a) is required for public retirement systems. If not required, this provision will cease to have any force or effect.

SECTION 2. That Section 59-1359, Idaho Code, be, and the same is hereby amended to read as follows:

59-1359. SEPARATION BENEFITS. (a) The separation benefit, if any, shall become payable upon the written request of an inactive member who has been separated from employment. If the person who received a separation benefit is reemployed or reinstated by the same employer within ninety (90) days or is guaranteed a right to employment or reinstatement with the same employer, the person shall repay to the system any separation benefit paid.

(b) A separation benefit shall automatically be payable three (3) years after the person becomes an inactive member if the inactive member has less than five (5) years of membership service, is not eligi-

ble for a vested retirement allowance, and has been separated from employment and is not reemployed or reinstated by the same employer within ninety (90) days.

(c) For purposes of this section, "separated from employment" means the inactive member terminated all employment with the employer. For purposes of this section, "same employer" means the employer for which the person last worked prior to being separated from employment.

(d) Any member may elect to have eligible rollover distributions paid directly to a specified eligible retirement plan as required by 26 U.S.C. section 401(a)(31).

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, 1998.

CHAPTER 194
(H.B. No. 669, As Amended)

AN ACT

RELATING TO THE FLOATING HOMES RESIDENCY ACT; AMENDING TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 27, TITLE 55, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A STATEMENT OF LEGISLATIVE POLICY, TO PROVIDE FOR GOOD FAITH IN THE PERFORMANCE OR ENFORCEMENT OF ANY DUTY OR ACT REQUIRED TO BE PERFORMED UNDER THE CHAPTER, TO PROVIDE DEFINITIONS, TO PROVIDE THAT THE CHAPTER GOVERNS RIGHTS, REMEDIES AND OBLIGATIONS ARISING FROM RENTAL AGREEMENTS FOR A FLOATING HOME MOORAGE AND TO PROVIDE AN EXCEPTION, TO PROVIDE THE TERMS AND CONDITIONS OF A RENTAL AGREEMENT FOR A FLOATING HOME MOORAGE, TO PROVIDE FOR RULES AND REGULATIONS OF A FLOATING HOME MARINA, TO PROVIDE FOR ADJUSTMENTS TO RENT, SERVICES, UTILITIES OR RULES, TO PROVIDE FOR FEES AND TO PROVIDE FOR TRASH DISPOSAL AND LIGHTING, TO PROVIDE FOR EVICTION FROM THE MARINA AND TO PROVIDE REASONS FOR EVICTION, TO REQUIRE A STATEMENT OF THE REASONS FOR EVICTION IN THE NOTICE OF EVICTION, TO PROHIBIT EVICTION TO MAKE SPACE FOR A FLOATING HOME OWNED OR SOLD BY THE LANDLORD, TO PROVIDE FOR THE SALE AND TRANSFER OF A FLOATING HOME, TO PROVIDE FOR NOTICE TO THE LANDLORD OF A LEGAL OWNER'S INTEREST IN A FLOATING HOME AND TO PROVIDE FOR LIABILITIES OF THE LEGAL OWNER, TO PROVIDE FOR A TENANT ACTION FOR DAMAGES AND SPECIFIC PERFORMANCE, TO PROHIBIT RETALIATORY CONDUCT BY THE LANDLORD, TO PROVIDE FOR TENANT ASSOCIATIONS, TO PROVIDE FOR ARBITRATION, TO PROVIDE FOR TREBLE DAMAGES, TO PROVIDE FOR ATTORNEY'S FEES AND TO PROVIDE FOR VENUE OF ACTIONS ARISING UNDER THE CHAPTER.

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

SECTION 1. That Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 27, Title 55, Idaho Code, and to read as follows:

CHAPTER 27
FLOATING HOMES RESIDENCY ACT

55-2701. SHORT TITLE. This chapter shall be known as and may be cited as "The Floating Homes Residency Act."

55-2702. LEGISLATIVE POLICY. The legislature finds and declares that, because of current governmental policy limiting the availability of moorage sites both within and outside a floating home marina, the historic value of existing floating homes moored on the waters of the state, the investment in these floating homes and floating home marinas, and the cost of relocating a floating home, it is necessary that the owners of floating homes within a floating home marina be provided with the unique protection from actual or constructive eviction and the other protections afforded by the provisions of this chapter.

55-2703. GOOD FAITH. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

55-2704. DEFINITIONS. (1) "Floating home" means a floating structure which is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling, has no mode or power of its own, is dependent for utilities upon a continuous utility linkage to a source originating on shore, and has a permanent continuous connection to a sewage system on shore.

(2) "Floating home moorage marina" or "moorage" means a waterfront facility for the moorage of one (1) or more floating homes and the land and water premises on which such facility is located.

(3) "Landlord" means the owner of a floating home marina and includes the agent of the landlord.

(4) "Moorage site" means a part of a floating home marina located over water and designed to accommodate one (1) floating home.

(5) "Resident organization" means a tenant or homeowner's association, whether or not incorporated, the membership of which is made up of tenants of the floating home marina and/or owners of a floating home.

(6) "Tenant" means any person who rents a floating home moorage site or the person's agent of record.

55-2705. THIS CHAPTER GOVERNS. This chapter shall regulate and determine legal rights, remedies and obligations arising from any rental agreement between a landlord and tenant regarding a floating home moorage, except in those instances in which the landlord is renting both the moorage site and the floating home to the tenant. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. This chapter does not abrogate any rights the landlord or tenant has under the laws and constitution of the United States and the state of Idaho.

55-2706. RENTAL AGREEMENT. (1) From and after the effective date

of this chapter, any landlord offering a moorage site for rent shall provide the prospective tenant with a written agreement. This agreement must be executed by both parties. The provisions of this chapter shall apply to all such agreements to the extent applicable as set forth in this chapter.

(2) The requirements of subsection (1) of this section shall not apply if:

(a) The floating home marina or a part thereof has been acquired by eminent domain or condemnation for a public works project; or

(b) An employer-employee relationship exists between a landlord and tenant.

(3) The provisions of this section shall apply to any tenancy in existence on the effective date of this act, but only after expiration of the term of any oral or written rental agreement governing such tenancy, not to exceed twelve (12) months from the effective date of this act. Existing contracts may be perpetuated by agreement of both parties.

(4) A floating home owner shall be offered a rental agreement for:

(a) A term of twelve (12) months;

(b) A lesser period as mutually agreed upon by both the floating home owner and the landlord; or

(c) A longer period as mutually agreed upon by both the floating home owner and the landlord.

(5) A rental agreement may not contain a provision by which the tenant waives his rights under this law.

(6) The rental agreement shall identify a specific moorage site. The moorage site occupied by a floating home shall remain site specific as set forth in the rental agreement unless any moorage site change is agreed upon by the tenant and the landlord.

55-2707. FLOATING HOME MARINA -- RULES AND REGULATIONS. (1) Subject to the provisions of this chapter and to the terms of the rental agreement, the landlord may establish reasonable rules and regulations governing the use and occupancy of a floating home marina. A rule or regulation may be amended at any time with the consent of the tenants or without their consent upon written notice of not less than six (6) months. Written notice of a proposed amendment to a new tenant whose tenancy commences within the required period of notice shall constitute compliance with this subsection where the written notice is given to the tenant before the inception of this tenancy.

(2) The landlord may enter a floating home in case of an apparent or actual emergency, when the tenant has abandoned the floating home, or as otherwise provided in the rental agreement.

(3) Management must disclose the name and address of the marina owner upon the request of the tenant.

55-2708. ADJUSTMENTS TO RENT, SERVICES, UTILITIES OR RULES -- FEES. (1) A landlord may increase or decrease rents only after ninety (90) days' written notice to the tenants.

(2) Except as provided herein, rental increases shall be uniform throughout the floating home marina. Notwithstanding the foregoing provision:

(a) When rents within a floating home marina are structured by reason of slip or floating home size, amenities, slip location or otherwise, rental increases shall be uniform among all floating homes in the same rent tier; and

(b) A rental agreement may include an escalation clause for a pro rata share of any increase or decrease in the floating home marina's property taxes, utility assessments or other services as included in the monthly rental charge, after the effective date of such a change.

(3) No fees may be charged except for rent, services and utilities actually provided.

(4) No fees can be charged for services unless the services are listed in the rental agreement or unless ninety (90) days' notice is given.

(5) A tenant shall not be charged a fee for the enforcement of any of the rules and regulations of the floating home marina, except as provided in the rental agreement or rules and regulations of the floating home marina.

(6) Unless the tenant specifically requests the service from the landlord in writing, a tenant shall not be charged a fee for entry, installation, hookup or improvements as a condition of tenancy except for an actual fee or cost imposed by a local governmental ordinance or requirement directly related to the occupancy of the specific moorage site where the floating home is located and incurred as a portion of the development of the floating home marina as a whole. However, reasonable improvements and maintenance requirements may be included in the floating home marina rules and regulations. The landlord shall not require a tenant or prospective tenant to purchase, rent or lease goods or services for improvements from any person, company or corporation.

(7) Where the landlord provides master meter utilities to a tenant, the cost of the utilities must be separately stated each billing period along with the opening and closing meter readings. The landlord must also post the current rates charged by the utility in at least one (1) conspicuous place in the floating home marina.

(8) The landlord shall maintain year round facilities for garbage and trash disposal from the floating home marina.

(9) The landlord shall maintain entry lights and common area lighting, if any, in good working order.

(10) The landlord shall not prevent the ingress or egress to watercraft moorage contained within a floating home.

55-2709. EVICTION FROM MARINA. The landlord shall not terminate or refuse to renew a tenancy, except for a reason specified in this chapter and upon the giving of not less than ninety (90) days' written notice to the tenant in the manner prescribed by this section, to remove the floating home from the floating home marina within a period of not less than ninety (90) days, which period shall be specified in the notice. A copy of this notice shall be served upon the legal owner of the floating home either by:

(1) Personally serving a copy of the notice upon the legal owner; or

(2) Mailing a copy of the notice to the last known address of the

legal owner and posting the notice conspicuously upon the floating home residence.

55-2710. REASONS FOR EVICTION -- STATEMENT OF EVICTION REASONS IN NOTICE. (1) The grounds for which a tenancy may be terminated and a tenant evicted shall be:

(a) Conduct by tenant or tenant's guest which constitutes a nuisance to other floating home owners, marina tenants or marina owner;

(b) Substantial or repeated violation of the reasonable rules and regulations of the marina;

(c) Nonpayment of rent;

(d) Other material breach of a rental agreement; or

(e) Condemnation of the marina.

(2) The landlord shall set forth in a notice of termination the reason relied upon for the termination with sufficient specificity to permit determination of the date, place, witnesses, if any, and circumstances concerning such reason. Reference to a section or subsection or a recital of the language of this chapter shall not constitute compliance with this section.

(3) In the case of termination of the tenancy and eviction for the reasons set out in paragraphs (a), (b), (c) or (d) of subsection (1) of this section, the tenant shall be given written notice to comply which notice may be given by personal service upon a tenant, or if the tenant cannot be found at the marina, then by mailing a copy of the notice by certified mail to the last mailing address provided by the tenant. In the case of personal service, service of the notice shall be deemed effected three (3) days after deposit in the United States mail, postage prepaid by registered mail, return receipt requested. If the tenant does not comply within fifteen (15) days following service, landlord may give notice of termination as provided in this chapter.

55-2711. EVICTION TO MAKE SPACE FOR FLOATING HOME OWNED BY LANDLORD. No tenancy shall be terminated for the purpose of making a moorage site available for the landlord or a person who purchases a floating home from the owner of the floating home marina or his agent.

55-2712. SALE, TRANSFER, OR REMOVAL OF A FLOATING HOME. (1) No landlord shall deny any tenant who owns his floating home the right to sell a floating home on a rented moorage site or require the tenant to remove the floating home for the moorage site solely on the basis of the sale.

(2) The landlord shall not exact a commission or a fee for the sale of a floating home on a rented moorage site unless the landlord has acted as an agent for the seller pursuant to a written agreement. The landlord may act as an agent for the seller only upon the voluntary agreement of the seller.

(3) The new rental agreement must be signed by the landlord and a prospective tenant prior to the sale, transfer, assignment or subletting of the floating home if the floating home is to remain at the floating home marina. From the date of sale, assignment, transfer or subletting, the new tenant shall be bound by the agreement.

(4) No floating home shall be removed from any floating home marina until the rental payment, including the month when the floating home is removed, is paid, or until the provisions of section 55-2713, Idaho Code, have been fully complied with and the landlord notified of the date and time of removal.

(5) A tenant shall notify the landlord in writing ninety (90) days prior to the expiration of a rental agreement of an intention not to renew the rental agreement.

55-2713. NOTICE TO OWNER. (1) Any legal owner of a floating home in order to be protected under this section must notify the landlord in writing of his secured or other legal interest.

(2) If the tenant becomes sixty (60) days in arrears in his rent or at the time of the suspected abandonment by the tenant of a moorage site, the landlord shall notify the legal owner of the floating home of his liability for any costs incurred for the floating home site for such floating home, including rent owing. The legal owner shall be responsible for utilities from the date of notice. Any and all costs shall, after the giving of such notice, become the responsibility of the legal owner of the floating home. The floating home may not be removed from the moorage site without a signed written receipt or agreement from the landlord, owner, or manager showing payment of charges due or agreement with the legal owner for removal of the floating home.

55-2714. TENANT ACTION FOR DAMAGES -- SPECIFIC PERFORMANCE. (1) A tenant of a floating home marina may file an action against a landlord for damages and specific performance for:

(a) Failure to maintain in good working order, to the terminal point of service, electrical, water or sewer services supplied by the landlord;

(b) Maintaining those portions of the premises open to use by the tenant in a manner hazardous to the health or safety of the tenant including, but not limited to, a continuing violation of any of the following:

(i) Any rule adopted by the department of health and welfare governing public drinking water systems;

(ii) Any rule adopted by the department of health and welfare governing hazardous waste;

(iii) Any rule adopted by the public health district in which the floating home marina is located governing wastewater and on-site sewage treatment systems;

(iv) Any provisions of the uniform fire code, as amended by the provisions of a fire code adopted by the county or municipality in which the floating home marina is located;

(v) Any provisions of the uniform building code, as amended by the provisions of any building code adopted by the state, county or municipality in which the floating home marina is located.

(c) Material breach of any specific term of a rental agreement.

(2) Upon filing the complaint, a summons must be issued, served and returned as in other actions. Provided however, that in an action exclusively for specific performance, at the time of issuance of the

summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court. If the plaintiff brings an action for damages with an action for specific performance, the early trial provision shall not be applicable, and a summons must be issued returnable as in other cases upon filing the complaint.

(3) In an action under this section, the plaintiff, in his complaint, must set forth facts on which he seeks to recover, describe the premises, and set forth any circumstances which may have accompanied the failure or breach by the landlord.

(4) If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for such special damages as may be proven. General damages may be awarded but shall not exceed five hundred dollars ($500). Judgment may also be entered requiring specific performance for any breach of agreement shown by the evidence and for costs and disbursements.

(5) Before a tenant shall have standing to file an action under this section, he must give his landlord three (3) days' written notice, listing each failure or breach upon which his action will be premised and written demand requiring performance or cure. If, within three (3) days after service of the notice, any listed failure or breach has not been performed or cured by the landlord, or in the event of damage to the premises or other default not capable of cure within three (3) days and the landlord has not provided written assurance to the tenant that a cure will be effected within a reasonable time, the tenant may proceed to commence an action for damages and specific performance.

(6) The notice required in subsection (5) of this section shall be served either:

(a) By delivering a copy to the landlord or his agent personally; or

(b) By leaving a copy with an employee at the usual place of business of the landlord or his agent if the landlord or his agent is absent from his usual place of business; or

(c) By sending a copy of the notice to the landlord or his agent by certified mail, return receipt requested.

(7) Nothing in this section shall bar either the landlord or the tenant from bringing such civil action for relief to which said party is otherwise entitled.

55-2715. RETALIATORY CONDUCT BY LANDLORD PROHIBITED. The landlord shall not terminate a tenancy, refuse to renew a tenancy, increase rent or decrease service he normally supplies, or threaten to bring an action for repossession of a floating home site as retaliation against the tenant because the tenant has:

(1) Complained in good faith about a violation of a building, safety or health code or regulation pertaining to a floating home marina to the governmental agency responsible for enforcing the code or regulation.

(2) Complained to the landlord concerning the maintenance or condition of the marina, rent charged, or rules and regulations.

(3) Organized, became a member of or served as an official in a homeowner's association, or similar organization, at a local, regional, state or national level.

(4) Retained counsel or an agent to represent his interests.

55-2716. TENANT ASSOCIATIONS. (1) The tenants in a floating home marina have the right to organize a tenant or homeowner's association to further their mutual interests and to conduct any other business and programs which the association shall determine. When an association is organized it shall notify the landlord.

(2) The landlord must meet and confer with homeowners or their representatives, including any persons designated by a resident organization, within thirty (30) days of a request concerning:

(a) Rule changes;

(b) Maintenance of facilities;

(c) Addition or deletion of services or facilities; or

(d) Rental agreements.

55-2717. ARBITRATION. The landlord and tenant may agree in writing to submit a controversy under the provisions of this chapter to arbitration through the better business bureau, or similar private association or as otherwise provided in Idaho law.

