GENERAL LAWS

OF THE

STATE OF IDAHO

PASSED BY
THE SECOND REGULAR SESSION OF THE
FIFTY-FIFTH IDAHO LEGISLATURE

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Volume 1

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

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SECRETARY OF STATE

PETE T. CENARRUSA
Secretary of State
Boise, Idaho

CHAPTER 1
(S.B. No. 1296)

AN ACT

RELATING TO THE DISPOSITION OF TOBACCO SETTLEMENT FUNDS; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 18, TITLE 67, IDAHO CODE, TO CREATE THE IDAHO MILLENNIUM FUND AND TO DIRECT THE STATE TREASURER TO INVEST MONEYS IN THE IDAHO MILLENNIUM FUND, TO CREATE THE IDAHO MILLENNIUM INCOME FUND AND TO DIRECT THE STATE TREASURER TO INVEST MONEYS IN THE IDAHO MILLENNIUM INCOME FUND AND TO PROVIDE FOR THE DISTRIBUTION OF MONEY FROM THE IDAHO MILLENNIUM FUND TO THE IDAHO MILLENNIUM INCOME FUND; TRANSFERRING TOBACCO SETTLEMENT FUNDS FROM THE BUDGET STABILIZATION FUND TO THE IDAHO MILLENNIUM FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 18, Title 67, Idaho Code, and to read as follows:

CHAPTER 18
IDAHO MILLENNIUM FUND

67-1801. IDAHO MILLENNIUM FUND. There is hereby created in the state treasury the "Idaho Millennium Fund." The fund shall consist of all moneys distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including Idaho, and such moneys as may be provided by legislative appropriations. Money in the fund is not subject to appropriation or distribution, except as provided in sections 67-1802 and 67-1803, Idaho Code. Fund assets shall be invested by the state treasurer according to the standards of the Idaho uniform prudent investor act, chapter 5, title 68, Idaho Code, and the state treasurer is hereby granted the authority to invest the assets of the Idaho millennium fund in any investment instruments authorized by the standards of the Idaho uniform prudent investor act.

67-1802. IDAHO MILLENNIUM INCOME FUND. There is hereby created in the state treasury the "Idaho Millennium Income Fund." The fund shall consist of distributions from the Idaho millennium fund and such moneys that may be provided by legislative appropriations. The Idaho millennium income fund shall be managed by the state treasurer and shall retain its own earnings. The uses of this fund shall be determined by legislative appropriation, provided that such appropriations may only be granted on a one-time basis through June 30, 2004, excepting any appropriations to pay the administrative costs of managing the Idaho millennium fund and the Idaho millennium income fund.

67-1803. DISTRIBUTION OF FUNDS. On the first business day of each month, the state treasurer shall distribute one-twelfth (1/12) of five percent (5%) of the Idaho millennium fund's fair market value to the

Idaho millennium income fund.

SECTION 2. The State Controller shall transfer the principal amount of all tobacco settlement funds received to date by the state of Idaho from the Budget Stabilization Fund to the Idaho Millennium Fund.

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 14, 2000.

CHAPTER 2
(H.B. No. 412)

AN ACT
RELATING TO THE SMALL CLAIMS DIVISION OF THE BOARD OF TAX APPEALS; REPEALING SECTIONS 63-3815, 63-3816, 63-3817, 63-3818, 63-3819 AND 63-3820, IDAHO CODE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Sections 63-3815, 63-3816, 63-3817, 63-3818, 63-3819 and 63-3820, Idaho Code, be, and the same are hereby repealed.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved February 16, 2000.

CHAPTER 3
(H.B. No. 387)

AN ACT
RELATING TO THE PURCHASE OF PROPERTY BY THE STATE OF IDAHO; REPEALING SECTION 67-5728, IDAHO CODE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-5728, Idaho Code, be, and the same is hereby repealed.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved February 16, 2000.

CHAPTER 4
(H.B. No. 386)

AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 31-4306, IDAHO CODE, TO REVISE TIMING REQUIREMENTS FOR THE FILING OF A DECLARATION OF INTENT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-2721, IDAHO CODE, TO REVISE TIMING REQUIREMENTS FOR THE FILING OF A DECLARATION OF INTENT; AND PROVIDING AN EFFECTIVE DATE.

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

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

31-4306. ELECTION OF DIRECTORS. (1) An election of directors shall be held in each district on the Tuesday succeeding the first Monday of November of each even-numbered year. Such election shall be held in conformity with chapter 14, title 34, Idaho Code, and other applicable provisions of title 34, Idaho Code. Before the notice of election is given, the board shall divide the district into subdivisions as nearly equal in population as possible to be designated as director's subdistrict 1, 2 and 3, or director's subdistrict 1, 2, 3, 4 and 5, depending upon the number of subdistricts in the district. Each nominating petition shall state the subdistrict for which the nominee is nominated.

(2) In any election for directors if, after the expiration of the date for filing written nominations for the office of director, it appears that only one (1) qualified candidate has been nominated for each position to be filled and if no declaration of intent has been filed as provided in subsection (3) of this section, it shall not be necessary to hold an election, and the board of directors, shall no later than seven (7) days before the scheduled date of the election declare such candidate elected as director, and the secretary of the recreation district board shall immediately make and deliver to such person a certificate of election.

(3) No write-in vote for recreation district director shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of recreation district director if elected. The declaration of intent shall be filed with the recreation district board secretary not later than ~~eleven (11)~~ twenty-five (25) days before the day of election.

SECTION 2. That Section 22-2721, Idaho Code, be, and the same is hereby amended to read as follows:

22-2721. ELECTION, APPOINTMENT, QUALIFICATIONS AND TENURE OF SUPERVISORS. The governing body of the district shall consist of five (5) supervisors, elected or appointed as provided in this chapter. Elections shall be conducted pursuant to the provisions of this section and the uniform district election law, chapter 14, title 34,

Idaho Code. If at any time the supervisors of a district deem it necessary, they may request permission from the state soil conservation commission to increase the number of supervisors to seven (7). Upon receipt of such a request in writing, signed by all five (5) supervisors, stating a valid reason for such need, the commission shall grant permission. The additional supervisors shall then be appointed as outlined in subparagraph C. of this section until such time as regular district elections for two (2) supervisors in each district. At that time those districts having seven (7) supervisors shall then elect four (4) supervisors for four (4) year terms. The two (2) supervisors appointed by the commission shall be persons who are by training and experience qualified to perform the specialized services which will be required of them in the performance of their duties. All supervisors shall be landowners or farmers of the district where they are elected or appointed.

A. Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation commission to nominate candidates for supervisors of each district. The soil conservation commission, unless it has contracted with the county clerk to conduct the election, shall designate an individual to act as the election official. If contracted to do so, the county clerk shall act as the election official. The election official shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the election official unless it shall be subscribed by not less than five (5) persons who are qualified electors owning land or residing within the boundaries of the district. The election official shall give due notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall appear arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and directions to insert a mark in the square before any three (3) names to indicate the voter's preference. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The commission shall pay all the expenses of such election, which shall be supervised and conducted by the election official.

B. All elections in districts, excluding the first election as provided in subparagraph A. of this section, shall be conducted by the district supervisors of the districts involved who shall designate an individual to be the election official, or the county clerk if contracted for that purpose. Such election shall be held on the first Tuesday succeeding the first Monday of November in each even-numbered year. Such elections shall be in compliance with the provisions of chapter 14, title 34, Idaho Code, and shall be supervised and conducted by the election official. The cost of conducting such elections shall be borne by the district involved. The election official shall certify to the state soil conservation commission the names of the elected supervisors. The state soil conservation commission shall issue certificates of election to each elected supervisor so certi-

fied. The state soil conservation commission may authorize each district to contract with the county clerk or county clerks of the county or counties in which the district is located to conduct the election for the soil conservation district. If a district election is conducted by a county clerk, the county clerk must provide a ballot for the district election, and must provide a process that allows only qualified electors of the district to vote in that district's election.

In any election for supervisor, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated is equal to the number of supervisors to be elected, it shall not be necessary for the candidates to stand for election, and the board of supervisors shall declare such candidates elected as supervisors, and the state soil conservation commission shall immediately make and deliver to such persons certificates of election.

C. In any election for supervisors of a soil conservation district, if after the expiration of the date for filing written nominations it appears that only one (1) qualified candidate has been nominated for each position to be filled and no declaration of intent has been filed by a write-in candidate as provided in subparagraph D. of this section, it shall not be necessary to hold an election, and the election official shall, no later than seven (7) days before the scheduled date of the election, declare such candidate elected as supervisor, and the state soil conservation commission shall immediately make and deliver to such person a certificate of election.

D. No write-in vote for supervisor shall be counted unless a declaration of intent has been filed with the election official indicating that the person making the declaration desires the office and is legally qualified to assume the duties of supervisor if elected as a write-in candidate. The declaration of intent shall be filed not later than ~~eleven (11)~~ twenty-five (25) days before the day of election.

E. The supervisors shall designate a chairman and may, from time to time, change such designation. The term of office of each supervisor shall be four (4) years commencing on the first day of January next following election, except that the two (2) supervisors who are first appointed shall be designated to serve for terms of two (2) years. A supervisor shall hold office until a qualified successor has been elected or appointed. Vacancies shall be filled for the unexpired term. The selection of successors to fill an unexpired term, or for a full term shall be made by a vote of the majority of the supervisors duly qualified and acting at the time the vacancy shall arise and the supervisors shall certify the name of the appointed supervisor to the state soil conservation commission who shall issue a certificate of such appointment.

F. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall be entitled to expenses, including travel expense, necessarily incurred in the discharge of duties. A supervisor shall receive no compensation for services from regular district funds, county funds authorized in section 22-2726, Idaho Code, or state funds authorized in section 22-2727, Idaho Code.

In the event the district has a special project, approved by the state soil conservation commission, making project funds available from federal or other sources, a supervisor may receive compensation not to exceed thirty-five dollars ($35.00) per day plus actual and necessary expenses from project funds for services directly related to the project.

The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents, or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation commission, upon request, copies of such ordinances, rules, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; they shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of a municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved February 18, 2000.

CHAPTER 5
(H.B. No. 388)

AN ACT

RELATING TO THE SALE, TRADE-IN OR EXCHANGE OF STATE PERSONAL PROPERTY; AMENDING SECTION 67-5722, IDAHO CODE, TO PROVIDE THAT THE ADMINISTRATOR OF THE DIVISION OF PURCHASING MAY PERMIT AN EXCHANGE OF PROPERTY IN PART PAYMENT FOR NEW PROPERTY ACQUISITIONS FROM CONTRACTS FOR THE SAME OR SIMILAR PROPERTY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-5722, Idaho Code, be, and the same is hereby amended to read as follows:

67-5722. SALE, TRADE-IN OR EXCHANGE OF STATE PERSONAL PROPERTY. Whenever any agency owns any property no longer economical to use, the administrator of the division of purchasing may dispose of such property by exchanging the same in part payment for new property, as provided for in this section. The administrator of the division of purchasing shall include in his request for bids a full description of the property to be exchanged as part payment and shall permit each registered vendor to examine the same, and the contract shall be awarded on the basis of net cost to the state after allowance for the property to be exchanged in part payment. In addition, the administrator of the division of purchasing may permit an exchange of property in part payment for new property acquisitions from contracts for the same or similar property.

Exchange of property will be permitted only when it is determined by the administrator of the division of purchasing that all other methods of disposal of the property sought to be exchanged will yield a lesser monetary return to the state.

In accordance with the internal management policies, guidelines or instructions of the board of examiners, the head of any agency may declare as surplus any item of personal property.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved February 18, 2000.

CHAPTER 6
(H.B. No. 413)

AN ACT

RELATING TO APPEALS FROM THE BOARD OF TAX APPEALS; AMENDING SECTION 63-3812, IDAHO CODE, TO PROVIDE THAT APPEALS FROM DECISIONS OF THE BOARD OF TAX APPEALS TO DISTRICT COURT BE FILED WITH THE COURT AND A COPY SERVED UPON THE BOARD AND TO PROVIDE THAT THE PETITION FOR JUDICIAL REVIEW SHALL CONFORM WITH THE IDAHO RULES OF CIVIL PROCEDURE INCLUDING RULE 84(e); AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-3812, Idaho Code, be, and the same is hereby amended to read as follows:

63-3812. APPEAL FROM BOARD -- PAYMENT OF TAXES WHILE ON APPEAL. Whenever any taxpayer, assessor, the state tax commission or any other party appearing before the board of tax appeals is aggrieved by a decision of the board of tax appeals or a decision on a motion for rehearing, an appeal may be taken to the district court located in the county of residence of the affected taxpayer, or to the district court

in and for the county in which property affected by an assessment is located. The appeal shall be taken and perfected in the following manner:

(a) The appellant shall cause notice specifying the grounds of appeal to be filed with the appropriate district court and shall forthwith serve copies of the notice with the clerk of the board of tax appeals and with all other parties to the proceeding before the board within twenty-eight (28) days after copy of the final decision of the board shall have been deposited in the mail. The petition for judicial review shall conform with the requirements of the Idaho rules of civil procedure, including rule 84(e). The grounds of appeal specified in such notice shall frame the issues for such appeal.

(b) Any record made in such matter together with the record of all proceedings shall be filed by the clerk with the district court of the proper county.

(c) Appeals may be based upon any issue presented by the appellant to the board of tax appeals and shall be heard and determined by the court without a jury in a trial de novo on the issues in the same manner as though it were an original proceeding in that court. The court may affirm, reverse or modify the order, direct the tax collector of the county or the state tax commission to refund any taxes found in such appeal to be erroneously or illegally assessed or collected or may direct the collection of additional taxes in proper cases.