55-2718. PENALTIES. If upon the trial of any action brought under the provisions of section 55-2714, Idaho Code, or those of section 6-303, Idaho Code, the court shall find that the defendant acted with malice, wantonness, or oppression, judgment may be entered for three (3) times the amount at which actual damages are assessed.

55-2719. ATTORNEY'S FEES. In any action brought under the provisions of this chapter, or those of section 6-302 or 6-303, Idaho Code, except in those cases where treble damages are awarded, the prevailing party shall be entitled to an award of attorney's fees.

55-2720. VENUE. Venue for any action arising under this chapter shall be in the district court of the county in which the floating home marina is located.

Approved March 20, 1998.

CHAPTER 195
(H.B. No. 665)

AN ACT

RELATING TO IRRIGATION DISTRICTS; AMENDING SECTION 43-330A, IDAHO CODE, TO AUTHORIZE A DISTRICT TO CONTRACT WITH LANDOWNERS FOR THE CONSTRUCTION OF IMPROVEMENTS WITHIN A SUBDIVISION WITHOUT REGARD TO THE SIZE OF THE TRACTS OF LAND WITHIN THE SUBDIVISION; AMENDING SECTION 43-331, IDAHO CODE, TO AUTHORIZE THE BOARD OF DIRECTORS TO CONSTRUCT OR MAINTAIN IMPROVEMENTS AND LEVY ASSESSMENTS WITHIN A SUBDIVISION WITHOUT REGARD TO THE SIZE OF THE TRACTS OF LAND

WITHIN THE SUBDIVISION AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 43-332, IDAHO CODE, TO AUTHORIZE THE BOARD OF DIRECTORS TO APPORTION WATER TO TRACTS OF LAND WITHIN A SUBDIVISION WITHOUT REGARD TO THE SIZE OF THE TRACTS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 43-330A, Idaho Code, be, and the same is hereby amended to read as follows:

43-330A. CONTRACTS WITH LANDOWNERS FOR CONSTRUCTION OF IMPROVEMENTS. When a parcel of land lying within an irrigation district has been subdivided ~~into tracts of five (5) acres or less~~ and the owner or owners of the entire parcel propose to develop that parcel or any of the tracts therein for residential, commercial, industrial or municipal use, the board of directors of the district may enter into a contract with the owner or owners of the entire parcel, or of any tract therein, for the construction of a pressurized system for the proper distribution of irrigation water to the parcel or to the designated tracts within the parcel.

SECTION 2. That Section 43-331, Idaho Code, be, and the same is hereby amended to read as follows:

43-331. DIRECTORS MAY CONSTRUCT OR MAINTAIN IMPROVEMENTS, LEVY ASSESSMENTS. (1) This section applies: (a) When a parcel of land lying within an irrigation district is subdivided ~~into tracts -- of -- four -- (4) acres or less,~~ and the owner has made no provisions which in the opinion of the board of directors is adequate for the proper distribution of water thereto; or (b) when improvements for the distribution or delivery of water to any tract of land are not owned by the district and the owner or person in control of the improvement fails to maintain, repair or replace the improvement as required for the proper and efficient distribution or delivery of water to any tract; or (c) when fifty ~~per cent~~ <u>percent</u> (50%) or more of the owners of the tracts in any such subdivided parcel request that the board provide for the proper distribution of water thereto or request that the board maintain, repair or replace the improvement as required for the proper and efficient distribution or delivery of water to any tract.

(2) Whenever the interest or convenience of such tracts requires the construction, repair or maintenance of any ditch, flume, dike, aqueduct or other improvement, the board may construct, repair or maintain such improvement, and levy and collect an assessment upon all tracts specially benefited thereby, to defray the whole or any portion of the cost and expense thereof. The board may determine what lands are specially benefited by such construction, repair or maintenance, and the amount to which each tract is benefited.

SECTION 3. That Section 43-332, Idaho Code, be, and the same is hereby amended to read as follows:

43-332. APPORTIONMENT OF WATER TO TRACTS -- EMPLOYMENT OF PERSON

TO DISTRIBUTE WATER -- ASSESSMENT OF COST -- LIEN ON LAND. Whenever a parcel of land lying within an irrigation district is subdivided ~~into tracts of four (4) acres or less,~~ and plats of such subdivision are filed as provided by law, and the owners fail to properly apportion the water to their various tracts in the subdivision, or upon request made by fifty ~~per--cent~~ percent (50%) or more of the owners of the tracts in the subdivision the board of directors may employ some competent person to distribute and apportion water for such tracts. The reasonable cost of such services shall be apportioned each year by the board to such tracts. The cost of such services shall be assessed by the board as a special charge to the tracts in the same manner as other assessments are made by the board. The assessment so levied and apportioned shall be a lien upon the tracts, and shall be collected in the same manner as all other assessments are levied and collected by the board.

Approved March 20, 1998.

CHAPTER 196
(H.B. No. 786)

AN ACT

RELATING TO REFUNDS OF MOTOR FUELS TAXES; AMENDING SECTION 63-2410, IDAHO CODE, TO PROVIDE FOR INTEREST UNDER CONDITIONS SPECIFIED FOR CLAIMED REFUNDS ON MOTOR FUELS TAXES; AND AMENDING SECTION 63-2423, IDAHO CODE, TO INCLUDE REFUNDS ON SPECIAL FUELS TAX IN PROVISIONS FOR PAYMENT OF INTEREST.

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

SECTION 1. That Section 63-2410, Idaho Code, be, and the same is hereby amended to read as follows:

63-2410. REFUND OF GASOLINE TAX PROCEDURE. (1) Any person who shall purchase fifty (50) gallons or more, and use the gasoline in motor vehicles operated on highways outside of the state of Idaho where a duplicate tax is assessed for the same gasoline, shall be entitled to refund when a claim is presented to the commission in the manner required in subsection (5)(c) of this section. Claimant shall present to the commission a statement accompanied by a verification of the use determined by an audit of his operations conducted as prescribed by the tax commission; or his claim may be verified by the filing of a receipt or proof showing the payment of tax on the gasoline used in any other state.

(2) Any person who shall purchase within any one (1) calendar year fifty (50) gallons or more of gasoline used for the purposes described in this subsection shall be entitled to be refunded the amount of gasoline tax previously paid on that gasoline. Exempt uses are:

(a) Operating stationary gasoline engines;

(b) Propelling equipment or vehicles, other than motor vehicles,

which are not operated on a highway; and

(c) Operating commercial motor boats.

(3) No refund of gasoline tax shall be allowed for any gasoline which is:

(a) Used in motor vehicles required to be licensed or used in any motor vehicle exempt from registration by reason of the ownership or residence; or

(b) Aircraft engine fuel placed in aircraft, provided however, if tax has been paid at the rate provided in section 63-2405, Idaho Code, on any motor fuel placed in the fuel supply tank of an aircraft the user of the fuel may apply for a refund of the difference between the tax paid on the fuel and the tax imposed in section 63-2408, Idaho Code; or

(c) Gasoline used in recreational vehicles; or

(d) Gasoline used in noncommercial motor boats or in boats operated by a governmental entity.

(4) Any licensed distributor paying the gasoline tax and/or aircraft engine fuel tax to the state of Idaho erroneously shall be allowed a credit or refund of the amount of tax paid by him if a written claim for refund is filed with the commission within three (3) years after the date those taxes were paid. Such credit or refund shall include interest at the rate established in section 63-3045, Idaho Code, computed from the date taxes to be refunded or credited were paid to the commission.

(5) (a) All claims for refund of gasoline taxes arising under subsection (1), (2) or (3)(b) of this section shall be filed in conjunction with the claimant's income tax return due pursuant to chapter 30, title 63, Idaho Code. The gasoline tax refund claimed shall be tax paid on gasoline actually purchased during the taxable year to which the income tax return relates. The gasoline tax refund due shall be offset against any other taxes, penalties or interest due before any balance is refunded by the commission to the claimant. Subject to a limitation as to the amount of refund to be claimed as the commission may provide by rule, refund claims may be submitted and paid on a monthly basis and reconciled on the income tax return when it is filed.

(b) If a claimant is not required to file an income tax return, the refund claim shall be made on forms and in the manner as the commission may provide. The claim shall relate to taxes paid on gasoline actually purchased in the calendar year preceding the filing and the claim shall be filed on or before April 15 following the close of the calendar year.

(c) Claims for refunds under subsection (1) or (2) of this section shall be filed within the time and in the manner prescribed in section 63-3072, Idaho Code. <u>Such credit or refund shall include interest at the rate established in section 63-3045, Idaho Code, computed from sixty (60) days following the later of the due date of the claimed refund under subsection (5)(a) or (5)(b) of this section or the filing of the claim.</u>

(d) The commission may require that all claims be accompanied by the original signed invoice or invoices issued to the claimant, showing the total amount of gasoline on which a refund is claimed and the reason, the amount of the tax and any additional informa-

tion required by the commission. Each separate delivery shall constitute a purchase and a separate invoice shall be prepared, at least in duplicate, to cover the delivery. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or double-spaced carbon shall be used between the original and first duplicate.

(6) (a) Should the commission find that the claim contains errors, it may correct the claim and approve it as corrected, or the commission may require the claimant to file an amended claim. The commission may require any person who makes a claim for refund to furnish a statement under oath, giving his occupation, description of the machine or equipment in which the gasoline was used, the place where used and any other information as the commission may require. If the commission determines that any claim has been fraudulently presented, or is supported by an invoice or invoices fraudulently made or altered, or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the commission may reject the claim in full. If the claim is rejected, the commission may suspend the claimant's right to any refund for purchases made during a period not to exceed one (1) year beginning with the date the rejected claim was filed, and it shall take all other action deemed appropriate.

(b) The commission has authority, in order to establish the validity of any claim, to examine the books and records of the claimant for that purpose, and failure of the claimant to accede to the demand for the examination may constitute a waiver of all rights to the refund claimed.

(7) In the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit a duplicate copy of the invoice certified by the vendor, but payment based on the duplicate invoice shall not be made until one (1) year after the date on which the gasoline was purchased.

SECTION 2. That Section 63-2423, Idaho Code, be, and the same is hereby amended to read as follows:

63-2423. CREDITS AND REFUNDS TO CONSUMERS. (1) Any person who has paid his special fuels tax directly to the vendor from whom it was purchased shall be refunded the amount of:

(a) Any special fuels tax paid on special fuels used for purposes other than propulsion of motor vehicles upon the highways in the state of Idaho;

(b) Any tax paid on special fuels used in motor vehicles owned or leased and operated by an instrumentality of the federal government or of the state of Idaho, including the state and all of its political subdivisions;

(c) Any tax paid on special fuels used in motor vehicles to which gaseous special fuel is delivered and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code;

(d) Any special fuels tax paid on special fuels exported for use outside the state of Idaho. Special fuels carried from the state in the fuel tank of a motor vehicle will not be deemed to be exported from the state unless it is subject to a like or similar

tax in the state to which it is taken and that tax is actually paid to the other state; and

(e) Any tax, penalty or interest erroneously or illegally paid or collected.

(2) No refund of special fuels tax shall be paid on:

(a) Special fuels used in a recreational vehicle; or

(b) Special fuels used in noncommercial motor boats or in motor boats operated by a governmental entity.

(3) Refunds authorized in this section shall be claimed in the same manner as applies to refunds of gasoline tax under section 63-2410, Idaho Code, and shall be subject to interest computed pursuant to subsection (5) of that section.

Approved March 20, 1998.

CHAPTER 197
(H.B. No. 777)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Department of Finance the following amount, to be expended according to the designated standard classifications from the listed fund for the period July 1, 1998, through June 30, 1999:

FOR:	
Personnel Costs	$2,291,600
Operating Expenditures	613,000
Capital Outlay	99,500
TOTAL	$3,004,100
FROM:	
State Regulatory Fund	$3,004,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Finance is authorized no more than forty-three (43) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 20, 1998.

CHAPTER 198
(H.B. No. 771, As Amended)

AN ACT
RELATING TO FOREST LANDS TAXATION; AMENDING SECTION 63-1705, IDAHO CODE, TO ESTABLISH A NEW LONG-TERM CAPITALIZATION RATE FOR USE IN THE FORMULA TO COMPUTE FOREST LANDS PROPERTY TAXES BY THE STATE TAX COMMISSION WHICH SHALL BE IN EFFECT FOR TWO TAX YEARS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-1705, Idaho Code, be, and the same is hereby amended to read as follows:

63-1705. TAXATION OF LARGE-SIZE FOREST TRACTS. (1) In order to encourage private forest landowners to retain and improve their holdings of forest lands and to promote better forest management, large-sized forest tracts shall be appraised, assessed and taxed as real property under the provisions of this section.

(2) The inventory of timber and other forest products growing on large-sized forest tracts shall not be included as a part of the total forest asset. The forest value shall be determined by an income approach which capitalizes the value of the average annual net wood production over a reasonable rotation period plus other agricultural-related income, if any, less annualized expenses including, but not limited to, the establishment, protection, maintenance, improvement and management of the crop over the rotation period.

(3) The market value for assessment purposes shall be determined by the county assessor under rules prescribed by the state tax commission. In prescribing such rules, the tax commission shall:

(a) Divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) Establish a uniform system of forest land classification which considers the productive capacity of the soil to grow forest products and furnish other associated agricultural uses.

(4) The state tax commission shall by March 1 of each year, furnish the county assessor for each value zone the capitalization rate, stumpage value, agricultural-related income, if any, and expense component to be used in determining the forest value. From January 1, 1999, until January 1, 2001, the capitalization rate shall be the interest rate for the farm credit bank district serving Idaho, as set forth in the most current revenue ruling made pursuant to section 2032A(e)(7)(A) of the Internal Revenue Code and 26 CFR 20.2032A-4(e), plus eighty-five one hundredths percent (.85%), plus a component for the local tax rate. ~~The capitalization rate shall be determined in accordance with the procedures prescribed for the determining of the capitalization rate for agricultural lands by section 63-602K, Idaho Code.~~ Stumpage values shall be based upon the preceding five (5) year rolling average value of timber harvested within the forest value zone

from state timber sales and/or the best available data for the same five (5) year period. Average agricultural-related income and the average expense component for each forest value zone shall be determined for the same time period as the period used to determine average stumpage values.

(5) Forest lands upon which, at any time after January 1, 1982, the trees are destroyed by fire, disease, insect infestation or other natural disaster such that the lands affected will not meet minimum stocking requirements under rules adopted pursuant to chapter 13, title 38, Idaho Code, shall be eligible for a reduction in value for the first ten (10) property tax years following the loss. The amount of reduction shall be determined by dividing the average age of the trees destroyed by the rotation age for the specific forest value zone in which the property is located. In no instance shall the annual reduction exceed eighty percent (80%) of the original forest value per year. In order to obtain a reduction, the landowner shall on or before January 1 following the destruction, make written application to the assessor indicating the legal description of the lands in question and stating all pertinent facts. The assessor may investigate the facts and may request assistance from the state tax commission in performing such investigations. If the requirements are met, such forest lands shall be assessed and taxed on the reduced basis herein provided.

(6) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by applicable laws and rules.

SECTION 2. This act shall be in full force and effect on and after January 1, 1999.

Approved March 20, 1998.

CHAPTER 199
(H.B. No. 760)

AN ACT

RELATING TO THE HIGHWAY DISTRIBUTION ACCOUNT; AMENDING SECTION 40-701, IDAHO CODE, TO PROVIDE THAT AN AMOUNT EQUIVALENT TO THE NET INCREASE IN THE MOTOR FUELS TAX EXCEEDING TWENTY-ONE CENTS PER GALLON SHALL BE DEPOSITED IN THE RESTRICTED HIGHWAY FUND AND TO MAKE TECHNICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 40-701, Idaho Code, be, and the same is hereby amended to read as follows:

40-701. HIGHWAY DISTRIBUTION ACCOUNT -- APPORTIONMENT. (1) There is established in the state treasury an account known as the "Highway Distribution Account," to which shall be credited:

(a) Moneys as provided by sections 63-2412(1)(e)4 and 63-2418(3),

Idaho Code;

(b) All moneys collected by the department, their agents and vendors, and county assessors and sheriffs, under the provisions of title 49, Idaho Code, except as otherwise specifically provided for; and

(c) All other moneys as may be provided by law.

(2) The highway distribution account shall be apportioned as follows:

(a) An amount equivalent to the net increase in ~~gasoline fuel~~ the motor fuels tax exceeding twenty-one cents (21¢) per gallon shall be deposited to the restricted highway fund, and the remainder shall be distributed:

(b) Thirty-five and seventy-seven hundredths ~~per cent~~ percent (35.77%) to local units of government as provided in section 40-709, Idaho Code;

(c) Fifty-eight and eighty-three hundredths ~~per cent~~ percent (58.83%) to the state highway account established in section 40-702, Idaho Code; and

(d) Five and forty hundredths ~~per cent~~ percent (5.40%) to the law enforcement account, established in section 67-2914, Idaho Code. The state controller shall cause the remittance of the moneys apportioned to local units of government not later than January 25, April 25, July 25 and October 25 of each year, and to the state highway account and the law enforcement account as the moneys become available to the highway distribution account.

(3) Interest earned on the investment of idle moneys in the highway distribution account shall be paid to the highway distribution account.

(4) All idle moneys in the dedicated highway trust or asset accounts or subaccounts established from highway user revenues, reimbursements, fees or permits shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the various highway trust or asset accounts and subaccounts.