(d) Nothing in this section shall be construed to suspend the payment of taxes pending any appeal, except that any privileges as to bonds or other rights extended by the provisions of chapters 30 and 36, title 63, Idaho Code, shall not be affected. Payment of taxes while an appeal hereunder is pending shall not operate to waive the right to an appeal.

(e) Any final order of the district court under this section shall be subject to appeal to the supreme court in the manner provided by law.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved February 18, 2000.

CHAPTER 7
(S.B. No. 1299)

AN ACT

RELATING TO ABORTION; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-601, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND INTENT; AMENDING SECTION 18-604, IDAHO CODE, TO PROVIDE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-608A, IDAHO CODE, TO MAKE IT UNLAWFUL FOR ANY PERSON OTHER THAN A PHYSICIAN TO CAUSE OR PERFORM AN ABORTION; AMENDING SECTION 18-609, IDAHO CODE, TO PROVIDE A REFERENCE TO ADULT PATIENTS, TO

DELETE REQUIREMENTS FOR NOTICE TO PARENTS OF UNMARRIED PREGNANT PATIENTS UNDER EIGHTEEN YEARS OF AGE OR WHO ARE UNEMANCIPATED, TO DELETE LANGUAGE PROVIDING FOR SEVERABILITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-609A, IDAHO CODE, TO REQUIRE CONSENT FOR ABORTIONS FOR MINORS, TO PROVIDE VARIOUS FORMS OF CONSENT, TO PROVIDE FOR ABORTION FOR MEDICAL EMERGENCIES, TO PROVIDE NOTICE TO PARENTS FOR ABORTIONS DUE TO MEDICAL EMERGENCIES, TO PROVIDE FOR REPORTS TO LAW ENFORCEMENT AGENCIES IF NOTICE TO PARENTS CANNOT BE MADE, TO PROVIDE PROCEDURES FOR A COURT TO GRANT A MINOR'S RIGHT TO SELF-CONSENT TO AN ABORTION, TO PROVIDE CONTENTS FOR PETITIONS TO THE COURT, TO PROVIDE FOR HEARINGS, TO PROVIDE FOR DECISIONS OF THE COURT, TO PROVIDE FOR APPEALS, TO PROVIDE THAT NO FEES MAY BE CHARGED, TO PROVIDE THAT A MINOR SHALL BE ORALLY INFORMED, TO PROVIDE THAT CERTAIN JUDICIAL RECORDS ARE EXEMPT FROM PUBLIC DISCLOSURE, TO PROVIDE THAT THE ADMINISTRATIVE DIRECTOR OF THE COURTS SHALL COMPILE STATISTICS, TO PROVIDE A PRIVATE RIGHT OF ACTION TO ANY PERSON INJURED BY AN ABORTION, TO REQUIRE REPORTING TO THE DEPARTMENT OF HEALTH AND WELFARE, TO PROVIDE THAT PHYSICIANS ARE SUBJECT TO PROFESSIONAL DISCIPLINE AND CIVIL PENALTIES AND TO PROVIDE DEFINITIONS; REPEALING SECTION 18-611, IDAHO CODE; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-614, IDAHO CODE, TO REQUIRE IDENTIFICATION AND AGE CONFIRMATION; AMENDING CHAPTER 6, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-615, IDAHO CODE, TO PROVIDE SEVERABILITY; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-340G, IDAHO CODE, TO EXEMPT FROM PUBLIC DISCLOSURE RECORDS OF COURT PROCEEDINGS REGARDING JUDICIAL AUTHORIZATION OF ABORTION PROCEDURES FOR MINORS; AND PROVIDING AN EFFECTIVE DATE.

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 18-601, Idaho Code, and to read as follows:

18-601. LEGISLATIVE FINDINGS AND INTENT. (1) The legislature finds:

(a) That children have a special place in society that the law should reflect;

(b) That minors too often lack maturity and make choices that do not include consideration of both immediate and long-term consequences;

(c) That the medical, emotional and psychological consequences of abortion and childbirth are serious and can be lasting, particularly when the patient is immature;

(d) That the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of bearing a child or of having an abortion are not necessarily related;

(e) That parents, when aware that their daughter is pregnant or has had an abortion are in the best position to ensure that she receives adequate medical attention during her pregnancy or after

her abortion;

(f) That except in rare cases, parents possess knowledge regarding their child which is essential for a physician to exercise the best medical judgment for that child;

(g) That when a minor is faced with the difficulties of an unplanned pregnancy, the best interests of the minor are always served when there is careful consideration of the rights of parents in rearing their child and the unique counsel and nurturing environment that parents can provide;

(h) That informed consent is always necessary for making mature health care decisions.

(2) It is the intent of the legislature in enacting section 18-609A, Idaho Code, to further the following important and compelling state interests recognized by the United States supreme court in:

(a) Protecting minors against their own immaturity;

(b) Preserving the integrity of the family unit;

(c) Defending the authority of parents to direct the rearing of children who are members of their household;

(d) Providing a pregnant minor with the advice and support of a parent during a decisional period;

(e) Providing for proper medical treatment and aftercare when the life or physical health of the pregnant minor is at serious risk in the rare instance of a sudden and unexpected medical emergency.

SECTION 2. That Section 18-604, Idaho Code, be, and the same is hereby amended to read as follows:

18-604. DEFINITIONS. As used in this act:

(1~~.~~) "Abortion" means the intentional termination of human pregnancy for purposes other than delivery of a viable birth.

~~2.--"Physician"-means-a-person-licensed-to-practice--medicine--and surgery--or-osteopathic-medicine-and-surgery-in-this-state-as-provided in-chapter-18,-title-54,-Idaho-Code.~~

(2) "First trimester of pregnancy" means the first thirteen (13) weeks of a pregnancy.

(3~~.~~) "Hospital" means an acute care, general hospital in this state, licensed as provided in chapter 13, title 39, Idaho Code.

~~4.--"First-trimester-of-pregnancy"-means-the-first--thirteen--(13) weeks-of-a-pregnancy.~~

(4) "Informed consent" means a voluntary and knowing decision to undergo a specific procedure or treatment. To be voluntary, the decision must be made freely after sufficient time for contemplation and without coercion by any person. To be knowing, the decision must be based on the physician's accurate and substantially complete explanation of each fact pertinent to making the decision. Facts pertinent to making the decision shall include, but not be limited to:

(a) A description of any proposed treatment or procedure;

(b) Any reasonably foreseeable complications and risks to the patient from such procedure, including those related to future reproductive health; and

(c) The manner in which such procedure and its foreseeable complications and risks compare with those of each readily available alternative to such procedure, including childbirth and adop-

tion.
The physician must provide the information in terms which can be understood by the person making the decision, with consideration of age, level of maturity and intellectual capability.

(5) "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state as provided in chapter 18, title 54, Idaho Code.

~~5.~~(6) "Second trimester of pregnancy" means that portion of a pregnancy following the thirteenth week and preceding the point in time when the fetus becomes viable, and there is hereby created a legal presumption that the second trimester does not end before the commencement of the twenty-fifth week of pregnancy, upon which presumption any licensed physician may proceed in lawfully aborting a patient pursuant to section 18-608, Idaho Code, in which case the same shall be conclusive and unrebuttable in all civil or criminal proceedings.

~~6.~~(7) "Third trimester of pregnancy" means that portion of a pregnancy from and after the point in time when the fetus becomes viable.

~~7.~~(8) Any reference to a viable fetus shall be construed to mean a fetus potentially able to live outside the mother's womb, albeit with artificial aid.

SECTION 3. 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 18-608A, Idaho Code, and to read as follows:

18-608A. PERSONS AUTHORIZED TO PERFORM ABORTIONS. It is unlawful for any person other than a physician to cause or perform an abortion.

SECTION 4. That Section 18-609, Idaho Code, be, and the same is hereby amended to read as follows:

18-609. PHYSICIANS AND HOSPITALS NOT TO INCUR CIVIL LIABILITY -- CONSENT TO ABORTION -- NOTICE. (1) Any physician may perform an abortion not prohibited by this act and any hospital or other facility described in section 18-608, Idaho Code, may provide facilities for such procedures without, in the absence of negligence, incurring civil liability therefor to any person~~,~~ including, but not limited to, the pregnant patient and the prospective father of the fetus to have been born in the absence of abortion, if informed consent for such abortion has been duly given by the pregnant patient.

(2) In order to provide assistance in assuring that the consent to an abortion is truly informed consent, the director of the department of health and welfare shall publish, after consultation with interested parties, easily comprehended printed material to be made available at the expense of the physician, hospital or other facility providing the abortion, and which shall contain the following:

(a) Descriptions of the services available to assist a woman through a pregnancy, at childbirth and while the child is dependent, including adoption services, a comprehensive list of the names, addresses, and telephone numbers of public and private

agencies that provide such services and financial aid available;

(b) Descriptions of the physical characteristics of a normal fetus, described at two (2) week intervals, beginning with the fourth week and ending with the twenty-fourth week of development, accompanied by scientifically verified photographs of a fetus during such stages of development. The description shall include information about physiological and anatomical characteristics, brain and heart function, and the presence of external members and internal organs during the applicable stages of development; and

(c) Descriptions of the abortion procedures used in current medical practices at the various stages of growth of the fetus and any reasonable foreseeable complications and risks to the mother, including those related to subsequent child bearing.

(3) No abortion shall be performed unless, prior to the abortion, the attending physician or the attending physician's agent (i) confirms or verifies a positive pregnancy test and informs the pregnant patient of a positive pregnancy test, and (ii) certifies in writing that the materials provided by the director of the department of health and welfare have been provided to the pregnant patient, if reasonably possible, at least twenty-four (24) hours before the performance of the abortion. If the materials are not available from the director of the department of health and welfare, no certification shall be required. The attending physician, or the attending physician's agent, shall provide any other information required under this act. In addition to providing the material, the attending physician may provide the pregnant patient with such other information which in the attending physician's judgment is relevant to the pregnant patient's decision as to whether to have the abortion or carry the pregnancy to term.

(4) If the attending physician reasonably determines that due to circumstances peculiar to a specific pregnant patient, disclosure of the material is likely to cause a severe and long lasting detrimental effect on the health of such pregnant patient, disclosure of the materials shall not be required. Within thirty (30) days after performing any abortion without certification and delivery of the materials, the attending physician, or the attending physician's agent, shall cause to be delivered to the director of the department of health and welfare, a report signed by the attending physician, preserving the patient's anonymity, which explains the specific circumstances that excused compliance with the duty to deliver the materials. The director of the department of health and welfare shall compile the information annually and report to the public the total number of abortions performed in the state where delivery of the materials was excused; provided that any information so reported shall not identify any physician or patient in any manner which would reveal their identities.

(5) If section 18-608(3), Idaho Code, applies to the abortion to be performed and the pregnant patient is <u>an adult and</u> for any reason unable to give a valid consent thereto, the requirement for that pregnant patient's consent shall be met as required by law for other medical or surgical procedures and shall be determined in consideration of the desires, interests and welfare of the pregnant patient.

~~(6)--In--addition--to--the--requirements-of-subsection-(1)-of-this section,-if-the-pregnant-patient-is-unmarried-and-under-eighteen--(18)~~

~~years--of-age-or-unemancipated,-the-physician-shall-provide-notice,-if possible,-of-the-pending-abortion-to-the-parents-or-legal-guardian--of the-pregnant-patient-at-least-twenty-four-(24)-hours-prior-to-the-performance-of-the-abortion.~~

~~(7)--If--any-one-or-more-the-subsection-or-provisions-of-this-section,-or-the-application-thereof-to-any-person-or-circumstance,--shall ever-be-held-by-any-court-of-competent-jursidiction-to-be-invalid,-the remaining--provisions--of--this-section-and-the-application-thereof-to persons-or-circumstances-other-than-those-to-which-it-is--held--to--be invalid,--shall-not-be-affected-thereby,-it-being-the-intention-of-the legislature-to-enact-the-remaining-provisions-of-this-section-notwithstanding-such-invalidity.~~

SECTION 5. 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 18-609A, Idaho Code, and to read as follows:

18-609A. CONSENT REQUIRED FOR ABORTIONS FOR MINORS.

(1) (a) No person shall knowingly cause or perform an abortion upon a minor unless:

(i) The attending physician has secured the written informed consent of the minor and the written informed consent of the minor's parent; or

(ii) The minor is emancipated and the attending physician has received written proof of emancipation and the minor's written informed consent; or

(iii) The minor has been granted the right of self-consent to the abortion by court order pursuant to paragraph (b) of this subsection and the attending physician has received the minor's written informed consent; or

(iv) A court has found that the causing or performing of the abortion, despite the absence of informed consent of a parent, is in the best interests of the minor and the court has issued an order, pursuant to paragraph (b)(iv)2. of this subsection, granting permission for the causing or performing of the abortion, and the minor is having the abortion willingly, pursuant to paragraph (f) of this subsection; or

(v) A medical emergency exists for the minor so urgent that there is insufficient time for the physician to obtain the informed consent of a parent or a court order and the attending physician certifies such in the pregnant minor's medical records. In so certifying, the attending physician must include the factual circumstances supporting his professional judgment that a medical emergency existed and the grounds for the determination that there was insufficient time to obtain the informed consent of a parent or a court order. Immediately after an abortion pursuant to this paragraph, the physician shall, with due diligence, attempt to provide a parent of an unemancipated minor actual notification of the medical emergency. If the parent cannot be immediately contacted for such actual notification, the physician shall, with due diligence, attempt to provide actual notification to a parent for

an eight (8) hour period following the causing or performing of the abortion and shall, until a parent receives such notification, ensure that the minor's postabortion medical needs are met. Notwithstanding the above, a physician shall, within twenty-four (24) hours of causing or performing an abortion pursuant to this paragraph, provide actual notification of the medical emergency by:

1. Conferring with a parent or agent designated by the parent, and providing any additional information needed for the minor's proper care, and, as soon as practicable thereafter, securing the parent's written acknowledgement of receipt of such notification and information; or
2. Providing such actual notification in written form, addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent with written acknowledgement of such receipt by the parent returned to the physician; or
3. Providing such actual notification in written form and mailing it by certified mail, addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee so that a postal employee can only deliver the notice to the authorized addressee.