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 April 1, 1996.

Approved March 20, 1998.

CHAPTER 200
(H.B. No. 759)

AN ACT

RELATING TO POWERS AND DUTIES OF THE STATE TAX COMMISSION; AMENDING SECTION 63-105A, IDAHO CODE, TO PROVIDE THAT THE STATE TAX COMMISSION SHALL PROVIDE A PROGRAM OF EDUCATION AND AN ANNUAL APPRAISAL SCHOOL FOR ITS EMPLOYEES, FOR COUNTY COMMISSIONERS AND FOR THE

ASSESSORS OF THE VARIOUS COUNTIES OF THE STATE.

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

SECTION 1. That Section 63-105A, Idaho Code, be, and the same is hereby amended to read as follows:

63-105A. POWERS AND DUTIES -- PROPERTY TAX. The state tax commission shall be the state board of equalization. In addition to other powers and duties vested in it, the state tax commission shall have the power and duty:

(1) To supervise and coordinate the work of the several county boards of equalization.

(2) To secure, tabulate and keep records of valuations of all classes of property throughout the state, and for that purpose, to have access to all records and files of state offices and departments and county and municipal offices, and to require all public officers and employees whose duties make it possible to ascertain valuations, including valuations of public utilities for rate-making purposes, to file reports with the state tax commission, giving such information as to valuation and the source thereof. The nature and kind of the tabulations, records of valuations and requirements from public officers as stated herein, shall be in such form and cover such valuations as the state tax commission may prescribe.

(3) To coordinate and direct a system of property taxation throughout the state.

(4) To require all assessments of property in this state to be made according to law; and for that purpose to correct, when it finds the same to be erroneous, any assessments made in any county, and require correction of the county assessment records accordingly.

(5) To prescribe forms and to specify and require information with relation to any duty or power of the state tax commission except as provided in section 63-219, Idaho Code.

(6) To instruct, guide, direct and assist the county assessors and county boards of equalization as to the methods best calculated to secure uniformity in the assessment and equalization of property taxes, to the end that all property shall be assessed and taxed as required by law.

(7) To reconvene, whenever the state tax commission may deem necessary, any county board of equalization, notwithstanding the limitations of chapter 5, title 63, Idaho Code, for equalization purposes and for correction of errors. The county board of equalization, when so reconvened shall have no power to transact any business except that for which it is specially reconvened, or such as may be brought before it by the state tax commission.

(8) To require prosecuting attorneys to institute and prosecute actions and proceedings in respect to penalties, forfeitures, removals and punishments for violations of law in connection with the assessment and taxation of property. It shall be the duty of such officers to comply promptly with the requirements of the state tax commission in that relation.

(9) To require individuals, partnerships, companies, associations and corporations to furnish such information as the state tax

commission may require concerning their capital, funded or other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes and all other facts which may be needed to enable the state tax commission to ascertain the value and the relative tax burden borne by all kinds of property in the state, and to require from all state and local officers such information as may be necessary to the proper discharge of the duties of the state tax commission.

(10) To visit, as a state tax commission or by individual members or agents thereof, whenever the state tax commission shall deem it necessary, each county of the state, for the investigation and direction of the work and methods of assessment and equalization, and to ascertain whether or not the provisions of law requiring the assessment of all property, not exempt from taxation, and just equalization of the same have been or are being properly administered and enforced.

(11) To carefully examine all cases where evasion or violation of the laws of assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered.

(12) To correct its own errors in property assessment at any time before the first Monday in November, and report such correction to the county auditor and county tax collector, who shall thereupon enter the correction upon the operating property roll.

(13) To apportion annually to the state and the respective counties any moneys received by the state from the United States or any agency thereof, as payments in lieu of property taxes; provided, that said moneys shall be apportioned in the same amounts, and to the same governmental divisions as the property taxes, in lieu of which payments are made, would be apportioned, if they were levied. The state treasurer and the state controller shall be bound, in making distribution of moneys so received, by the apportionment ordered by the state tax commission.

(14) To make administrative construction of property tax law whenever necessary or requested by any officer acting under such laws and until judicially overruled, such administrative construction shall be binding upon the inquiring officer and all others acting under such laws.

(15) To require the attendance of any assessor in the state at such time and place as may be designated by the commission, and the actual and necessary expenses of any assessor in attending any such meeting shall be a legal claim against his county.

(16) To analyze the work of county assessors at any time and to have and possess all rights and powers of such assessors for the examination of persons and property, and for the discovery of property subject to taxation; and if it shall ascertain that any taxable property is omitted from the property rolls or is not assessed or valued according to law, it shall bring the same to the attention of the assessor of the proper county in writing, and if such assessor shall neglect or refuse to comply with the request of the state tax commission to place such property on the property rolls, or correct such incorrect assessment or valuation, the tax commission shall have the power to prepare a supplemental roll, which supplemental roll shall include all property required by the tax commission to be placed on

the property roll and all corrections to be made. Such supplement shall be filed with the assessor's property roll, and shall thereafter constitute an integral part thereof to the exclusion of all portions of the original property rolls inconsistent therewith, and shall be submitted therewith to the county board of equalization.

(17) To provide a program of education and an annual appraisal school for its employees, for county commissioners and for the assessors of the various counties of this state. Additionally, the state tax commission shall provide for the establishment of a property tax appraiser certification program. Such program shall include, as a minimum, a written examination prepared, administered and graded under the supervision and control of an examination committee; such committee is to be composed as the state tax commission may provide by rule. The state tax commission's rules shall include, but need not be limited to, the following:

(a) The composition of the examination committee, provided however, that the committee shall include a representative of the counties, an agent of the state tax commission and a representative of a professional appraisal association within this state. The representative of the counties together with the representatives of such professional appraisal association shall constitute a majority of the committee.

(b) The frequency with which the examination shall be given.

(c) A reasonable review procedure by which examinees having complaints may seek review of the examination committee.

(d) The establishment of a reasonable period of time within which a county appraiser must meet the certification requirements as a condition to continued employment by the county as a certified property tax appraiser.

(18) To report at least quarterly to the revenue and taxation committee of the house of representatives and to the joint senate finance-house appropriations committee on its program to assist the counties with the property tax assessments.

(19) To transmit to the governor and to the legislature, an annual report, with the state tax commission's recommendations as to such legislation as will correct or eliminate defects in the operations of the property tax laws and will equalize taxation within the state. Said annual report shall include a comprehensive study of the property tax laws and detailed statistical information concerning the operation of the property tax laws of this state. Said report shall be submitted prior to the meeting of any regular session of the legislature.

(20) To maintain a forest land and forest product tax section to perform the functions and duties of the state tax commission under the provisions of chapter 17, title 63, Idaho Code.

Approved March 20, 1998.

CHAPTER 201
(H.B. No. 744)

AN ACT

RELATING TO PUBLIC CHARTER SCHOOLS; AMENDING SECTION 33-5204, IDAHO CODE, AS ADDED BY HOUSE BILL NO. 517, ENACTED BY THE SECOND REGULAR SESSION OF THE FIFTY-FOURTH IDAHO LEGISLATURE, TO CLARIFY THAT A PUBLIC CHARTER SCHOOL IS A GOVERNMENTAL ENTITY FOR PURPOSES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 33-5207, IDAHO CODE, AS ADDED BY HOUSE BILL NO. 517, ENACTED BY THE SECOND REGULAR SESSION OF THE FIFTY-FOURTH IDAHO LEGISLATURE, TO PROVIDE THAT ANY HEARING CONDUCTED BY THE STATE BOARD OF EDUCATION DURING AN APPEAL PROCEDURE SHALL BE CONDUCTED PURSUANT TO PROCEDURES SET BY THE BOARD AND TO CLARIFY THAT EMPLOYEES OF A CHARTER SCHOOL AUTHORIZED BY THE STATE BOARD OF EDUCATION SHALL NOT BE CONSIDERED EMPLOYEES OF THE STATE BOARD; AND AMENDING SECTION 59-1374, IDAHO CODE, TO CLARIFY THAT PUBLIC CHARTER SCHOOLS SHALL BE EMPLOYERS PURSUANT TO PROVISIONS OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM.

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

SECTION 1. That Section 33-5204, Idaho Code, as added by House Bill No. 517, enacted by the Second Regular Session of the Fifty-fourth Idaho Legislature, be, and the same is hereby amended to read as follows:

33-5204. NONPROFIT CORPORATION -- LIABILITY -- INSURANCE. (1) A charter school shall be organized and managed under the Idaho nonprofit corporation act. The board of directors of a charter school shall be deemed public agents authorized by a public school district or the state board of education to control the charter school. A charter school shall be considered a public school for all purposes. <u>For the purposes of section 59-1302(15), Idaho Code, a charter school created pursuant to this chapter shall be deemed a governmental entity.</u>

(2) A charter school may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and borrow money for such purposes, to the same extent and on the same conditions as a public school district, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of public school districts and other public schools. The approving authority of a charter school shall have no liability for the acts, omissions, debts or other obligations of a charter school, except as may be provided in an agreement or contract with such charter school.

(3) Charter schools shall secure insurance for liability and property loss.

SECTION 2. That Section 33-5207, Idaho Code, as added by House Bill No. 517, enacted by the Second Regular Session of the Fifty-fourth Idaho Legislature, be, and the same is hereby amended to read as follows:

33-5207. CHARTER APPEAL PROCEDURE. (1) If a local school board of trustees grants a charter for the conversion of an existing school within the school district over the objection of thirty (30) or more persons or employees of the district, or denies a petition for the establishment of a new charter school for any reason including, but not limited to, failure by the petitioner to follow procedures or for failure to provide required information, then such decisions may be appealed to the state superintendent of public instruction, at the request of persons opposing the conversion of an existing school, or at the request of the petitioner whose request for a new charter was denied.

(2) The state superintendent of public instruction shall select a hearing officer to review the action of the local board of trustees. The hearing officer shall, within thirty (30) days of the request, review the charter petition and convene a public hearing regarding the charter request. Within ten (10) days of the public hearing, the hearing officer shall submit a written recommendation to the local board of trustees and to the persons requesting the review.

(3) Within thirty (30) days following receipt of the hearing officer's written recommendation, the local board of trustees shall hold a public hearing. Within ten (10) days of this hearing, the local board of trustees shall either affirm or reverse its initial decision. The board's decision shall be in writing and contain findings which explain the reasons for its decision.

(4) If, upon reconsideration of a decision to approve the conversion of an existing school to a charter school, the local school board:

(a) Affirms its initial decision to authorize such conversion, the charter shall be granted and there shall be no further appeal.

(b) Reverses its initial decision and denies the conversion, that decision is final and there shall be no further appeal.

(5) If, upon reconsideration of a decision to deny establishment of a new charter school, the local school board:

(a) Reverses its initial decision and approves the new charter school, the charter shall be granted and there shall be no further appeal.

(b) Affirms its initial decision denying the new charter school, the petitioners for the establishment of the new charter school may appeal to the state board of education. The state board of education shall hold a public hearing at its next regular meeting and shall approve the charter for the establishment of a new charter school if it determines that the local board of trustees failed to appropriately consider the charter request, or if the local board acted in an arbitrary manner in denying the request. Such hearing shall be conducted pursuant to procedures as set by the state board of education.

(6) A charter school for which a charter is granted by the state board of education shall qualify fully as a charter school for all funding and other purposes of this chapter. The state board of education shall assume the role of the chartering entity. Employees of a charter school authorized by the state board of education shall not be considered employees of the local school district nor of the state board of education.

(7) The finding of the state board of education shall be subject to review pursuant to chapter 52, title 67, Idaho Code. Nothing in this section shall prevent a petitioner from bringing a new petition at a later time.

(8) There shall be no appeal of a decision by a local school board of trustees which denies the conversion of an existing school within that district to a charter school, or which grants a petition for the establishment of a new charter school.

SECTION 3. That Section 59-1374, Idaho Code, be, and the same is hereby amended to read as follows:

59-1374. EMPLOYERS -- MEMBERS -- EXCEPTIONS. All school districts, public community college districts and Boise State University shall become employers pursuant to the provisions of chapter 13, title 59, Idaho Code, on July 1, 1967, except as herein otherwise provided. School employees shall become members pursuant to the provisions of chapter 13, title 59, Idaho Code, on July 1, 1967, except as herein otherwise provided. Provided, however, that teacher members employed by the agricultural extension service of the college of agriculture of the University of Idaho shall be deemed to be employees of the state of Idaho notwithstanding the provisions of section 59-1302(14)(B)(e), Idaho Code, and may elect to participate or be excluded as members of the system in accordance with rules of the board. All public charter schools created pursuant to chapter 52, title 33, Idaho Code, shall be employers pursuant to the provisions of chapter 13, title 59, Idaho Code.

Approved March 20, 1998.

CHAPTER 202
(H.B. No. 740, As Amended)

AN ACT

RELATING TO THE IDAHO FOOD QUALITY ASSURANCE INSTITUTE; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 67-8301, IDAHO CODE, TO PROVIDE THAT THE INSTITUTE SHALL BE AN ENTITY OF THE STATE OF IDAHO FOR PURPOSES OF THE TORT CLAIMS ACT; AMENDING SECTION 67-8304, IDAHO CODE, TO REVISE THE POWERS OF THE INSTITUTE; AND REPEALING SECTION 2, CHAPTER 358, LAWS OF 1996.

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

SECTION 1. LEGISLATIVE INTENT. It is the intent of the legislature that a sublease be entered into between the State of Idaho, the College of Southern Idaho and the Idaho Food Quality Assurance Institute so that the Institute can occupy and perform food quality testing at the Food Quality Assurance Laboratory located in Twin Falls, Idaho. It is further the intent of the legislature that should the Institute cease to exist or is unable to provide food quality testing services for the benefit of Idaho agriculture, then the Idaho Department of

Agriculture, Idaho Alfalfa Seed Commission, Idaho Mint Commission, Idaho Potato Commission and Idaho Wheat Commission may continue to contract for food quality testing and the Food Quality Assurance Laboratory upon the same sublease conditions as were made available to the Idaho Food Quality Assurance Institute.

SECTION 2. That Section 67-8301, Idaho Code, be, and the same is hereby amended to read as follows:

67-8301. IDAHO FOOD QUALITY ASSURANCE INSTITUTE CREATED. There is hereby created an independent public body corporate and politic to be known as the Idaho food quality assurance institute. The institute shall be exempt from taxation. The institute shall be an entity of the state of Idaho as provided in the tort claims act, chapter 9, title 6, Idaho Code, and shall be entitled to all the protection as provided in the tort claims act, chapter 9, title 6, Idaho Code.

SECTION 3. That Section 67-8304, Idaho Code, be, and the same is hereby amended to read as follows:

67-8304. POWERS OF THE INSTITUTE. The Idaho food quality assurance institute is an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers which are hereby declared to be public purposes necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(1) To provide an ongoing quality assurance testing program for Idaho agricultural commodities by analyzing and documenting the food safety practices of Idaho producers and such other agricultural commodities by documenting the food safety practices of other producers as feasible;

(2) To provide for the management and operation of the quality assurance laboratory at Twin Falls, Idaho, and to provide and facilitate educational opportunities;

(3) To establish fees for testing and analysis of agricultural commodities and for any other services to be provided to benefit agricultural commodity producers by the laboratory or the institute;

(4) To provide for certification of testing results;

(5) To sue and to be sued, to have a seal and to alter the same at pleasure, to have perpetual succession, and to make and execute agreements, contracts and other instruments necessary or convenient to the exercise of the powers and duties of the institute;

(6) ~~To--insure--or--provide-for-the-insurance-of-any-real-or-personal-property-or-operation-of-the-institute-against-any-risks-or-hazards;~~

~~(7)~~ To own, hold and improve personal property; to purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise or otherwise, any personal property or any interest therein;

(8~~7~~) To make and from time to time amend and repeal bylaws and rules, not inconsistent with this act, to carry into effect the powers and purposes of the institute.

SECTION 4. That Section 2, Chapter 358, Laws of 1996, be, and the same is hereby repealed.

Approved March 20, 1998.

CHAPTER 203
(H.B. No. 739)

AN ACT

RELATING TO THE PURE SEED LAW; AMENDING SECTION 22-418, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE MAY BY RULE SET THE SERVICE AND LICENSE FEES TO BE COLLECTED AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 22-434, IDAHO CODE, TO REVISE CONDITIONS FOR A SEED DEALER'S LICENSE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 22-418, Idaho Code, be, and the same is hereby amended to read as follows:

22-418. DUTIES AND AUTHORITY OF DIRECTOR. The duty of enforcing the provisions of this chapter and carrying out its provisions and requirements shall be vested in the director pursuant to section 22-103, Idaho Code. Additional duties of the director or his authorized agents shall include, but are not limited to, the following:

(1) To establish and maintain or make provision for seed testing facilities.

(2) To have analyses and tests of samples of seed made as necessary.

(3) To make or provide for making purity and germination tests of seeds for farmers and dealers on request.

(4) The director of the department of agriculture may by ~~regulation~~ rule set the service and license fees to be collected. Fees so collected shall be paid into the state treasury and credited to the agriculture department inspection account, created in section 22-104, Idaho Code, and such fees shall be used only to pay the costs of operating the state seed laboratory.

(5) To enter upon any public or private premises during regular business hours in order to have access to seeds subject to this chapter.