For the purposes of this section, "actual notification" includes, but is not limited to, a statement that an abortion was caused or performed, a description of the factual circumstances supporting the physician's judgment that the medical emergency existed and a statement of the grounds for the determination that there was insufficient time to obtain the informed consent of a parent or a court order.

If the physician causing or performing such abortion reasonably believes that the minor is homeless or abandoned so that the parents cannot be readily found or that the minor has suffered abuse or neglect such that the minor's physical safety would be jeopardized if a parent were notified that the abortion was caused or performed, the physician shall, in lieu of notifying a parent as required above, make a report to a law enforcement agency pursuant to section 16-1619, Idaho Code, and a petition shall be filed pursuant to section 16-1605, Idaho Code, which petition shall include a reference to this code section. Upon adjudication that the minor comes within the purview of chapter 16, title 16, Idaho Code, either on the basis of homelessness or abandonment such that no parent can be found, or on the basis of abuse or neglect such that the minor's physical safety would be in jeopardy if a parent were notified that the abortion was performed, the court shall, as a part of the decree, also order that the physician's duty to so notify a parent is relieved. In any other event, unless the court enters a finding that the best interests of the child require withholding notice to a parent, the court shall order that a parent receive actual notification of the medical emergency and the causing or performing of the abortion.

(b) A proceeding for the right of a minor to self-consent to an abortion pursuant to paragraph (a)(iii) of this subsection or for a court order pursuant to paragraph (a)(iv) of this subsection, may be adjudicated by a court as follows:

(i) The petition shall be filed in the judicial district where the minor resides. A minor shall have the legal capacity to make and prosecute a petition and appeal as set out herein. A guardian ad litem may assist the minor in preparing her petition and other documents filed pursuant to this section and may seek appointment as set forth below. A guardian ad litem, whether prospective or appointed, must be an attorney properly licensed in this state. The court shall ensure that the minor is given assistance in filing the petition if the minor so desires a guardian ad litem but no qualified guardian ad litem is available.

(ii) The petition shall set forth:

1. The initials of the minor;
2. The age of the minor;
3. The name and address of each parent, guardian, or, if the minor's parents are deceased or the minor is abandoned and no guardian has been appointed, the name and address of any other person standing in loco parentis of the minor;
4. That the minor has been fully informed of the risks and consequences of the abortion procedure to be performed;
5. A claim that the minor is mature, of sound mind and has sufficient intellectual capacity to consent to the abortion for herself;
6. A claim that, if the court does not grant the minor the right to self-consent to the abortion, the court should find that causing or performing the abortion, despite the absence of the consent of a parent, is in the best interest of the minor and give judicial consent to the abortion; and
7. If so desired by the minor, a request that the court appoint a guardian ad litem, or, alternatively, if no guardian ad litem is requested, that the court should consider whether appointment of a guardian ad litem for the minor is appropriate.

The petition shall be signed by the minor and, if she has received assistance from a prospective guardian ad litem in preparing the petition, by the guardian ad litem.

(iii) A hearing on the merits of the petition shall be held as soon as practicable but in no event later than five (5) days from the filing of the petition. The petition shall be heard by a district judge on the record in a closed session of the court. The court shall appoint a qualified guardian ad litem for the minor if one is requested in the petition. If no qualified guardian ad litem is available, the court may appoint some other person to act in the capacity of a guardian ad litem, who shall act to fulfill the purposes of this section and protect the confidentiality and other rights of

the minor.

At the hearing, the court shall, after establishing the identity of the minor, hear evidence relating to the emotional development, maturity, intellect and understanding of the minor; the nature of the abortion procedure to be performed and the reasonably foreseeable complications and risks to the minor from such procedure, including those related to future childbearing; the available alternatives to the abortion; the relationship between the minor and her parents; and any other evidence that the court may find relevant in determining whether the minor should be granted the right to self-consent to the abortion or whether the court's consent to causing or performing of the abortion, despite the absence of consent of a parent, is in the best interests of the minor.

(iv) The order shall be entered as soon as practicable, but in no event later than five (5) days after the conclusion of the hearing. If, by clear and convincing evidence, the court finds the allegations of the petition to be true and sufficient to establish good cause, the court shall:

1. Find the minor sufficiently mature to decide whether to have the abortion and grant the petition and give the minor the right of self-consent to the abortion, setting forth the grounds for so finding; or

2. Find the performance of the abortion, despite the absence of the consent of a parent, is in the best interests of the minor and give judicial consent to the abortion, setting forth the grounds for so finding.

If the court does not find the allegations of the petition to be true or if good cause does not appear from the evidence heard, the court shall deny the petition, setting forth the grounds on which the petition is denied.

If, in hearing the petition, the court becomes aware of allegations which, if true, would constitute a violation of any section of title 18, Idaho Code, or would bring a child within the purview of chapter 16, title 16, Idaho Code, the court shall order, upon entry of final judgment in the proceeding under this subsection, that an appropriate investigation be initiated or an appropriate information, complaint or petition be filed. Such allegations shall be forwarded by the court with due consideration for the confidentiality of the proceedings under this section.

(c) A notice of appeal from an order issued under the provisions of this subsection shall be filed within two (2) days from the date of issuance of the order. The record on appeal shall be completed and the appeal shall be perfected as soon as practicable, but in no event later than five (5) days from the filing of notice of appeal. Because time may be of the essence regarding the performance of the abortion, appeals pursuant to this subsection shall receive expedited appellate review.

(d) Except for the time for filing a notice of appeal, a court may enlarge the times set forth pursuant to this subsection upon request of the minor or upon other good cause appearing, with due consideration for the expedited nature of these proceedings.

(e) No filing, appeal or other fees shall be charged for cases or appeals brought pursuant to this section.

(f) If a minor desires an abortion, then she shall be orally informed of, and, if possible, sign the written consent required by this act, in the same manner as an adult person. No abortion shall be caused or performed on any minor against her will, except that an abortion may be performed against the will of a minor pursuant to court order if the abortion is necessary to preserve the life of the minor.

(g) All records contained in court files of judicial proceedings arising under the provisions of this subsection, and subsection (3) of this section, shall be confidential and exempt from disclosure pursuant to section 9-340G, Idaho Code. Dockets and other court records shall be maintained and court proceedings undertaken so that the names of the parties to actions brought pursuant to this section will not be disclosed to the public.