(6) To sample and inspect agricultural, vegetable, flower, tree and shrub seeds transported, sold, offered or exposed for sale, or delivered under a contract within this state for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether the seeds are in compliance with the provisions of this chapter, and to notify promptly the person who transported, sold, offered or exposed the seed for sale of any violation.

(7) To issue and enforce a "stop-sale" order to the owner or custodian of any lot of seed which is in violation of any of the provisions of this chapter, which order shall prohibit further sale or

delivery under a contract of the seed until such officer has evidence that the law has been complied with; provided, that in respect to seeds which have been denied sale as provided in this paragraph, the owner or custodian of such seeds shall have the right to appeal from such order to the district court of the county in which the seeds are found, praying for a judgment as to the justification of the order and for the discharge of such seed from the order prohibiting the sale in accordance with the findings of this court; and provided further, that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized under other sections of this chapter.

(8) To cooperate with the United States department of agriculture and other agencies in seed law enforcement.

(9) To notify in writing, the proprietor of any plant variety protected under the United States plant variety protection act when any sample of a proprietor's variety is received for testing at the Idaho state seed laboratory.

(10) To cooperate fully with the proprietor of any plant variety which is protected under the United States plant variety protection act to secure for the proprietor the full protection afforded under the United States plant variety protection act or the federal seed act, or both, by releasing to the proprietor any and all knowledge as may come to the attention of the director or his authorized agents in regard to the illegal use of any United States protected variety.

(11) To prescribe and adopt rules ~~and regulations~~ governing:

(a) The methods of sampling, inspecting, analysis tests and examination of seed, and the tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce;

(b) Reasonable standards of germination for vegetable seeds and flower seeds;

(c) Labeling of flower seeds;

(d) A list of the kinds of flower seeds subject to the flower seed germinations labeling requirements;

(e) A list of the tree and shrub species subject to germination labeling requirements;

(f) A list of species that may be tetrazolium tested in lieu of germination testing.

SECTION 2. That Section 22-434, Idaho Code, be, and the same is hereby amended to read as follows:

22-434. SEED DEALER'S LICENSE. An in-state seed dealer or an out-of-state seed dealer who conditions, labels and sells, ~~distributes, processes or mixes~~ for the use of others any seed, shall obtain a license from the department authorizing him to condition, label and sell~~, distribute, process or mix~~ such seed. A dealer shall not be entitled to a license unless he has an established plant, warehouse or place of business.

A separate license shall be required for each place of business from which seed regulated under this chapter is sold. Application for licenses shall be on a form provided by the director. ~~No license shall be issued until the applicant shall have paid the fee provided in the~~

~~following-paragraphs-(1),-(2)-and-(3).~~

~~(1)--Class-"A"-license-shall-consist-of-those-in-state-dealers-who sell-seed-in-packages-of-eight-(8)-ounces-up-to-and-including-five-(5) pounds,-who-shall-pay-a-license-fee-of-fifteen-dollars-($15.00).~~

~~(2)--Class-"B"-license-shall-consist-of-those-in-state-dealers-who sell-seed-in-packages-or-bulk-of-more-than-five-(5)-pounds--who--shall pay-a-license-fee-of-forty-dollars-($40.00).~~

~~(3)--Class--"C"--license-shall-consist-of-out-of-state-dealers-who shall-pay-a-license-fee-of-eighty-dollars-($80.00).~~

~~The-license-fees-established-in-this-section-are-minimums-and--any future--increases--shall-be-as-promulgated-by-the-director-pursuant-to chapter-52,-title-67,-Idaho-Code.~~ Applications shall be renewed no later than July 1 of each year.

Fees so collected shall be paid into the state treasury and credited to the state agricultural inspection account.

In-state producers selling their own crop shall be exempt from this section.

The department may suspend, revoke, or refuse to issue or renew the license of any person when it is satisfied that:

(1) The applicant or licensee has been guilty of fraud, deception, or misrepresentation in the procurement of a license; and/or

(2) The licensee was guilty of violating any of the provisions of this chapter.

Approved March 20, 1998.

CHAPTER 204
(H.B. No. 738)

AN ACT

RELATING TO NONMEDICAL INDIGENT ASSISTANCE; AMENDING SECTION 31-3403, IDAHO CODE, TO PROVIDE A DEFINITION OF RESOURCE SIMILAR TO THE MEDICAL INDIGENT STATUTES, TO CLARIFY SPECIFIC NONMEDICAL ASSISTANCE DETERMINED BY RESOLUTION OF THE BOARD AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-3405, IDAHO CODE, TO ALLOW THE BOARD TO DETERMINE THE LENGTH OF TIME OF ELIGIBILITY FOR ASSISTANCE BEYOND ONE MONTH; AND AMENDING SECTION 31-3409, IDAHO CODE, TO PROVIDE THAT INTERIM RELIEF IS AVAILABLE TO THE EXTENT PROVIDED BY THE RESOLUTION OF THE BOARD.

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

SECTION 1. That Section 31-3403, Idaho Code, be, and the same is hereby amended to read as follows:

31-3403. DEFINITIONS. As used in this chapter:

(1) "Adult household member" means any individual eighteen (18) years of age and over who resides in the household.

(2) "Anticipated future income" means a reasonable expectation of income to the household based on an analysis of past income, future income, current income, experience, skills, education, inheritance and

possible assets from any source.

(3) "Applicant" means the individual and all others in the household who are requesting nonmedical assistance, and who submits a county application.

(4) "Assets" means property rights including, but not limited to, personal, real, tangible and intangible property.

(5) "Authorized representative" means the applicant's guardian or appointed attorney-in-fact.

(6) "Board" means a board of county commissioners.

(7) "Clerk" means the clerk of a board of county commissioners or his designee.

(8) "Emergency" means any circumstance demanding immediate action.

(9) "Household" means a collective body of persons consisting of spouses or parents and their children who reside in the same residence; or all other persons who by choice or necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

(10) "Indigent" means any applicant who does not have resources available from whatever source which shall be sufficient to enable the applicant to provide nonmedical assistance or a portion thereof.

(11) "Information release" means the document authorizing release of confidential information.

(12) "Investigation" means a detailed examination of the application and information required from the applicant and others to verify eligibility.

(13) ~~"Medically-unemployable"-means-a-physical-or-mental--disability--to--the--extent--it--prevents-an-individual-from-participation-in employment-and-such-disability-is-certified-by-one--or--more--licensed physicians-and/or-psychiatrist-or-psychologist.~~

~~(14)~~ "Nonmedical assistance" means reasonable costs for assistance which includes~~,-but-is-not-limited-to,~~ food and shelter and other such necessary services ~~as-may-be~~ determined by the board by resolution.

(15~~4~~) "Obligated county for payment" means the county wherein residency has been established.

(16~~5~~) "Recipient" means the individual(s) determined eligible for county assistance.

(17~~6~~) "Repayment" means the authority of the board of county commissioners to require indigent person(s) to repay the county for assistance when investigation of their application determines their ability to do so.

(18~~7~~) "~~Residence--or--residency~~Resident" means a ~~physical-presence~~ person with a home, house, place of abode, place of habitation, dwelling or place where one actually ~~lives~~ lived for a consecutive period of thirty (30) days or more prior to the date of application.

(19~~8~~) "Resource" means assets, ~~or-income-from-any-source-including,-but-not-limited-to,-cash,-assets,-gifts,-bequests,-grants,-available-forms-of-public-or-private-assistance,-household-members-and-family,-whether-it-be-services-or-payment-of-services,--loans,--borrowing power--and--anticipated-income~~ whether tangible or intangible, real or personal, liquid or nonliquid, including, but not limited to, gifts, bequests, grants, all forms of public or private assistance, crime victim's compensation, worker's compensation, veteran's benefits, med-

icaid, medicare and any other property from any source for which an applicant and/or an obligated person may be eligible or in which he or she may have an interest. For purposes of determining approval for nonmedical indigency only, resources shall not include the value of the homestead of the applicant or obligated person's residence, a burial plot, exemptions for personal property allowed in section 11-605(1) through (3), Idaho Code, and additional exemptions allowed by county resolution.

SECTION 2. That Section 31-3405, Idaho Code, be, and the same is hereby amended to read as follows:

31-3405. ELIGIBILITY CLASSIFICATIONS -- DURATION OF ASSISTANCE FOR PURPOSES OF ELIGIBILITY. ~~A--recipient--of--nonmedical--assistance shall-be-classified-as-either-employable-or-medically-unemployable.~~

~~(1)--For-medically-unemployable-persons,-the-board-shall-determine the--length-of-eligibility-for-nonmedical-services,-based-upon-medical documentation-submitted-to-them-as-requested.~~

~~(2)~~ The county is not obligated to provide nonmedical assistance for more than ~~three~~ one (~~3~~1) month~~s~~ in the aggregate in any twelve (12) month period to ~~employable~~ persons who are ~~otherwise~~ eligible for assistance. Assistance provided in any Idaho county shall apply toward the ~~obligatory-three~~ one (~~3~~1) month benefit period. The board may determine the length of additional eligibility, consistent with the county resolution, for nonmedical services, based upon documentation submitted to them as requested.

SECTION 3. That Section 31-3409, Idaho Code, be, and the same is hereby amended to read as follows:

31-3409. APPLICATION OF STATE AND FEDERAL PROGRAM -- INTERIM RELIEF SUBROGATION OF COUNTY TO RECEIPT OF FEDERAL PAYMENTS. (1) ~~Nonmedical-assistance-is-available-to-a~~An eligible applicant may be provided nonmedical interim assistance that is consistent with the resolution adopted by the board and to the extent such relief is not duplicative of resources or benefits reasonably available to the recipient.

(2) If federal, state or other programs or assistance are available to meet the needs of a household, an eligible applicant must apply for those programs before nonmedical assistance may be provided. ~~An-eligible-applicant-shall-be-provided-interim-nonmedical--assistance after--initial--applications-for-other-programs-are-pending.~~ If denied such other assistance, the applicant must pursue available administrative appeals for those programs to the final administrative level. ~~If the--applicant--becomes--eligible--for--other-assistance,-such-interim relief-shall-be-repaid-to-the-county-to-the--extent--that--such--other assistance--is--for--the--same-periods-of-time-that-interim-nonmedical assistance-has-been-provided.~~

Approved March 20, 1998.

CHAPTER 205
(H.B. No. 734, As Amended)

AN ACT

RELATING TO THE BOARD OF SHEEP COMMISSIONERS; AMENDING SECTION 25-127, IDAHO CODE, TO STRIKE OBSOLETE PROVISIONS; AMENDING SECTION 25-128, IDAHO CODE, TO AUTHORIZE THE BOARD TO DESIGNATE THE USE OF FUNDS OF THE BOARD; AMENDING SECTION 25-128A, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING CHAPTER 1, TITLE 25, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 25-153, 25-154, 25-155, 25-156, 25-157, 25-158, 25-159 AND 25-160, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A STATEMENT OF POLICY, TO PROVIDE DUTIES AND POWERS OF THE COMMISSION PERTAINING TO PROMOTION, RESEARCH AND EDUCATION POLICY, TO PROVIDE FOR DEPOSIT AND DISBURSEMENT OF FUNDS, TO REQUIRE BONDS OF AGENTS AND EMPLOYEES, TO PROVIDE THAT THE STATE IS NOT LIABLE FOR ACTS OR OMISSIONS OF THE COMMISSION OR OF ITS EMPLOYEES, TO PROVIDE FOR AN ASSESSMENT, AND TO REQUIRE A REFERENDUM OF PRODUCERS PRIOR TO THE IMPLEMENTATION OF THE PROVISIONS OF THIS ACT.

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

SECTION 1. 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.

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-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 may be compensated as

provided by section 59-509(d), Idaho Code. Said compensation may be paid from the sheep commission account 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 ~~semi~~annually and at any other time if so requested by any member of the board.

SECTION 2. That Section 25-128, Idaho Code, be, and the same is hereby amended to read as follows:

25-128. POWERS AND DUTIES OF STATE BOARD OF SHEEP COMMISSIONERS. The board shall have the authority to perform all those duties and powers necessary for the prevention, control, and eradication of diseases which may include the supervision of sheep, handling of sheep, shipping, transporting or moving of sheep, regulation of sheep, the making of rules concerning sheep and all other matters pertaining to sheep either in the state of Idaho or which may be brought into or shipped from the state of Idaho. The board shall also be responsible for all matters relating to the prevention, control, and eradication of diseases pertaining to goats within the state of Idaho with the provisions of this chapter also applying to goats. The board may also designate a portion of the assessment, as provided in sections 25-130 and 25-131, Idaho Code, to help carry on the work for the prevention and control of damage caused by predatory animals and other vertebrate pests.

SECTION 3. That Section 25-128A, Idaho Code, be, and the same is hereby amended to read as follows:

~~25-128A~~25-2612A. DUTIES AND POWERS OF THE STATE ANIMAL DAMAGE CONTROL BOARD. (1) There is hereby created a state animal damage control board. The chairman of the board of sheep commissioners shall be a voting member and serve as the chairman of the state animal damage control board which shall have such duties and powers relating to the prevention and control of damage caused by predatory animals and other vertebrate pests, including threatened or endangered wildlife, within the state of Idaho as are established by federal or state law, federal or state rule or regulation, or county ordinance. It is hereby made the duty of the state animal damage control board to coordinate and give general direction to programs to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health or safety; and also to facilitate, coordinate or conduct such investigations, experiments or tests as deemed necessary to determine, demonstrate and promulgate the best methods of predatory animals and other vertebrate pest control. In carrying out these duties, the board may cooperate with federal, state, county, city and private agencies, organizations or individuals; provided, however, that the authority of this board is not to supersede the state fish and game department or the responsible federal agency in the utilization of the funds of those two (2) agencies in their conduct of similar work within the

state of Idaho, but the board shall cooperate and work with these two (2) agencies. Prevention and control of predatory animals and other vertebrate pests does not include the payment of compensation for damages.

(2) In addition to the chairman, the state animal damage control board shall consist of a member appointed by the president of the Idaho cattle association, the director of the state department of agriculture, the director of the state department of fish and game, and the chairman of the board of directors of each of the five (5) animal damage control districts.

(3) The state animal damage control board shall have as its primary duties the coordination of the control efforts of the five (5) animal damage control districts; the establishment of general policies for the control programs; the establishment of annual priorities for control efforts; and the assignment or distribution of moneys made available to the board from any source. All contracts or agreements for providing prevention and control services which involve an expenditure of moneys from the state animal damage control board shall be in writing and shall be maintained as a part of the official records of the board.

(4) The state board of sheep commissioners shall provide staff, administrative and fiscal services for the animal damage control board.

SECTION 4. That Chapter 1, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 25-153, 25-154, 25-155, 25-156, 25-157, 25-158, 25-159 and 25-160, Idaho Code, and to read as follows:

25-153. SHORT TITLE. Sections 25-153 through 25-160, Idaho Code, shall be known and may be cited as the "Sheep, Lamb and Wool Promotion, Research and Education Act."

25-154. PROMOTION, RESEARCH AND EDUCATION POLICY. It is to the best interests of all the people of the state of Idaho that the abundant and natural resources of Idaho be protected, fully developed and uniformly distributed. It is in the public interest and within the exercise of the police power of the state to protect the public health; to prevent fraudulent practices; to provide the means for the development of markets; to provide production research and education; and to encourage new product development and promotion of the sheep, lamb and wool industry.

25-155. DUTIES AND POWERS OF THE COMMISSION PERTAINING TO PROMOTION, RESEARCH AND EDUCATION POLICY. (1) The commission may contract with the Idaho wool growers association, inc., or a similar agency for the administration of the sheep commission's business pertaining to the promotion, research and education policy.

(2) In the administration of sections 25-153 through 25-160, Idaho Code, the commission shall, in conjunction with the Idaho wool growers association, inc., have the following duties, authorities and powers:

(a) To conduct a campaign of research, education and publicity;

(b) To find new markets for sheep, lamb and wool products;
(c) To give, publicize and promulgate reliable information showing the value of sheep, lamb and wool products for any purpose for which it is found useful and profitable;
(d) To make public and encourage the widespread national and international use of sheep, lamb and wool products produced in Idaho;
(e) To investigate and participate in studies of the problems peculiar to the producers of sheep, lamb and wool in Idaho.
(3) The commission shall have the duty, power and authority:
(a) To take such action as the commission deems necessary or advisable in order to stabilize and protect the sheep, lamb and wool industry of the state and the health and welfare of the public;
(b) To sue and be sued;
(c) To enter into such contracts as may be necessary or advisable;
(d) To appoint and employ 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;
(e) 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;
(f) 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;
(g) To lease, purchase or own the real or personal property deemed necessary in the administration of the provisions of this act;
(h) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in the provisions of this act;
(i) To adopt, rescind, modify and amend all necessary and proper orders and resolutions for the procedure and exercise of its powers and the performance of its duties;
(j) To incur indebtedness and carry on all business activities;
(k) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller and the public at all times;
(l) To adopt from time to time, alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and performance of its duties under this act.

25-156. DEPOSIT AND DISBURSEMENT OF FUNDS. (1) Immediately upon receipt, all grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift, and all of the revenues received under the provisions of section 25-159, Idaho

Code, shall be deposited 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 banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this act.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income to the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current fiscal year and a projection of anticipated expenses by category for the current fiscal year. The report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

25-157. BONDS OF AGENTS AND EMPLOYEES. The administrator, or any agent or employee appointed by the commission 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.