(2) The administrative director of the courts shall compile statistics for each county for each calendar year, accessible to the public, including:

(a) The total number of petitions filed pursuant to paragraph (b) of subsection (1) of this section; and

(b) The number of such petitions filed where a guardian ad litem was requested and the number where a guardian ad litem or other person acting in such capacity was appointed; and

(c) The number of such petitions for which the right to self-consent was granted; and

(d) The number of such petitions for which the court granted its informed consent; and

(e) The number of such petitions which were denied; and

(f) For categories described in paragraphs (c), (d) and (e) of this subsection, the number of appeals taken from the court's order in each category; and

(g) For each of the categories set out in paragraph (f) of this subsection, the number of cases for which the district court's order was affirmed and the number of cases for which the district court's order was reversed.

(3) In addition to any other cause of action arising from statute or otherwise, any person injured by the causing or performing of an abortion on a minor in violation of any of the requirements of paragraph (a) of subsection (1) of this section, shall have a private right of action to recover all damages sustained as a result of such violation, including reasonable attorney's fees if judgment is rendered in favor of the plaintiff.

(4) Statistical records.

(a) The vital statistics unit of the department of health and welfare shall, in addition to other information required pursuant to section 39-261, Idaho Code, require the complete and accurate reporting of information relevant to each abortion performed upon a minor which shall include, at a minimum, the following:

(i) Whether the abortion was performed following the physician's receipt of:

1. The written informed consent of a parent and the minor; or

2. The written informed consent of an emancipated minor for herself; or

3. The written informed consent of a minor for herself pursuant to a court order granting the minor the right to self-consent; or

4. The written informed consent of a court pursuant to an order which includes a finding that the performance of the abortion, despite the absence of the consent of a parent, is in the best interests of the minor; or

5. The professional judgment of the attending physician that the performance of the abortion was immediately necessary due to a medical emergency and there was insufficient time to obtain consent from a parent or a court order.

(ii) If the abortion was performed due to a medical emergency and without consent from a parent or court order, the diagnosis upon which the attending physician determined that the abortion was immediately necessary due to a medical emergency.

(b) The knowing failure of the attending physician to perform any one (1) or more of the acts required under this subsection is grounds for discipline pursuant to section 54-1814(6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars ($100) for each month or portion thereof that each such failure continues, payable to the center for vital statistics and health policy, but such failure shall not constitute a criminal act.

(5) As used in this section:

(a) "Cause or perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage upon a minor known to be pregnant.

(b) "Emancipated" means any minor who has been married or is in active military service.

(c) (i) "Medical emergency" means a sudden and unexpected physical condition which, in the reasonable medical judgment of any ordinarily prudent physician acting under the circumstances and conditions then existing, is abnormal and so complicates the medical condition of the pregnant minor as to necessitate the immediate causing or performing of an abortion:

1. To prevent her death; or

2. Because a delay in causing or performing an abortion will create serious risk of immediate, substantial and irreversible impairment of a major physical bodily function of the patient.

(ii) The term "medical emergency" does not include:

1. Any physical condition that would be expected to occur in normal pregnancies of women of similar age, physical condition and gestation; or

2. Any condition that is predominantly psychological or psychiatric in nature.

(d) "Minor" means a woman less than eighteen (18) years of age.

(e) "Parent" means one (1) parent of the unemancipated minor, or

a guardian appointed pursuant to chapter 5, title 15, Idaho Code, if the minor has one.

SECTION 6. That Section 18-611, Idaho Code, be, and the same is hereby repealed.

SECTION 7. 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 18-614, Idaho Code, and to read as follows:

18-614. IDENTIFICATION REQUIRED. (1) No person may cause or perform an abortion otherwise permitted pursuant to Idaho law until the physician either confirms the age of the woman by positive identification or secures legal consent pursuant to section 18-609A, Idaho Code. A photocopy of such positive identification or legal consent shall be kept in the physician's office file for the woman. If due to medical emergency there is insufficient time for the physician to confirm the woman's age by positive identification before performing the abortion, the physician shall as soon as possible after performing the abortion, confirm the age of the woman by positive identification and retain a photocopy.

(2) "Positive identification" means a lawfully issued state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military card, bearing the person's photograph and date of birth, or the person's valid passport, or certified copy of the person's own birth certificate.

SECTION 8. 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 18-615, Idaho Code, and to read as follows:

18-615. SEVERABILITY. If any one (1) or more provision, section, subsection, sentence, clause, phrase, or word of this chapter or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed every section of this chapter and each provision, section, subsection, sentence, clause, phrase or word thereof irrespective of the fact that any one (1) or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

SECTION 9. 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 9-340G, Idaho Code, and to read as follows:

9-340G. EXEMPTION FROM DISCLOSURE -- RECORDS OF COURT PROCEEDINGS REGARDING JUDICIAL AUTHORIZATION OF ABORTION PROCEDURES FOR MINORS. In accordance with section 18-609A, Idaho Code, the following records are

exempt from public disclosure: records contained in court files of judicial proceedings regarding judicial authorization of a minor's consent to an abortion or the performance of abortion procedures upon a minor who would otherwise have to obtain consent for the procedure from a parent or guardian, in addition to records of any judicial proceedings filed under section 18-609A(3), Idaho Code.

SECTION 10. This act shall be in full force and effect on and after July 1, 2000.

Approved February 22, 2000.

CHAPTER 8
(S.B. No. 1348)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2000; 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 192, Laws of 1999, there is hereby appropriated to the Department of Agriculture the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1999, through June 30, 2000:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. PLANT INDUSTRIES:			
FROM:			
General Fund	$44,700	$122,500	$167,200
II. SHEEP COMMISSION:			
FROM:			
General Fund	$12,000	$ 3,000	$ 15,000
GRAND TOTAL	$56,700	$125,500	$182,200

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 $167,200 as appropriated in Section 1 of this act.

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 22, 2000.

CHAPTER 9
(S.B. No. 1349)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE ENDOWMENT FUND INVESTMENT BOARD FOR FISCAL YEAR 2000; 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 239, Laws of 1999, there is hereby appropriated to the Office of the Governor for the Endowment Fund Investment Board the following amount to be expended according to the designated expense class from the listed fund for the period July 1, 1999, through June 30, 2000:

FOR: Operating Expenditures	$100,000
FROM: General Fund	$100,000

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 22, 2000.

CHAPTER 10
(H.B. No. 472)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 2000; PROVIDING TRANSFERS TO THE FIRE SUPPRESSION DEFICIENCY FUND; 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 253, Laws of 1999, there is hereby appropriated to the Department of Lands the following amounts to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 1999, through June 30, 2000:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR LUMP SUM	TOTAL
I. FOREST AND RANGE FIRE PROTECTION:				
FROM:				
General Fund			$1,765,000	$1,765,000
Fire Suppression Deficiency Fund			916,000	916,000
TOTAL			$2,681,000	$2,681,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR LUMP SUM	TOTAL
II. FOREST RESOURCES MANAGEMENT:				
FROM:				
General Fund	$7,300	$10,200		$ 17,500
GRAND TOTAL	$7,300	$10,200	$2,681,000	$2,698,500

SECTION 2. 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 $1,765,000 as appropriated in Section 1 of this act.

SECTION 3. 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 $17,500 as appropriated in Section 1 of this act.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 22, 2000.

CHAPTER 11
(S.B. No. 1362)

AN ACT

RELATING TO THE APPROPRIATION TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2000; REDUCING THE APPROPRIATION FOR THE INSTITUTIONAL SUPPORT PROGRAM FOR FISCAL YEAR 2000; APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF CORRECTION FOR FISCAL YEAR 2000; AND DECLARING AN EMERGENCY.

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

SECTION 1. The appropriation to the Department of Correction for the Institutional Support Program made in Section 1, Chapter 241, Laws of 1999, is hereby reduced by the following amount from the designated expense class from the listed fund for the period July 1, 1999, through June 30, 2000:

I. INSTITUTIONAL SUPPORT:	
FOR:	
Operating Expenditures	$10,100
FROM:	
General Fund	$10,100

SECTION 2. In addition to the appropriation made in Section 1, Chapter 241, Laws of 1999, there is hereby appropriated to the Department of Correction the following amounts to be expended for the desig-

nated programs according to the designated expense classes from the listed funds for the period July 1, 1999, through June 30, 2000:

I. ADMINISTRATION DIVISION:	
FOR:	
Trustee and Benefit Payments	$4,213,400
FROM:	
General Fund	$4,122,800
Federal Grant Fund	90,600
TOTAL	$4,213,400
II. IDAHO STATE CORRECTIONAL INSTITUTION:	
FOR:	
Operating Expenditures	$ 3,000
FROM:	
Miscellaneous Revenue Fund	$ 3,000
III. IDAHO MAXIMUM SECURITY INSTITUTION:	
FOR:	
Operating Expenditures	$ 6,500
FROM:	
Miscellaneous Revenue Fund	$ 6,500
IV. POCATELLO WOMEN'S CORRECTIONAL CENTER:	
FOR:	
Personnel Costs	$ 21,100
FROM:	
Miscellaneous Revenue Fund	$ 21,100
V. INSTITUTIONAL SUPPORT:	
FOR:	
Operating Expenditures	$ 66,000
FROM:	
Miscellaneous Revenue Fund	$ 66,000
VI. COMMISSION FOR PARDONS AND PAROLE:	
FOR:	
Operating Expenditures	$ 20,000
FROM:	
Miscellaneous Revenue Fund	$ 20,000
GRAND TOTAL	$4,330,000

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

Approved February 25, 2000.

CHAPTER 12
(H.B. No. 452)

AN ACT

RELATING TO THE IDAHO POTATO COMMISSION; AMENDING SECTION 22-1210, IDAHO CODE, TO PROVIDE THAT ALL TORT OBLIGATIONS ARISING OUT OF ACTS AND OMISSIONS OF THE COMMISSION ARE BINDING ON THE STATE OF IDAHO AS, AND TO THE EXTENT PROVIDED FOR, IN THE IDAHO TORT CLAIMS

ACT; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 22-1210, Idaho Code, be, and the same is hereby amended to read as follows:

22-1210. LIMIT ON STATE LIABILITY -- COMPENSATION AND EXPENSES. All contractual expenses incurred by the commission in performing its duties and exercising its powers shall be without liability on the part of the state. All tort obligations arising out of acts and omissions of the commission are binding on the state of Idaho as, and to the extent provided for, in chapter 9, title 6, Idaho Code.

No member of the commission shall receive any compensation for his services as such member, except as provided in section 22-1202, Idaho Code, but members and employees of the commission and other persons acting under the direction of the commission shall, if approved by the commission, be reimbursed for their actual and reasonable expenses incurred in performing their duties under this chapter.

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, 1993.

Approved March 3, 2000.

CHAPTER 13
(H.B. No. 401)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM AND THE FIREMEN'S RETIREMENT FUND; AMENDING SECTION 59-1301, IDAHO CODE, TO REPLACE THE TERM "PRUDENT MAN" WITH THE TERM "PRUDENT PERSON"; AMENDING SECTION 59-1316, IDAHO CODE, TO MAKE THE SECTION CONSISTENT WITH DISCLOSURE UNDER THE PUBLIC RECORDS ACT AND TO AUTHORIZE DISCLOSURE OF THE IDENTITY OF A DECEASED MEMBER'S BENEFICIARY TO THE MEMBER'S SPOUSE AND CHILDREN AND TO THE COURT-APPOINTED ADMINISTRATOR OF THE MEMBER'S ESTATE; AMENDING SECTION 59-1319, IDAHO CODE, TO DELETE THE DEADLINE OF JULY 1, 2000, FOR AMENDING DOMESTIC RETIREMENT ORDERS ISSUED PRIOR TO JULY 1, 1998; AMENDING SECTION 72-1432, IDAHO CODE, TO INCLUDE AUGUST 31 IN THE TWELVE-MONTH PERIOD USED FOR DETERMINING THE AVERAGE ANNUAL PAID SALARIES OF PAID FIREFIGHTERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 72-1442, IDAHO CODE, TO BE CONSISTENT WITH SECTION 72-1447, IDAHO CODE, IN SETTING FORTH MAXIMUM BENEFITS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 59-1301, Idaho Code, be, and the same is hereby amended to read as follows:

59-1301. PUBLIC EMPLOYEE RETIREMENT SYSTEM CREATED -- PURPOSE -- DUTIES OF FIDUCIARIES OF RETIREMENT FUND. (1) A retirement and disability benefit system is created and placed under the management of a retirement board for the purpose of providing a retirement system and other benefits for public employees in the state of Idaho under this chapter. The retirement system shall be known as the "Public Employee Retirement System of Idaho."

(2) The purpose of such system is to provide an orderly means whereby public employees in the state of Idaho who become superannuated or otherwise incapacitated as the result of age or disability, may be retired from active service without prejudice and without inflicting a hardship upon the employees retired, and to enable such employees to accumulate pension credits to provide for old-age, disability, death and termination of employment, thus effecting economy and efficiency in the administration of the state, county and local government. The legislature, therefore, declares that, in its considered judgment, the public good, and the general welfare of the citizens of this state required the enactment of this measure, under the police powers of the state.

With respect to the retirement fund created in this chapter, the fiduciaries of the fund shall discharge their duties with respect to the fund solely in the interest of the members and their beneficiaries

(a) for the exclusive purpose of:

(i) providing benefits to members and their beneficiaries; and

(ii) defraying reasonable expenses of administering the system;

(b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent ~~man~~ person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(c) by diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) in accordance with the provisions of the Idaho Code governing the system.