25-158. STATE NOT LIABLE FOR ACTS OR OMISSIONS OF COMMISSION OR OF ITS EMPLOYEES. The state of Idaho is not liable for the acts or omissions of the commission or any member thereof or any officer, agent or employee thereof.

25-159. ASSESSMENT. In addition to the assessment described in section 25-131, Idaho Code, there is hereby levied upon all wool grown annually in the state of Idaho an assessment of up to four cents (4¢) per pound of wool marketed. The assessment shall be collected in the amount authorized by the Idaho wool growers association and in the same manner as prescribed in this chapter with all provisions of this chapter, and corresponding rules, applying thereto.

25-160. REFERENDUM FOR WOOL GROWERS. Prior to the provisions of this act becoming effective, a referendum shall be held to determine if producers favor the provisions of this act. The question shall be submitted by secret ballot upon which the words "Do you favor a promo-

tion, research, and education program for the Idaho sheep industry that is funded by all producers with no refund provision?" are printed with a square before each of the words "YES" and "NO" with directions to insert an "X" mark in the square before the proposition which the voter favors. If a majority of the producers voting in the referendum or a majority of the production represented by the producers voting in the referendum vote in favor of the question submitted, the provisions of this act shall become effective.

(1) The procedures necessary to initiate a referendum in subsequent years, but not less than five (5) years from the passage of the initial referendum, are as follows:

(a) A referendum shall be held if the Idaho department of agriculture receives a petition requesting such referendum signed by ten percent (10%) or more of sheep producers who have paid an assessment to the Idaho sheep commission in either of the two (2) immediate past calendar years; or

(b) A referendum shall be held if the Idaho department of agriculture receives a written request for such referendum from the Idaho sheep commission.

(2) (a) Any referendum shall be conducted only among sheep producers who paid an assessment to the Idaho sheep commission during one (1) of the two (2) years prior to the referendum.

(b) Any referendum must be supervised by the Idaho department of agriculture.

(c) Any referendum shall be held, and the result determined and declared by the director of the department of agriculture, and recorded in the office of the secretary of state.

(d) Notice of any referendum must be given by the commission in a manner determined by it. The ballots must be prepared by the commission and forwarded to eligible producers, who shall return them within twenty (20) days after mailing by the commission.

(e) The commission shall pay the costs of any referendum.

Approved March 20, 1998.

CHAPTER 206
(H.B. No. 729)

AN ACT

RELATING TO ATTENDANCE AT SCHOOLS AND STUDENTS USING CONTROLLED SUBSTANCES; AMENDING SECTION 33-210, IDAHO CODE, TO EXPAND APPLICATION TO INTERVENTION TRAINED EMPLOYEES AND INDEPENDENT CONTRACTORS OF EDUCATIONAL INSTITUTIONS, TO PROVIDE FOR IMMUNITY FROM CIVIL LIABILITY, TO PROVIDE THAT INTENTIONALLY HARASSING A STUDENT BY USE OF THE AUTHORITY GRANTED SHALL BE A MISDEMEANOR AND TO PROVIDE DEFINITIONS.

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

SECTION 1. That Section 33-210, Idaho Code, be, and the same is hereby amended to read as follows:

33-210. STUDENTS USING OR UNDER THE INFLUENCE OF CONTROLLED SUBSTANCES. (1) It is legislative intent that parental involvement in all aspects of a child's education in the public school system remain a priority in administrative policy. Drug prevention programs and counseling for students under the custodial and tutelary care of the public schools are no exception. Consequently, any student who voluntarily discloses using or being under the influence of any controlled substance defined by section 37-2732C, Idaho Code, before he or she is reasonably suspicioned to be in violation of section 37-2732C, Idaho Code, shall be provided anonymity to the extent that disclosure is held confidential on a faculty "need to know" basis, that notification is provided to parents, the legal guardian or child's custodian and that available counseling at the school level is offered. However, once a student is reasonably suspicioned to be in violation of section 37-2732C, Idaho Code, regardless of any previous voluntary disclosure, school administrators shall immediately initiate procedures established by the district board of trustees to seek law enforcement evaluation of the student; such evaluation possibly resulting in transfer of school custodial responsibility to that of law enforcement in accordance with section 20-516, Idaho Code. The fact that a student has previously disclosed use of a controlled substance shall not be deemed a factor in determining reasonable suspicion at a later date.

(2) For the purposes of this section, the following definitions shall apply:

(a) "Intervention trained" means ~~public school educators, counselors or administrators~~ employees and independent contractors of an educational institution who have completed a state accredited course related to illegal drugs, their physical characteristics, physiological effects and how student behavioral changes typically associated with the use of such products may be evidenced in the classroom; or before May 31, 1997, those ~~educators, counselors and administrators~~ employees and independent contractors of an educational institution who have completed similar training and who have a minimum of two (2) years experience as intervention team members. The latter are exempt from additional training to meet "intervention trained" standards in effect after May 31, 1997.

(b) "Reasonable cause/suspicion" means an act of judgment by an intervention trained ~~educator, counselor or administrator~~ employee or independent contractor of an educational institution which leads to a reasonable and prudent belief that a student is in violation of "use" or "under the influence" provisions of section 37-2732C, Idaho Code.

(3) By September 1, 1996, the state department of education, in cooperation with the chief certification officer of the state board of education, shall develop course materials and standards appropriate to establishing intervention training as an accredited option among public education recertification electives. Such training shall be made available not later than May 31, 1997.

(4) The process leading to law enforcement evaluation of a reasonably suspected student is a responsibility of the district board of trustees, the specifics of which shall be based on procedures developed within each district to insure that reasonable suspicion, as defined above, is not confused with intentional harassment of a diffi-

cult student. District policy formulated to meet the provisions of section 37-2732C, Idaho Code, and this section, together with the process by which law enforcement may assume custodial responsibility of a reasonably suspected student, shall be made available to each student, parent, guardian or custodian by August 31, 1997, and afterwards at the time of original registration of the student in a district school. The procedure for parental, legal guardian or custodian notification will be included.

(5) Intervention trained employees and independent contractors of educational institutions who in good faith and with appropriate foundation exercise the authority granted in this section shall be immune from civil liability arising from the exercise of that authority.

(6) Intervention trained employees and independent contractors of educational institutions who intentionally harass a student through the misuse of the authority provided in this section shall not be immune from civil liability arising from the wrongful exercise of that authority and shall be guilty of a misdemeanor punishable by a fine not to exceed three hundred dollars ($300) only.

(7) For purposes of this section, "intentionally harass" means a knowing and willful course of conduct directed at a specific student which seriously alarms, annoys, threatens or intimidates the student and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress. "Course of conduct" means a pattern or series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally and statutorily protected activity is not included within the meaning of "course of conduct."

Approved March 20, 1998.

CHAPTER 207
(H.B. No. 725, As Amended, As Amended)

AN ACT

RELATING TO ENFORCEMENT OF CHILD SUPPORT ORDERS; AMENDING SECTION 7-1202, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 7-1203, IDAHO CODE, TO PROVIDE CORRECT REFERENCES AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 7-1206, IDAHO CODE; AND AMENDING CHAPTER 12, TITLE 7, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 7-1206, IDAHO CODE, TO PROVIDE A LIEN UPON REAL AND PERSONAL PROPERTY OF AN OBLIGOR WHO IS DELINQUENT IN THIS OR ANOTHER STATE AND TO PROVIDE CONDITIONS GOVERNING THE LIEN.

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

SECTION 1. That Section 7-1202, Idaho Code, be, and the same is hereby amended to read as follows:

7-1202. DEFINITIONS. As used in this chapter:

(1) ~~"Bureau"--means--the--bureau--of--child--support-enforcement;~~

~~department of health and welfare of the state of Idaho.~~

~~(2)~~ "Child support" means a legally enforceable obligation assessed against an individual for the support of a child which shall include medical care, including health insurance premiums for the child, and any amount owing under an order for support during a period in which public assistance was expended.

~~(3) "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.~~

(~~4~~2) "Delinquency" means unpaid support for a minor child or spouse which has accrued under an order.

(3) "Department" means the department of health and welfare.

(~~5~~4) "Obligee" means any person, state agency or bureau entitled by order to receive child support payments or child and spousal support payments.

(~~6~~5) "Obligor" means any person obligated by order to pay child or spousal support.

(~~7~~6) "Order" means a judgment, decree, order, or administrative ruling directing a person or persons to pay money for support of a minor child or a spouse.

(~~8~~7) "Income" means any form of payment to an individual, regardless of source, including, but not limited to, wages, salary, commission, compensation as an independent contractor, ~~workers'~~ worker's compensation, disability, veteran's annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district or any entity created by a public act.

~~(9) "Withholding order" means any order issued by the bureau ordering an employer to retain an amount of the obligor's income for child support or spousal support.~~

~~(10) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.~~

~~(11) "Employer" means any person, private entity, federal or state government, unit of local government, school district, or any entity created by a public act who pays income to an individual.~~

SECTION 2. That Section 7-1203, Idaho Code, be, and the same is hereby amended to read as follows:

7-1203. AVAILABLE REMEDIES. In addition to other remedies available to the ~~bureau~~ department or obligee, collection of any delinquency from an obligor on behalf of an obligee shall be accomplished through any of the following means:

(1) The ~~bureau~~ department shall intercept and withhold tax refunds to satisfy child support obligations pursuant to section 56-203D, Idaho Code.

(2) The ~~bureau~~ department shall intercept and withhold a portion of any unemployment benefit payable to an obligor pursuant to section 72-1365, Idaho Code.

(3) The ~~bureau~~ department shall administer a program to withhold a portion of an obligor's income for the benefit of the obligee pursu-

ant to ~~this~~ chapter 12, title 32, Idaho Code.

(4) The ~~bureau~~ department shall intercept and withhold a portion of any veteran's benefits payable to an obligor pursuant to state or federal law.

(5) The ~~bureau~~ department shall attach, garnish, or intercept and withhold a portion of any ~~workmen's~~ worker's compensation benefits which are payable to an obligor pursuant to title 72, Idaho Code.

SECTION 3. That Section 7-1206, Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Chapter 12, Title 7, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 7-1206, Idaho Code, and to read as follows:

7-1206. DEPARTMENT LIEN FOR CHILD SUPPORT DELINQUENCY. (1) Upon a delinquency under a child support order for which the department is or has been providing child support enforcement services, a lien arises upon and attaches to the real and personal property of an obligor. When the amount of the lien is equal to or greater than the total support owing for at least ninety (90) days, or two thousand dollars ($2,000), whichever is less, the lien may be perfected by a filing with the office of the secretary of state. A perfected lien shall include all subsequently arising delinquencies. When a lien has been perfected pursuant to this section and the underlying delinquency reaches a zero balance or is otherwise satisfied, the lien is automatically released. Any support order or decree issued or modified after the effective date of this act shall include a provision notifying the obligor that a lien will arise automatically upon a delinquency. A notice of release of lien shall be filed pursuant to section 45-1908, Idaho Code.

(2) A lien arising out of a child support order or delinquency under the laws of another state shall be given full faith and credit as if the lien arose out of a child support order or delinquency under Idaho law.

(3) The department shall notify each obligor by certified mail of the filing of the lien at the same time the notice is delivered to the secretary of state. No such lien may be enforced until ten (10) days after notice of the filing of the lien has been given to the obligor.

Approved March 20, 1998.

CHAPTER 208
(H.B. No. 724, As Amended)

AN ACT

RELATING TO CHILD SUPPORT; AMENDING SECTION 56-203B, IDAHO CODE, TO ALLOW ANY JUDGMENT SOUGHT BY THE DEPARTMENT OF HEALTH AND WELFARE FOR PUBLIC ASSISTANCE TO BE BASED ON THE IDAHO CHILD SUPPORT GUIDELINES AND TO AUTHORIZE THE PAYMENT OF ANY EXCESS TO THE PARENT OR CARETAKER OF THE CHILD.

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

SECTION 1. That Section 56-203B, Idaho Code, be, and the same is hereby amended to read as follows:

56-203B. PAYMENT OF PUBLIC ASSISTANCE FOR CHILD CONSTITUTES DEBT TO DEPARTMENT BY ~~NATURAL OR ADOPTIVE~~ PARENTS -- LIMITATIONS -- DEPARTMENT SUBROGATED TO RIGHTS. Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due or owing to the department by the ~~natural or adoptive~~ parent or ~~parents~~ others who are responsible for support of such children in an amount equal to the ~~amount of public assistance money so paid~~ support obligation as is subsequently determined by court order pursuant to the Idaho child support guidelines which debt arises at the end of the first month for which the payment of public assistance commences. If a judgment entered by the court under the Idaho child support guidelines is more than the public assistance expended, the amount in excess of the public assistance expended shall be payable to the custodial parent or caretaker. Provided, that where there has been a district court order, the debt shall be limited to the amount provided for by said order. The department shall have the right to petition the appropriate district court for modification of a district court order on the same grounds as a party to said cause. Where a child has been placed in foster care, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt shall be limited to the amount provided for in said agreement. Provided, that if a court order for support is or has been entered, the provisions of said order shall prevail over the agreement.

The department shall be subrogated to the right of said child or children or person having the care, custody and control of said child or children to prosecute or maintain any support action existing under the laws of the state of Idaho to obtain reimbursement of moneys thus expended. If a district court order enters judgment for an amount of support to be paid by an obligor parent, the department shall be subrogated to the debt created by such order, and said money judgment shall be deemed to be in favor of the department. This subrogation shall specifically be applicable to temporary spouse support orders, family maintenance orders and alimony orders up to the amount paid by the department in public assistance moneys to or for the benefit of a dependent child or children but allocated to the benefit of said children on the basis of providing necessities for the caretaker of said children.

Debt under this section shall not be incurred by, nor at any time be collected from a parent or other person who would be or is eligible for or who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status and the collection of the debt from such person would not be in the fiscal interest of the state or would not be in the best interest of the child(ren) for whom such person owes support.

Approved March 20, 1998.

CHAPTER 209
(H.B. No. 720)

AN ACT

RELATING TO CIVIL COMPROMISE OF MISDEMEANOR OFFENSES; AMENDING SECTION 19-3401, IDAHO CODE, TO ADD DOMESTIC VIOLENCE AS AN ACT THAT MAY NOT BE COMPROMISED; AND AMENDING SECTION 19-3402, IDAHO CODE, TO PROVIDE THAT LEAVE OF THE PROSECUTOR SHALL BE REQUIRED FOR A DISCHARGE OF THE DEFENDANT ON THE CRIMINAL PROCEEDING PURSUANT TO A CIVIL COMPROMISE AND TO PROVIDE THAT THE ORDER OF DISMISSAL BARS ANOTHER PROSECUTION FOR THE OFFENSE THAT WAS ORIGINALLY CHARGED.

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

SECTION 1. That Section 19-3401, Idaho Code, be, and the same is hereby amended to read as follows:

19-3401. COMPROMISE OF OFFENSES AFTER SATISFACTION. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office.
2. Riotously.
3. With an intent to commit a felony.
4. As an act of domestic violence as defined in section 39-6303(1), Idaho Code.

SECTION 2. That Section 19-3402, Idaho Code, be, and the same is hereby amended to read as follows:

19-3402. LEAVE OF COURT AND PROSECUTOR REQUIRED. If the party injured appears before the court to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the court and the prosecutor may, in ~~its~~ their discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the ~~same~~ offense that was originally charged.

Approved March 20, 1998.

CHAPTER 210
(H.B. No. 714)

AN ACT

RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-409, IDAHO CODE, TO PROVIDE THAT DURING THE FIRST FIFTY-TWO WEEKS OF TOTAL

DISABILITY, IF THE MAXIMUM BENEFIT OF NINETY PERCENT OF THE EMPLOYEE'S AVERAGE WEEKLY WAGE IS LESS THAN FIFTEEN PERCENT OF THE CURRENTLY APPLICABLE AVERAGE WEEKLY STATE WAGE, THE EMPLOYEE SHALL RECEIVE NO LESS THAN FIFTEEN PERCENT OF THE CURRENTLY APPLICABLE AVERAGE WEEKLY STATE WAGE AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 72-409, Idaho Code, be, and the same is hereby amended to read as follows:

72-409. MAXIMUM AND MINIMUM INCOME BENEFITS FOR TOTAL DISABILITY. (1) The weekly income benefits provided for in section 72-408(1), Idaho Code, shall be subject to a maximum of ninety ~~per-cent~~ percent (90%) and a minimum of forty-five ~~per-cent~~ percent (45%) of the currently applicable average weekly state wage, provided, however, that during the first fifty-two (52) weeks of total disability income benefits shall not in any case exceed ninety ~~per-cent~~ percent (90%) of the employee's average weekly wage, but if during the first fifty-two (52) weeks ninety percent (90%) of the employee's average weekly wage is less than fifteen percent (15%) of the currently applicable average weekly state wage, then the employee shall receive no less than fifteen percent (15%) of the currently applicable average weekly state 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 paid 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, provided, however, that where an employee's benefit rate for the first fifty-two (52) week period was less than the minimums prescribed above, his benefit rate thereafter shall be not less than forty-five ~~per--cent~~ percent (45%) of the currently applicable 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.

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, 1998.

CHAPTER 211
(H.B. No. 780)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC HEALTH TRUST FUND FOR THE PUBLIC HEALTH DISTRICTS FOR FISCAL YEAR 1999.

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

SECTION 1. There is hereby appropriated $8,272,700 from the General Fund to be deposited in the Public Health Trust Fund for the period July 1, 1998, through June 30, 1999.

Approved March 20, 1998.

CHAPTER 212
(H.B. No. 668)

AN ACT

RELATING TO FISH AND GAME LICENSES; AMENDING SECTION 36-202, IDAHO CODE, TO FURTHER DEFINE RESIDENCY FOR PURPOSES OF FISH AND GAME LICENSES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 36-202, Idaho Code, be, and the same is hereby amended to read as follows:

36-202. DEFINITIONS. Whenever the following words appear in title 36, Idaho Code, and orders and rules promulgated by the Idaho fish and game commission or the director of the Idaho department of fish and game, they shall be deemed to have the same meaning and terms of reference as hereinafter set forth. The present tense includes the past and future tenses, and the future, the present.

(a) "Title" ~~shall~~ means all of the fish and game laws and rules promulgated pursuant thereto.

(b) "Commission" ~~shall~~ means the Idaho fish and game commission. "Commissioner" ~~shall~~ means a member of the Idaho fish and game commission.

(c) "Department" ~~shall~~ means the Idaho department of fish and game.

(d) "Director" ~~shall~~ means the director of the Idaho department of fish and game or any person authorized to act in his name.

(e) "Employee" ~~shall~~ means any employee of the Idaho department of fish and game whose salary is paid entirely or in part by funds administered by the Idaho fish and game commission and whose appointment is made in accordance with the Idaho personnel commission act and related rules.

(f) "Person" ~~shall~~ means an individual, partnership, corporation, company, or any other type of association, and any agent or officer of

any partnership, corporation, company, or other type of association. The masculine gender includes the feminine and the neuter. The singular, the plural, and the plural, the singular.

(g) "Wildlife" ~~shall~~ means any form of animal life, native or exotic, generally living in a state of nature.

(h) "Take" ~~shall~~ means hunt, pursue, catch, capture, shoot, fish, seine, trap, kill, or possess or any attempt to so do.

(i) "Hunting" ~~shall~~ means chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, shooting at, stalking, or lying in wait for, any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded. Such term does not include stalking, attracting, searching for, or lying in wait for, any wildlife by an unarmed person solely for the purpose of watching wildlife or taking pictures thereof.

(j) "Fishing" ~~shall~~ means any effort made to take, kill, injure, capture, or catch any fish or bullfrog.

(k) "Trapping" ~~shall~~ means taking, killing, and capturing wildlife by the use of any trap, snare, deadfall, or other device commonly used to capture wildlife, and the shooting or killing of wildlife lawfully trapped, and includes all lesser acts such as placing, setting or staking such traps, snares, deadfalls, and other devices, whether or not such acts result in the taking of wildlife, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife with traps, snares, deadfalls, or other devices.

(l) "Possession" ~~shall~~ means both actual and constructive possession, and any control of the object or objects referred to; provided that wildlife taken accidentally and in a manner not contrary to the provisions of this title shall not be deemed to be in possession while being immediately released live back to the wild.

(m) "Possession limit" ~~shall~~ means the maximum limit in number or amount of wildlife which may be lawfully in the possession of any person. "Possession limit" shall apply to wildlife being in possession while in the field or being transported to final place of consumption or storage.

(n) "Bag limit" ~~shall~~ means the maximum number of wildlife which may be legally taken, caught, or killed by any one (1) person for any particular period of time, as provided by order of the commission. The term "bag limit" shall be construed to mean an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another.

(o) "Buy" ~~shall~~ means to purchase, barter, exchange, or trade and includes any offer or attempt to purchase, barter, exchange, or trade.

(p) "Sell" ~~shall~~ means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging or trading.

(q) "Transport" ~~shall~~ means to carry or convey or cause to be carried or conveyed from one (1) place to another and includes an offer to transport, or receipt or possession for transportation.

(r) "Resident" ~~shall~~ means any person who has been domiciled in this state, with a bona fide intent to make this his place of permanent abode, for a period of not less than six (6) months immediately

preceding the date of application for any license, tag, or permit required under the provisions of this title or orders of the commission and who, when temporarily absent from this state, continues residency with intent to return, and who does not claim any resident privileges in any other state or country for any purpose. Such privileges include, but are not limited to: state where valid driver's license is issued; state of voter registration; state where resident state income taxes are filed; state where homeowner's tax exemption is granted. Provided that, until any such person has been continuously domiciled outside the state of Idaho for a sufficient period of time to qualify for resident hunting and fishing privileges in his new state of residence, said person shall be deemed not to have lost his residency in Idaho for the purposes of this title. However, mere ownership of real property or payment of property taxes in Idaho does not establish residency. Provided further that:

1. Idaho residents shall not lose their residency in Idaho if they are absent from the state for religious (not to exceed two (2) years) or full-time educational (not to exceed five (5) years) purposes, full time to be defined by the educational institution attended, and do not claim residency or use resident privileges in any other state or country for any purpose.

2. Idaho residents who are in the military service of the United States and maintain Idaho as their official state of residence as shown on their current leave and earnings statement, together with their spouse and children under eighteen (18) years of age living in the household, shall be eligible for the purchase of resident licenses.

3. A member of the military service of the United States or of a foreign country, together with his spouse and children under eighteen (18) years of age residing in his household, who have been officially transferred, stationed, domiciled and on active duty in this state for a period of thirty (30) days last preceding application shall be eligible, as long as such assignment continues, to purchase a resident license. A member of the state national guard or air national guard, domiciled in this state for a period of thirty (30) days last preceding application shall be eligible, as long as such residency continues, to purchase a resident license.

4. Any person enrolled as a corpsman at a job corps center in Idaho shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.

5. Any foreign exchange student enrolled in an Idaho high school shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.

(s) "Senior resident" ~~shall~~ means any person who is over sixty-five (65) years of age and who has been a resident of the state of Idaho as hereinbefore provided for not less than five (5) years.

(t) "Nonresident" ~~shall~~ means any person who does not qualify as a resident.

(u) "Order, rule, regulation" are all used interchangeably and each includes the others.

(v) "Blindness" ~~shall~~ means sight that does not exceed 20/200 as

provided by the administrative guidelines of section 56-213, Idaho Code.

(w) "Public highway" ~~shall~~ means the traveled portion of, and the shoulders on each side of, any road maintained by any governmental entity for public travel, and ~~shall~~ includes all bridges, culverts, overpasses, fills, and other structures within the limits of the right-of-way of any such road.

(x) "Motorized vehicle" ~~shall~~ means any water, land or air vehicle propelled by means of steam, petroleum products, electricity, or any other mechanical power.

(y) "Commercial fish hatchery" ~~shall~~ means any hatchery, pond, lake or stream or any other waters where fish are held, raised, or produced for sale but shall not include facilities used for the propagation of fish commonly considered as ornamental or aquarium varieties.

(z) "License" ~~shall~~ means any license, tag, permit or stamp.

(aa) "License vendor" ~~shall~~ means any person authorized to issue or sell licenses.

Approved March 20, 1998.

CHAPTER 213
(H.B. No. 666)

AN ACT

RELATING TO NONRESIDENT FISHING LICENSES; AMENDING SECTION 36-407, IDAHO CODE, TO PROVIDE FOR A NONRESIDENT JUVENILE FISHING LICENSE THAT SHALL NOT BE GOOD FOR STEELHEAD OR SALMON.

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

SECTION 1. That Section 36-407, Idaho Code, be, and the same is hereby amended to read as follows:

36-407. NONRESIDENT FISHING, HUNTING, AND TRAPPING LICENSES -- FEES -- RIGHTS UNDER. Licenses of the sixth class shall be issued to nonresidents in the several kinds and for fees as follows:

(a) Nonresident Hunting License. A license issued only to a person twelve (12) years of age or older entitling said person to pursue, hunt, or kill game birds, small game animals, unprotected birds and animals and predatory birds and animals and to purchase game tags as provided in section 36-409(b), Idaho Code. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of one hundred dollars ($100).

(b) Nonresident Season Fishing License. A license entitling a person to fish in the public waters of the state. A license of this kind may be had by persons fourteen (14) years of age or older upon payment of fifty dollars ($50.00).

(c) Nonresident Trapping License. A license entitling a person to trap fur-bearing, unprotected, and predatory animals. A license of

this kind may be had upon payment of one hundred and fifty dollars ($150) providing the state of residence of said person grants similar trapping license privileges to residents of Idaho.

(d) Nonresident Nongame License. A license entitling a person to carry a shotgun or rifle for the protection of livestock, or to pursue, hunt and kill unprotected birds and animals and predatory birds and animals of this state. A license of this kind may be had by a nonresident person who is twelve (12) years of age or older upon payment of fifteen dollars ($15.00). This license shall be valid only during the period of January 1 to August 31 of the calendar year in which issued, unless verified by the director that the licensee requires such a license to authorize him to carry a shotgun or rifle for the protection of livestock, in which case said license shall be valid until December 31 of the year in which issued.

(e) Nonresident Two Day Hunting License. A license issued only to a person twelve (12) years of age or older, entitling the person to hunt upland game birds (to include turkeys), migratory game birds, cottontail rabbits, and pygmy rabbits for any two (2) consecutive days. A person holding this license may not hunt pheasants in an area during the first five (5) days of the pheasant season in that area. A license of this type may be had upon payment of fifty-five dollars ($55.00).

(f) Falconry Meet Permit. The director may issue a special permit for a regulated meet scheduled for a specific number of days upon payment of ten dollars ($10.00). Only trained raptors may be used under the special permit issued under the provisions of this subsection.

(g) Daily Fishing License -- Resident May Purchase. A license entitling a person to fish in the waters of the state on a day-to-day basis. A license of this kind may be had by a resident or nonresident person (the provisions of section 36-405, Idaho Code, notwithstanding), upon payment of six dollars ($6.00) for the first effective day and three dollars ($3.00) for each consecutive day thereafter.

(h) Nonresident Three Day Fishing License with Steelhead or Salmon Permit. A license entitling a nonresident to fish in the waters of the state for a period of three (3) consecutive days for steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of thirty dollars ($30.00). The three (3) day license holder may fish for and take one (1) steelhead trout and one (1) anadromous salmon or either two (2) steelhead trout or two (2) anadromous salmon subject to the limitations prescribed in this title and rules promulgated by the commission. A nonresident may purchase as many of the licenses provided in this subsection as he desires provided that the nonresident is otherwise eligible to do so. Moneys collected pursuant to this subsection shall be remitted as specified by law.

(i) Nonresident Juvenile Fishing License. A license entitling a nonresident who is fourteen (14) years of age but less than eighteen (18) years of age to fish in the waters of this state at any lawful time and during any open season, except for steelhead trout or anadromous salmon, may be had upon payment of twenty dollars ($20.00). Moneys collected pursuant to this subsection shall be remitted as provided by law.

Approved March 20, 1998.

CHAPTER 214
(H.B. No. 784)

AN ACT

APPROPRIATING MONEYS TO THE LOTTERY COMMISSION FOR FISCAL YEAR 1999; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT TO CLARIFY THE SCOPE OF THE APPROPRIATION.

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

SECTION 1. There is hereby appropriated to the Lottery Commission in the Department of Self-Governing Agencies the following amounts, to be expended for administrative costs according to the designated standard classifications from the listed fund for the period July 1, 1998, through June 30, 1999:

FOR:	
Personnel Costs	$ 2,059,400
Operating Expenditures	8,487,900
Capital Outlay	869,000
TOTAL	$11,416,300
FROM:	
State Lottery Fund	$11,416,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Lottery Commission is authorized no more than forty-seven (47) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that amounts necessary to pay prizes, retailer commissions, advertising and promotional costs shall be continuously appropriated to the Lottery Commission under the provisions of Section 67-7428, Idaho Code.

Approved March 20, 1998.

CHAPTER 215
(H.B. No. 783)

AN ACT

APPROPRIATING MONEYS FOR THE DIVISION OF FINANCIAL MANAGEMENT FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Division of Financial Management the following amounts, to be expended for the named programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. DIVISION OF FINANCIAL MANAGEMENT:				
FROM:				
General Fund	$1,152,200	$231,700		$1,383,900
Miscellaneous Revenue Fund	21,800	7,500		29,300
TOTAL	$1,174,000	$239,200		$1,413,200
II. SILVER VALLEY TRUST FUND:				
FROM:				
Natural Restoration Fund	$ 61,800	$629,300	$769,700	$1,460,800
GRAND TOTAL	$1,235,800	$868,500	$769,700	$2,874,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Financial Management is authorized no more than eighteen (18) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 20, 1998.

CHAPTER 216
(H.B. No. 782)

AN ACT

APPROPRIATING MONEYS FOR THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 1999; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Endowment Fund Investment Board the following amounts, to be expended according to designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
ENDOWMENT FUND INVESTMENT BOARD:				
FROM:				
General Fund	$218,100	$111,700	$2,200	$332,000
Miscellaneous Revenue Fund	126,400	48,700	1,200	176,300
TOTAL	$344,500	$160,400	$3,400	$508,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Endowment Fund Investment Board is authorized no more than five (5) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 20, 1998.

CHAPTER 217
(H.B. No. 781)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR FISCAL YEAR 1999; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO CERTAIN TRANSFERS BEING CONTINUOUSLY APPROPRIATED; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO THE RETENTION OF CERTAIN POSITIONS SCHEDULED FOR DELETION; AND LIMITING AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Idaho Transportation Department the following amount, to be expended for the designated programs according to the designated standard classifications from the listed fund sources for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT:					
FROM:					
State Highway Fund (Dedicated)	$ 9,862,300	$ 4,847,400	$ 683,600		$ 15,393,300
State Highway Fund (Federal)	29,200	194,400			223,600
TOTAL	$ 9,891,500	$ 5,041,800	$ 683,600		$ 15,616,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. PLANNING:					
FROM:					
State Highway Fund (Dedicated)	$ 643,800	$ 265,000	$ 112,800		$ 1,021,600
State Highway Fund (Federal)	1,181,900	640,400		$ 685,000	2,507,300
TOTAL	$ 1,825,700	$ 905,400	$ 112,800	$ 685,000	$ 3,528,900
III. MOTOR VEHICLES:					
FROM:					
State Highway Fund (Dedicated)	$ 9,502,300	$ 4,531,700	$ 290,000		$ 14,324,000
IV. HIGHWAY OPERATIONS:					
FROM:					
State Highway Fund (Restricted)	$ 1,179,200	$ 919,700			$ 2,098,900
State Highway Fund (Dedicated)	50,223,100	30,380,500	$ 14,216,800		94,820,400
State Highway Fund (Federal)	7,840,500	3,360,400			11,200,900
Idaho Traffic Safety Fund (Federal)				$1,600,000	1,600,000
State Highway Fund (Local)	217,600	98,100			315,700
TOTAL	$59,460,400	$34,758,700	$ 14,216,800	$1,600,000	$110,035,900
V. CAPITAL FACILITIES:					
FROM:					
State Highway Fund (Dedicated)			$ 2,800,000		$ 2,800,000
VI. CONTRACT CONSTRUCTION & RIGHT-OF-WAY ACQUISITION:					
FROM:					
State Highway Fund (Restricted)			$ 23,822,800		$ 23,822,800
State Highway Fund (Dedicated)			28,975,500		28,975,500
State Highway Fund (Federal)			119,926,700		119,926,700
State Highway Fund (Local)			2,988,300		2,988,300
TOTAL			$175,713,300		$175,713,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
VII. AERONAUTICS:					
FROM:					
State Aeronautics Fund (Dedicated)	$ 578,000	$ 384,100	$ 27,500	$ 500,000	$ 1,489,600
State Aeronautics Fund (Federal)		197,900			197,900
TOTAL	$ 578,000	$ 582,000	$ 27,500	$ 500,000	$ 1,687,500
VIII. PUBLIC TRANSPORTATION:					
FROM:					
State Highway Fund (Dedicated)	$ 179,800	$ 90,100	$ 13,800		$ 283,700
State Highway Fund (Federal)	198,700	2,500		$3,001,900	3,203,100
TOTAL	$ 378,500	$ 92,600	$ 13,800	$3,001,900	$ 3,486,800
IX. INTER/INTRA DEPARTMENT SERVICES:					
FROM:					
State Aeronautics Fund (Dedicated)	$ 93,500	$ 73,200	$ 50,000		$ 216,700
State Aeronautics Fund (Billing)	25,000	125,000			150,000
State Highway Fund (Billing)	60,100	598,900			659,000
TOTAL	$ 178,600	$ 797,100	$ 50,000		$ 1,025,700
GRAND TOTAL	$81,815,000	$46,709,300	$193,907,800	$5,786,900	$328,219,000

SECTION 2. It is legislative intent that all moneys transferred to the Local Bridge Inspection Fund and to the Railroad Grade Crossing Protection Fund, as provided in Section 63-2412, Idaho Code, are hereby continuously appropriated to the Idaho Transportation Department for the stated purposes of those funds.

SECTION 3. In response to the final report, issued in January of 1996 by the Legislative Interim Committee on Transportation Issues, the Idaho Transportation Department scheduled one hundred (100) positions for deletion over a three (3) year period. It is legislative intent that the Idaho Transportation Department retain twenty-nine (29) of the one hundred (100) positions scheduled for deletion and that the Idaho Transportation Board be given the flexibility to move those positions to any program as needed to best minimize overtime, compensatory time, and excess vacation time.

SECTION 4. In accordance with Section 67-3519, Idaho Code, the Idaho Transportation Department is authorized no more than one thousand seven hundred forty-six (1,746) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

Approved March 20, 1998.

CHAPTER 218
(H.B. No. 779)

AN ACT

APPROPRIATING MONEYS TO THE CATASTROPHIC HEALTH CARE COST FUND FOR FISCAL YEAR 1999.

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

SECTION 1. There is hereby appropriated $12,135,700 from the General Fund to be transferred to the Catastrophic Health Care Cost Fund for the period July 1, 1998, through June 30, 1999.

Approved March 20, 1998.

CHAPTER 219
(H.B. No. 778)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 1999; LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; PROVIDING LEGISLATIVE INTENT REGARDING THE IDAHO WILDLIFE MAGAZINE; PROVIDING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES FOR THE ANIMAL DAMAGE CONTROL FUND; AND APPROPRIATING MONEYS TO THE ANIMAL DAMAGE CONTROL PROGRAM IN THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 1999.

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

SECTION 1. There is hereby appropriated to the Department of Fish and Game the following amounts, to be expended for the designated programs according to the designated standard classifications from the listed funds for the period July 1, 1998, through June 30, 1999:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. ADMINISTRATION:					
FROM:					
Fish and Game Fund	$ 1,806,900	$ 2,117,700	$ 73,900	$260,000	$ 4,258,500
Fish and Game Set-aside Fund	16,800	15,100			31,900
Fish and Game Depredation Claim Fund		900			900
Fish and Game Expendable Trust Fund		1,600			1,600
Fish and Game Nonexpendable Trust Fund		1,500			1,500
Fish and Game Federal Fund	2,183,600	1,975,000	88,600		4,247,200
TOTAL	$ 4,007,300	$ 4,111,800	$ 162,500	$260,000	$ 8,541,600
II. ENFORCEMENT:					
FROM:					
Fish and Game Fund	$ 5,464,700	$ 1,012,500	$ 120,700		$ 6,597,900
Fish and Game Set-aside Fund		10,300			10,300
Fish and Game Expendable Trust Fund		20,500			20,500
TOTAL	$ 5,464,700	$ 1,043,300	$ 120,700		$ 6,628,700
III. FISHERIES:					
FROM:					
Fish and Game Fund	$ 3,066,700	$ 2,062,300	$ 340,000		$ 5,469,000
Fish and Game Set-aside Fund	116,500	163,600			280,100
Fish and Game Expendable Trust Fund	192,600	49,700			242,300
Fish and Game Nonexpendable Trust Fund		32,200			32,200

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Fish and Game Federal Fund	7,786,600	5,228,100	1,825,700		14,840,400
TOTAL	$11,162,400	$ 7,535,900	$2,165,700		$20,864,000
IV. WILDLIFE:					
FROM:					
Fish and Game Fund	$ 2,401,500	$ 1,757,900	$ 78,100		$ 4,237,500
Fish and Game Set-aside Fund	235,300	101,100			336,400
Fish and Game Expendable Trust Fund	220,000	305,700	5,000		530,700
Fish and Game Nonexpendable Trust Fund	8,000	1,900			9,900
Fish and Game Federal Fund	2,550,300	1,087,500			3,637,800
TOTAL	$ 5,415,100	$ 3,254,100	$ 83,100		$ 8,752,300
V. INFORMATION AND EDUCATION:					
FROM:					
Fish and Game Fund	$ 1,056,900	$ 1,604,100	$ 8,000		$ 2,669,000
Fish and Game Expendable Trust Fund		24,600			24,600
Fish and Game Federal Fund	362,700	256,600	20,000		639,300
TOTAL	$ 1,419,600	$ 1,885,300	$ 28,000		$ 3,332,900
VI. ENGINEERING:					
FROM:					
Fish and Game Fund	$ 624,700	$ 51,700	$ 4,500		$ 680,900
VII. NATURAL RESOURCE POLICY:					
FROM:					
Fish and Game Fund	$ 511,500	$ 72,000	$ 23,400		$ 606,900
Fish and Game Federal Fund	1,105,600	304,800			1,410,400
TOTAL	$ 1,617,100	$ 376,800	$ 23,400		$ 2,017,300

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
VIII. WINTER FEEDING AND HABITAT IMPROVEMENT:					
FROM:					
Fish and Game Fund	$ 367,000	$ 51,300			$ 418,300
Fish and Game Set-aside Fund	34,000	2,127,200	$1,469,100		3,630,300
Fish and Game Primary Depredation Fund				200,000	200,000
Fish and Game Secondary Depredation Fund				200,000	200,000
TOTAL	$ 401,000	$ 2,178,500	$1,469,100	$400,000	$ 4,448,600
GRAND TOTAL	$30,111,900	$20,437,400	$4,057,000	$660,000	$55,266,300

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Fish and Game is authorized no more than four hundred ninety-six (496) full-time equivalent positions at any point during the period July 1, 1998, through June 30, 1999, for the programs specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that the Idaho Fish and Game Commission continue efforts to make the Idaho Wildlife magazine completely self-supporting from revenues earned by the magazine from subscriptions, advertising income or private donations, and that by June 30, 1999, no hunting or fishing license or tag moneys, nor any federal moneys be used in support of the magazine.

SECTION 4. It is legislative intent that of the moneys to be transferred from the Fish and Game Fund to the Animal Damage Control Fund in Section 36-112(2), Idaho Code, for research projects, $20,000 shall be retained by the Department of Fish and Game for fiscal year 1999, and used for a study of predator impacts on big game species, focusing on wolves in the Salmon region.

SECTION 5. There is hereby appropriated the sum of $50,000 from the General Fund to the Animal Damage Control Program in the Department of Agriculture for the period July 1, 1998 through June 30, 1999.

Approved March 20, 1998.

CHAPTER 220
(H.B. No. 449)

AN ACT

RELATING TO LAND SURVEYS AND ENGINEERS AND SURVEYORS; AMENDING SECTION 50-1301, IDAHO CODE, TO DELETE PUBLIC EASEMENT AS A DEFINED TERM; AMENDING SECTION 50-1303, IDAHO CODE, TO PROVIDE FOR MARKING OF POINTS WHERE THE CENTERLINE CHANGES DIRECTION ON ALL STREETS, AVENUES AND PUBLIC HIGHWAYS; AMENDING SECTION 50-1306A, IDAHO CODE, TO DELETE REFERENCES TO PUBLIC EASEMENT AND TO PROVIDE THAT LAND EXCLUSIVE OF PUBLIC RIGHT-OF-WAY THAT HAS BEEN SUBDIVIDED AND PLATTED NEED NOT BE VACATED IN ORDER TO BE REPLATTED; AMENDING SECTION 50-1317, IDAHO CODE, TO DELETE REFERENCES TO PUBLIC EASEMENTS AND TO PROVIDE THAT LAND EXCLUSIVE OF PUBLIC RIGHT-OF-WAY THAT HAS BEEN SUBDIVIDED AND PLATTED NEED NOT BE VACATED IN ORDER TO BE REPLATTED; AMENDING SECTION 50-1332, IDAHO CODE, TO PROVIDE FOR PLACEMENT OF A WITNESS CORNER OR REFERENCE MONUMENT AND TO REQUIRE THE FILING OF A RECORD OF SURVEY; AMENDING SECTION 54-1208, IDAHO CODE, TO PROVIDE THAT THE BOARD OF REGISTRATION OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS MAY RECOMMEND ARBITRATION OF DISPUTES BETWEEN PROFESSIONAL ENGINEERS OR PROFESSIONAL LAND SURVEYORS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1213, IDAHO CODE, TO PROVIDE A MAXIMUM APPLICATION FEE FOR PROFESSIONAL ENGINEERS, PROFESSIONAL LAND SURVEYORS, ENGINEERS-IN-TRAINING, LAND SURVEYORS-IN-TRAINING AND CORPORATIONS SEEKING TO BE LICENSED AND TO PROVIDE FOR A CERTIFICATE FEE; AMENDING SECTION 54-1214, IDAHO CODE, TO PROVIDE A FEE FOR REEXAMINATION; AND AMENDING SECTION 54-1229, IDAHO CODE, TO PROVIDE THAT NO SURVEY OF LAND OR PLAT OR SUBDIVISION SHALL BE LEGAL UNLESS MADE BY OR UNDER THE RESPONSIBLE CHARGE OF A PROFESSIONAL LAND SURVEYOR.

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

SECTION 1. That Section 50-1301, Idaho Code, be, and the same is hereby amended to read as follows:

50-1301. DEFINITIONS. The following definitions shall apply to terms used in sections 50-1301 through 50-1334, Idaho Code.

1. Easement: A right of use, falling short of ownership, and usually for a certain stated purpose;

2. Functioning street department: A city department responsible for the maintenance, construction, repair, snow removal, sanding and traffic control of a public highway or public street system and which receives funds from the highway distribution account to local units of government pursuant to section 40-709, Idaho Code;

3. Idaho coordinate system: That system of coordinates established and designated by chapter 17, title 55, Idaho Code;

4. Monument: A physical structure or object that occupies the position of a corner;

5. Owner: The proprietor of the land, (having legal title);

6. Plat: The drawing, map or plan of a subdivision, cemetery,

townsite or other tract of land, or a replatting of such, including certifications, descriptions and approvals;

7. Private road: A road within a subdivision plat that is not dedicated to the public and not a part of a public highway system;

8. ~~Public easement: An easement dedicated to the public;~~

~~9.~~ Public highway agency: The state transportation department, any city, county, highway district or other public agency with jurisdiction over public highway systems and public rights-of-way;

~~10~~9. Public land survey corner: Any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management;

1~~1~~0. Public right-of-way: Any land dedicated and open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic;

1~~2~~1. Public street: A road, thoroughfare, alley, highway or bridge under the jurisdiction of a public highway agency;

1~~3~~2. Reference monument: A special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is known and recorded, and which serves to witness the corner;

1~~4~~3. Sanitary restriction: The requirement that no building or shelter which will require a water supply facility or a sewage disposal facility for people using the premises where such building or shelter is located shall be erected until written approval is first obtained from the state board of health by its administrator or his delegate approving plans and specifications either for public water and/or sewage facilities, or individual parcel water and/or sewage facilities;

1~~5~~4. Street: A road, thoroughfare, alley, highway or a right-of-way which may be open for public use but is not part of a public highway system nor under the jurisdiction of a public highway agency;

1~~6~~5. Subdivision: A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger, and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of the above definition;

1~~7~~6. Witness corner: A monumented point usually on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner.

SECTION 2. That Section 50-1303, Idaho Code, be, and the same is hereby amended to read as follows:

50-1303. SURVEY -- STAKES AND MONUMENTS -- ACCURACY. The center-

line intersections and ~~right-of-way-lines of~~ points where the centerline changes direction on all streets, avenues, and public highways and all points, witness corners and reference monuments on the exterior boundary where the boundary line changes direction shall be marked with monuments either of concrete, galvanized iron pipe, aluminum pipe, iron or steel rods or other suitable monument approved by the county surveyor; if concrete be used they shall not be less than six (6) inches by six (6) inches by twenty-four (24) inches or in the case of public highways the size of a state standard right-of-way monument, and be magnetically detectable; if galvanized iron pipe be used they shall not be less than one (1) inch in diameter and thirty (30) inches long; if aluminum pipe be used they shall not be less than one (1) inch in diameter and thirty (30) inches long, and be magnetically detectable; and if iron or steel rods be used they shall not be less than five-eighths (5/8) of an inch in least dimension and thirty (30) inches long. Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth (1/10) of a foot. All lot corners, witness corners, and reference monuments for lot corners shall be marked with monuments of either galvanized iron pipe, not less than one-half (1/2) inch in diameter, or iron or steel rods, not less than one-half (1/2) inch in least dimension and two (2) feet long or other suitable monument approved by the county surveyor. All monuments set shall be magnetically detectable and shall be permanently marked with the registration number of the professional land surveyor in responsible charge. All lot corners of a burial lot within a platted cemetery need not be marked with a monument, but the block corners shall be placed within the cemetery in accordance with sound surveying principles and practice, and at locations that will permit the accurate identification of each burial lot within the cemetery. The monuments shall be of either galvanized iron pipe or iron or steel rods or bars not less than one-half (1/2) inch in least dimension and two (2) feet long with marked cap; or caps not less than one (1) inch in diameter. The locations and descriptions of all monuments within a platted cemetery shall be carefully recorded upon the plat, and the proper courses and distances of all boundary lines shall be shown, but may be shown by appropriate legend. The survey for any plat shall be conducted in such a manner to produce an unadjusted mathematical error of closure of not less than one (1) part in five thousand (5,000).

SECTION 3. That Section 50-1306A, Idaho Code, be, and the same is hereby amended to read as follows:

50-1306A. VACATION OF PLATS -- PROCEDURE. (1) Any person, persons, firm, association, corporation or other legally recognized form of business desiring to vacate a plat or any part thereof which is inside or within one (1) mile of the boundaries of any city must 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.

(2) 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; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

(3) 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.

(4) 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.

(5) In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur upon the recording of the new or amended plat, provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.

(6) When public streets or public rights-of-way ~~or public easements~~ are located within the boundary of a highway district, the highway district commissioners shall assume the authority to vacate said public streets and public rights-of-way~~, and public easements~~ as provided in subsection (4) of this section.

(7) All publication costs shall be at the expense of the petitioner.

(8) Public highway agencies acquiring real property within a platted subdivision for highway right-of-way purposes shall be exempt from the provisions of this section.

(9) ~~Platting--land--which~~ Land exclusive of public right-of-way that has ~~previously~~ been subdivided and platted ~~shall serve to--vacate any previous plats~~ in accordance with this chapter need not be vacated in order to be replatted.

SECTION 4. That Section 50-1317, Idaho Code, be, and the same is hereby amended to read as follows:

50-1317. VACATION PROCEDURE IN UNINCORPORATED AREAS AND IN CITIES NOT EXERCISING THEIR CORPORATE FUNCTIONS -- FILING OF PETITION -- NOTICE OF HEARING. Whenever any person, persons, firm, association or corporation interested in any city which if unincorporated, or which,

if incorporated, is not exercising its corporate functions, or interested in any platted and subdivided tract or acreage outside the limits of any incorporated city, may desire to vacate any lot, tract, public street, public right-of-way, ~~public--easements,~~ private road, common, plot or any part thereof in any such city, it shall be lawful to petition the board of county commissioners of the county where such property is located, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated and the names of the persons to be particularly affected thereby; which petition shall be filed with the appropriate county or highway district clerk and notice of the pendency of said petition shall be given for a period of thirty (30) days by written notice thereof, containing a description of the property to be vacated, posted in three (3) public or conspicuous places in said city, and also within the limits of said platted acreage, or in the event such property is located within a county in which there is published a newspaper, as defined by law, such notice shall also be published in such newspaper, once a week for two (2) successive weeks. Provided, however, when a public street or public right-of-way ~~or public easement~~ is located within the boundary of a highway district, the commissioners of the highway district shall assume the authority to vacate said public street or public right-of-way. ~~or public easement. Platting land which~~ Land exclusive of public right-of-way that has ~~previously~~ been subdivided and platted ~~shall serve to vacate any previous plats~~ in accordance with this chapter need not be vacated in order to be replatted.

SECTION 5. That Section 50-1332, Idaho Code, be, and the same is hereby amended to read as follows:

50-1332. SETTING INTERIOR MONUMENTS AFTER RECORDING OF PLAT -- BOND OR CASH DEPOSIT REQUIRED -- RELEASE OF BOND -- RETURN OF CASH DEPOSIT -- PAYMENT FOR SURVEY WORK -- COUNTY SURVEYOR PERFORMING SURVEY WORK. (1) If the interior monuments for a subdivision are to be set on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish, prior to recording the plat, to the governing body of the city or county which approved the plat, either a bond or cash deposit, at the option of the governing body, in an amount equal to one hundred twenty percent (120%) of the estimated cost of performing the work for the interior monumentation. The estimated cost of performing such work will be determined by the surveyor signing the plat.

(2) If the person subdividing the land described in subsection (1) of this section pays the surveyor for performing the interior monumentation work and notifies the governing body of such payment, the governing body, within two (2) months after such notice, shall release the bond or return the cash deposit upon a finding that such payment has been made. Upon written request from the person subdividing the land, the governing body may pay the surveyor from moneys within a cash deposit or bond held by it for such purpose and return the excess amount of the cash deposit, if any, to such person.

(3) In the event of the death, disability, or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure of such pro-

fessional land surveyor to set such monuments, the governing body may direct the county surveyor in his official capacity or contract with a professional land surveyor in private practice to set such monuments and reference such monuments for recording as provided in section 50-1333, Idaho Code. Payment of the fees of a county surveyor or professional land surveyor in private practice performing such work shall be made as otherwise provided in this section.

(4) In the event any interior monument cannot be placed at the location shown on the plat, the professional land surveyor shall place a witness corner or reference monument and he shall file a record of survey as provided in chapter 19, title 55, Idaho Code, to show the location of any witness corner or reference monument in relation to the platted location of the corner.

SECTION 6. That Section 54-1208, Idaho Code, be, and the same is hereby amended to read as follows:

54-1208. BOARD -- POWERS. (1) The board shall have the power to adopt and amend all ~~by-laws~~ bylaws, rules of professional responsibility and rules of procedure, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the administration of the act and the regulation of proceedings before the board. These actions by the board shall be binding upon persons registered under this act and shall be applicable to corporations holding a certificate of authorization as provided in section 54-1235, Idaho Code. It shall adopt and have an official seal which shall be affixed to each certificate issued. 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.

(2) In carrying into effect the provisions of this act, the board may subpoena witnesses and compel their attendance, and also may require the submission of books, papers, documents, or other pertinent data in any disciplinary matters or in any case wherever a violation of this act is alleged. Upon failure or refusal to comply with any such order of the board, or upon failure to honor its subpoena as herein provided, the board may apply to any court of any jurisdiction to enforce compliance with same.

(3) The board is hereby authorized in the name of the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this act or to restrain any violation thereof. Venue for all such actions shall be in the district court of the fourth judicial district, Ada county, Idaho.

(4) The board may subject an applicant for registration to such examination as it deems necessary to determine qualifications.

(5) Any action, claim or demand to recover money damages from the board or its employees which any person is legally entitled to recover as compensation for the negligent or otherwise wrongful act or omission of the board or its employees, when acting within the course and scope of their employment, shall be governed by the Idaho tort claims act, chapter 9, title 6, Idaho Code. For purposes of this section, the term "employees" shall include, in addition to those persons listed in

section 6-902(4), Idaho Code, special assignment members and other independent contractors while acting within the course and scope of their board related work.

(6) The board may ~~appoint arbitration review committees to review and~~ recommend arbitration of disputes between professional engineers or disputes between professional land surveyors. ~~Each committee shall consist of no fewer than three (3) individuals currently licensed as professional engineers on engineering disputes, and as professional land surveyors on land surveying disputes. The committee members shall be reimbursed as provided for board members in section 54-1205, Idaho Code. Further, each committee member shall be protected from any action or other legal proceedings for damages as provided for board members in section 54-1208(5), Idaho Code.~~

SECTION 7. That Section 54-1213, Idaho Code, be, and the same is hereby amended to read as follows:

54-1213. APPLICATIONS AND REGISTRATION FEES. Applications for registration as a professional engineer or professional land surveyor, or certification as an engineer-in-training or land surveyor-in-training, 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 technical and engineering or land surveying experience. An applicant for registration as a professional engineer or professional land surveyor shall furnish not less than five (5) references, of whom three (3) or more should be registered professional engineers or professional land surveyors, as applicable, having personal knowledge of the applicant's engineering or land surveying experience. An applicant for certification as an engineer-in-training or land surveyor-in-training shall furnish not less than three (3) references of whom at least one (1) should be a registered professional engineer or professional land surveyor, as applicable, having personal knowledge of the applicant's engineering or land surveying experience. Applications for certificates of authorization shall be made in accordance with section 54-1235, Idaho Code.

The maximum ~~registration~~ application fee for professional engineers or professional land surveyors seeking to be licensed by an eight (8) hour or longer examination shall be ~~one hundred fifty~~ an amount equal to the amount charged the board by the entity preparing the examination, plus an administrative fee not to exceed fifty dollars ($150.00).~~, of which a~~ The total application fee ~~not to exceed one hundred thirty dollars ($130),~~ shall accompany the application.~~, and the remaining~~ In addition to the application fee, a certificate fee, not to exceed twenty dollars ($20.00), shall be paid prior to issuance of the certificate.

~~The maximum registration fee for a professional engineer licensed by a sixteen (16) hour examination shall be two hundred seventy dollars ($270), of which a fee not to exceed two hundred fifty dollars ($250) shall accompany the application, and the remaining fee, not to exceed twenty dollars ($20.00) shall be paid prior to issuance of the certificate.~~

The maximum ~~certification~~ application fee for an applicant who seeks a certificate as an engineer-in-training or land surveyor-in-

training shall be ~~seventy~~ an amount equal to the amount charged the board by the entity preparing the examination, plus an administrative fee not to exceed twenty-five dollars ($~~7~~25.00).~~,of which a fee not to exceed fifty-five dollars ($55.00),~~ The application fee shall accompany the application.~~,and the remaining~~ In addition to the application fee, a certificate fee, not to exceed twenty dollars ($20.00), shall be paid prior to issuance of the certificate.

The maximum ~~certification~~ application fee for corporations seeking a certificate of authorization shall be two hundred ~~twenty~~ dollars ($2~~2~~00).~~,of which a fee not to exceed two hundred dollars ($200),~~ The application fee shall accompany the application.~~,and the remaining fee,~~ In addition to the application fee, a certificate fee, not to exceed twenty dollars ($20.00), shall be paid prior to issuance of the certificate.

Separate application fees shall accompany all applications for each of the four (4) classes of examinations: professional land surveyor, engineer-in-training, land surveyor-in-training and professional engineer.

The amount of the registration fee or certificate fee shall be fixed by the board prior to June 30th of any year and shall continue in force until changed. Said fees shall not be subject to change except at the beginning of each fiscal year.

Should the board deny the issuance of a certificate of registration or authorization to any applicant, the fee deposited shall be retained as an application fee.

SECTION 8. That Section 54-1214, Idaho Code, be, and the same is hereby amended to read as follows:

54-1214. EXAMINATIONS. (1) Examinations will be held at such times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations will be given in two (2) sections and may be taken only after the applicant has met the other minimum requirements as given in section 54-1212, Idaho Code, and has been approved by the board for admission to the examinations as follows:

(a) Fundamentals of Engineering -- The examination consists of an eight (8) hour test period on the fundamentals of engineering. Passing this examination qualifies the examinee for an engineer-in-training certificate, provided he has met all other requirements of certification required by this chapter.

(b) Principles and Practice of Engineering -- The examination consists of a minimum of an eight (8) hour test period on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer, provided he has met the other requirements for registration required by this chapter.

(c) Fundamentals of Land Surveying -- The examination consists of an eight (8) hour test period on the fundamentals of land surveying. Passing this examination qualifies the examinee for a land surveyor-in-training certificate, provided he has met all other requirements for certification required by this chapter.

(d) Principles and Practice of Land Surveying -- The examination consists of a minimum of an eight (8) hour test period on applied

land surveying. Passing this examination qualifies the examinee for registration as a professional land surveyor, provided he has met the other requirements for registration required by this chapter.

(3) A candidate failing all or part of the examination may apply for reexamination, which may be granted upon payment of ~~an--additional fee-of-not-to-exceed-a-maximum-of-one-hundred-thirty-dollars-($130)-if the-examination-is-for-registration-as-a-professional-engineer-or-professional--land--surveyor--by-use-of-an-eight-(8)-hour-examination-and not-to-exceed-a-maximum-of-two-hundred-fifty--dollars--($250)--if--the examination-is-for-registration-as-a-professional-engineer-by-use-of-a sixteen--(16)--hour--examination,-and-not-to-exceed-fifty-five-dollars ($55.00)-if-the-examination-is-for-certification--as--an--engineer-in-training--or--land-surveyor-in-training.-Before-readmission-for-a-section-of-the-examination,~~ a fee equal to the total application fee for the first examination. ~~In~~ the event of a second failure, the examinee shall be required to appear before the board or a member thereof to submit evidence of having acquired the necessary additional knowledge to warrant assignment ~~of-the-applicant~~ to ~~the~~ a third examination ~~in-a section~~.

(4) The board may prepare and adopt specifications for the written examinations in engineering and land surveying. They shall be published in brochure form and be available to any person interested in being registered as a professional engineer or as a professional land surveyor.

SECTION 9. That Section 54-1229, Idaho Code, be, and the same is hereby amended to read as follows:

54-1229. LEGAL SURVEY OF LAND. No survey of land, or plat or subdivision shall be legal unless made by or under the ~~direct-supervision~~ responsible charge of a professional land surveyor.

All land surveys made under the authority of the state, or of any county, town, city or village within the state, must be performed by a professional land surveyor.

Approved March 20, 1998.

CHAPTER 221
(H.B. No. 514)

AN ACT

RELATING TO THE APPLICATION OF THE PERSONNEL SYSTEM TO STATE EMPLOYEES; AMENDING SECTION 67-5303, IDAHO CODE, TO PROVIDE THAT ALL EMPLOYEES OF THE MILITARY DIVISION OF STATE GOVERNMENT SHALL BE NONCLASSIFIED EMPLOYEES AND TO MAKE A TECHNICAL CORRECTION.

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 defined as nonclassified, shall be classified employees, who are subject to this act and to the system of personnel administration which it prescribes. Nonclassified 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, deputy directors appointed by the director 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~~ lieutenant governor, secretary of state, attorney general, state treasurer, state controller, 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 in addition to those declared to be nonclassified by other provisions of law.

(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) All employees of the Idaho state bar.

(i) Assistant attorneys general attached to the office of the attorney general.

(j) Officers, members of the teaching staffs of state educational institutions, the professional staff of the Idaho department of education administered by the board of regents and the board of education, and the professional staffs of the Idaho department of vocational education and vocational rehabilitation administered by the state board for vocational education. "Teaching staff" includes teachers, coaches, resident directors, librarians and those principally engaged in academic research. The word "officer" means presidents, vice presidents, deans, directors, or employees in positions designated by the state board who receive an annual salary of not less than step "A" of the pay grade equivalent to three hundred fifty-five (355) Hay points in the state compensation schedule. A nonclassified employee who is designated as an "officer" on July 5, 1991, but does not meet the requirements of this subsection, may make a one (1) time irrevocable election to remain nonclassified. Such an election must be made not later than August 2, 1991. When such positions become vacant, these positions will be reviewed and designated as either classified or nonclassified in accordance with this subsection.

(k) Employees of the military division. ~~not--assigned--to--the bureau-of-disaster-services;~~

(l) Patients, inmates or students employed in a state institu-

tion.

(m) Persons employed in positions established under federal grants, which, by law, restrict employment eligibility to specific individuals or groups on the basis of nonmerit selection requirements. Such employees shall be termed "project exempt" and the tenure of their employment shall be limited to the length of the project grant, or twenty-four (24) months, or four thousand one hundred sixty (4,160) hours of credited state service, whichever is of the shortest duration. No person hired on a project-exempt appointment shall be employed in any position allocated to the classified service.

(n) Temporary employees.

(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.

(p) All inspectors of the fresh fruit and vegetable inspection service of the Idaho department of agriculture, except those positions involved in the management of the program.

(q) All employees of the division of correctional industries within the department of correction.

(r) All wardens employed by the department of correction.

(s) All public information positions with the exception of secretarial positions, in any department.

(t) Any division administrator.

(u) Any regional administrator or assistant administrator in the division of environmental protection in the department of health and welfare.

(v) All employees of the division of financial management.

(w) All employees of the Idaho food quality assurance institute.

Approved March 20, 1998.

CHAPTER 222
(H.B. No. 531)

AN ACT

RELATING TO THE IDAHO BUSINESS CORPORATION ACT; AMENDING SECTION 30-1-120, IDAHO CODE, TO PROVIDE AN EXCEPTION TO THE PERSONS AUTHORIZED TO EXECUTE A DOCUMENT; AMENDING PART 7, CHAPTER 1, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1-721, IDAHO CODE, TO PROVIDE THE VOTING ENTITLEMENT OF SHARES OF COMMON STOCK; AND AMENDING SECTION 30-1-1622, IDAHO CODE, TO PROVIDE THAT THE FORM OF THE ANNUAL REPORT SHALL BE PRESCRIBED BY THE SECRETARY OF STATE AND TO SPECIFY THE PERSONS AUTHORIZED TO EXECUTE THE ANNUAL REPORT.

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

SECTION 1. That Section 30-1-120, Idaho Code, be, and the same is hereby amended to read as follows:

30-1-120. FILING REQUIREMENTS. (1) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(2) This chapter must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this chapter. It may contain other information as well.

(4) The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) Except as otherwise permitted by section 30-1-1622, Idaho Code, t~~T~~he document must be executed:

(a) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain a corporate seal, attestation, acknowledgment or verification.

(8) If the secretary of state has prescribed a mandatory form for the document under section 30-1-121, Idaho Code, the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary

of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one (1) exact or conformed copy to be delivered with the document, except as provided in sections 30-1-503 and 30-1-1509, Idaho Code.

(10) When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any other fee or penalty required to be paid therewith by this chapter or other law must be paid or provision for payment made in a manner permitted by the secretary of state.

SECTION 2. That Part 7, Chapter 1, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1-721, Idaho Code, and to read as follows:

30-1-721. VOTING ENTITLEMENT OF SHARES. (1) Except as provided in subsections (2) and (4) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) A corporation is not entitled to vote treasury shares. Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

SECTION 3. That Section 30-1-1622, Idaho Code, be, and the same is hereby amended to read as follows:

30-1-1622. ANNUAL REPORT FOR SECRETARY OF STATE. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report in a form prescribed by the secretary of state that sets forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The address of its registered office and the name of its registered agent at that office in this state;

(c) The address to which correspondence to the corporation's officers may be mailed; and

(d) The names and business addresses of its directors and its president and secretary.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The annual report shall be executed by one (1) of the persons identified in section 30-1-120, Idaho Code, or by another person who is authorized by the board of directors to execute the report. Execution of the annual report constitutes a representation that the person is authorized by the board of directors to execute the report.

(4) The first annual report must be delivered to the secretary of state between July 1 and November 30 of the state fiscal year (July 1 -- June 30) following the state fiscal year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between July 1 and November 30 of succeeding state fiscal years.

(~~4~~5) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

Approved March 20, 1998.

CHAPTER 223
(H.B. No. 530)

AN ACT

RELATING TO THE IDAHO BUSINESS CORPORATION ACT; REPEALING SECTION 30-1-740, IDAHO CODE; AMENDING PART 7, CHAPTER 1, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1-740, IDAHO CODE, TO PROVIDE A DEFINITION; AMENDING PART 7, CHAPTER 1, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1-741, IDAHO CODE, TO PROVIDE THE STANDING OF A SHAREHOLDER TO MAINTAIN A DERIVATIVE PROCEEDING; AMENDING PART 7, CHAPTER 1, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1-742, IDAHO CODE, TO REQUIRE A DEMAND BY THE SHAREHOLDER UPON THE CORPORATION BEFORE A DERIVATIVE PROCEEDING MAY BE COMMENCED; AMENDING PART 7, CHAPTER 1, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1-743, IDAHO CODE, TO PROVIDE FOR A STAY OF PROCEEDINGS; AMENDING PART 7, CHAPTER 1, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1-744, IDAHO CODE, TO PROVIDE FOR DISMISSAL OF THE PROCEEDING; AMENDING PART 7, CHAPTER 1, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1-745, IDAHO CODE, TO PROVIDE FOR DISCONTINUANCE OR SETTLEMENT OF THE PROCEEDING; AMENDING PART 7, CHAPTER 1, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1-746, IDAHO CODE, TO PROVIDE FOR PAYMENT OF EXPENSES ON TERMINATION OF THE PROCEEDING; AND AMENDING PART 7, CHAPTER 1, TITLE 30, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 30-1-747, IDAHO CODE, TO PROVIDE FOR APPLICATION TO FOREIGN CORPORATIONS.

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

SECTION 1. That Section 30-1-740, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Part 7, Chapter 1, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1-740, Idaho Code, and to read as follows:

30-1-740. DEFINITIONS. As used in sections 30-1-741 through 30-1-747, Idaho Code, "derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in section 30-1-747, Idaho Code, in the right of a foreign corporation.

SECTION 3. That Part 7, Chapter 1, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1-741, Idaho Code, and to read as follows:

30-1-741. STANDING. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one (1) who was a shareholder at that time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

SECTION 4. That Part 7, Chapter 1, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1-742, Idaho Code, and to read as follows:

30-1-742. DEMAND. No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety (90) days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety (90) day period.

SECTION 5. That Part 7, Chapter 1, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1-743, Idaho Code, and to read as follows:

30-1-743. STAY OF PROCEEDINGS. If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

SECTION 6. That Part 7, Chapter 1, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1-744, Idaho Code, and to read as follows:

30-1-744. DISMISSAL. (1) A derivative proceeding shall be dismissed by the court on motion by the corporation if one (1) of the groups specified in subsection (2) or (6) of this section has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6) of this section, the determination in subsection (1) of this section shall be made by:

(a) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum;

(b) A majority vote of a committee consisting of two (2) or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(3) None of the following shall by itself cause a director to be considered not independent for purposes of this section:

(a) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either (a) that a majority of the board of directors did not consist of independent directors at the time the determination was made, or (b) that the requirements of subsection (1) of this section have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (1) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (1) have not been met.

(6) The court may appoint a panel of one (1) or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

SECTION 7. That Part 7, Chapter 1, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION,

to be known and designated as Section 30-1-745, Idaho Code, and to read as follows:

30-1-745. DISCONTINUANCE OR SETTLEMENT. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

SECTION 8. That Part 7, Chapter 1, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1-746, Idaho Code, and to read as follows:

30-1-746. PAYMENT OF EXPENSES. On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's reasonable expenses, including counsel fees, incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

SECTION 9. That Part 7, Chapter 1, Title 30, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 30-1-747, Idaho Code, and to read as follows:

30-1-747. APPLICABILITY TO FOREIGN CORPORATIONS. In any derivative proceeding in the right of a foreign corporation, the matters covered by sections 30-1-740 through 30-1-746, Idaho Code, shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 30-1-743, 30-1-745 and 30-1-746, Idaho Code.

Approved March 20, 1998.