SECTION 2. That Section 59-1316, Idaho Code, be, and the same is hereby amended to read as follows:

59-1316. MEMBER'S RETIREMENT RECORDS CONFIDENTIAL. Each member shall furnish the board with such information as the board shall deem necessary for the proper operation of the system. ~~Except as specifically~~ As provided ~~by law~~ in section 9-340C, Idaho Code, information contained in the retirement system mortgage portfolio loan documents and in each member's retirement system records is ~~subject to disclosure according to chapter 3, title 9, Idaho Code,~~ confidential and may not be divulged except as ordered by a court; or except as may be required by the employer member or by the retirement board and its staff in order to carry into effect the purposes of this chapter. A

member may by his written authorization release specific information from his own retirement system records to a stated designee. If the member is deceased, the member's contingent annuitant or beneficiary may, by written authorization, release specific information from the member's retirement system records to a stated designee. The retirement system may also disclose the identity of a deceased member's beneficiary to the member's spouse, children, and to the court-appointed administrator of the member's estate. Should a court order direct distribution or partial distribution of a member's benefit as defined in either chapter 13, title 59, Idaho Code, or chapter 14, title 72, Idaho Code, to the member's spouse or former spouse, the system may release to the spouse, former spouse, or the court issuing the order, information pertaining to the member's retirement account only with regard to the calculation, division and distribution of the spouse's or former spouse's community property portion of the account or benefit.

SECTION 3. That Section 59-1319, Idaho Code, be, and the same is hereby amended 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, which is the date of divorce or the date of an earlier property settlement agreement incorporated into the initial divorce decree, 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, <u>and</u> that the value of the distribution is not materially changed<u>.</u> ~~and--that--such--modified--order--be-submitted-and-become-an approved-domestic-retirement-order-before-July-1,-2000.~~

SECTION 4. That Section 72-1432, Idaho Code, be, and the same is hereby amended to read as follows:

72-1432. PENSION FUND CONTRIBUTIONS BY CITIES AND FIRE DISTRICTS -- REMITTANCES. Beginning October 1, 1978, it shall also be the duty of the cities and fire districts of this state employing paid fire-

fighters who are establishing the right to benefits under the provisions of chapter 14, title 72, Idaho Code, and of the boards and officers having authority therein, to cause to be remitted to the public employee retirement system board, as an incident to and part of the current expenses of such cities and fire districts, a sum equivalent to the total contribution rate and tax percentage paid into the Idaho public employee retirement system and the Social Security Act on other public employees plus one percent (1%) thereafter of the annual average paid firefighter's salary or wage in the state of Idaho or the monthly gross salary or wage of each individual firefighter, to be computed according to the classification of each firefighter under Option I or Option II as defined under section 72-1434, Idaho Code, for each paid firefighter employed by said cities or fire districts; which said sum shall be measured and determined by the actual expenditures for such purpose during the preceding year from September 1 to August 30~~0~~1, and remitted by the end of the succeeding payroll period as herein provided for remittances for individual firefighters as set forth in ~~this~~ section 72-1431, Idaho Code.

SECTION 5. That Section 72-1442, Idaho Code, be, and the same is hereby amended to read as follows:

72-1442. PENSION PAYMENT -- MAXIMUM. (1) No paid firefighter, retiring under the provisions of chapter 14, title 72, Idaho Code, shall receive more than one hundred percent (100%) of ~~his last year's monthly average salary or wage~~ the firefighter's average compensation for the three (3) consecutive years which produce the greatest aggregate compensation, which said monthly sum shall vary annually according to the determination of the "cost of living adjustment" as set forth in section 72-1471, Idaho Code.

(2) As the amount, terms and conditions of benefits under this chapter may be revised from time to time, the application of such revisions shall be prospective only and not retrospective or retroactive unless otherwise provided by law.

SECTION 6. This act shall be in full force and effect on and after July 1, 2000.

Approved March 3, 2000.

CHAPTER 14
(H.B. No. 416)

AN ACT

RELATING TO STATE CHARITABLE INSTITUTIONS; AMENDING SECTION 66-1106, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE TO THE STATE JUVENILE CORRECTIONS INSTITUTIONS FUND; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 66-1106, Idaho Code, be, and the same is

hereby amended to read as follows:

66-1106. CHARITABLE INSTITUTIONS FUND -- TRANSFER OF MONEYS TO SEPARATE FUNDS. Any and all moneys hereafter accruing to said charitable institutions fund shall be forthwith transferred and credited to the following designated funds in the following proportions, respectively, to wit:

To the Idaho State University fund, four-fifteenths (4/15) thereof;

To the State Juvenile Corrections ~~Center~~ Institutions fund, four-fifteenths (4/15) thereof;

To the State Hospital North fund, four-fifteenths (4/15) thereof;

To the Veterans Home fund, five-thirtieths (5/30) thereof;

To the School for the Deaf and Blind fund, one-thirtieth (1/30) thereof.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 3, 2000.

CHAPTER 15
(H.B. No. 446)

AN ACT

RELATING TO FILING TAX RETURNS ELECTRONICALLY; AMENDING SECTION 63-113, IDAHO CODE, AS ADDED BY SECTION 10, CHAPTER 117, LAWS OF 1997, TO REDESIGNATE THE SECTION AND TO CLARIFY THE FILING DATE OF ELECTRONICALLY FILED RETURNS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-113, Idaho Code, as added by Section 10, Chapter 117, Laws of 1997, be, and the same is hereby amended to read as follows:

63-113~~3~~5. FILING OF ELECTRONIC RETURNS AND DOCUMENTS -- ELECTRONIC FUNDS TRANSFERS. (1) Any return or other document filed with or submitted to the state tax commission may be transmitted electronically to the commission when permitted by rules or procedures established by the commission. Payments of any amounts to the commission by electronic funds transfer shall be in accordance with sections 67-2026 and 67-2026A, Idaho Code.

(2) As used in this section, "transmitted electronically" means the use of a telecommunication or computer network to transfer information in an optical, electronic, magnetic or other machine sensible form. The term includes the use of facsimile machines and third party value added networks.

(3) Any return or other document transmitted electronically to the commission and accepted by the commission shall be deemed received on the earlier of:

(a) The date it arrives at the commission or, ~~at--a--third--party value--added-network-under-contract-with-the-commission-to-receive the-return-or-document~~ in the case of returns filed through the Internal Revenue Service, the date the return is received by the Internal Revenue Service; or

(b) The date that a third party, in accordance with procedures approved by the commission, transmits the return to the commission or makes it otherwise available to the commission.

(4) Any payment made electronically shall be deemed paid on the date the funds are available to the state treasurer.

(5) To constitute a properly filed valid tax return or report, a document transmitted electronically or submitted in a physical machine sensible form such as tape or disk must:

(~~1~~a) Be filed in a format prescribed by the tax commission and be sufficiently free of errors to identify the filer and the tax type and to calculate the amounts due;

(~~2~~b) Contain the taxpayer's name, address (if required by the tax commission) and identifying number;

(~~3~~c) Be signed by the taxpayer or other individual effecting the signature or verification; and

(~~4~~d) Include sufficient information to permit the mathematical verification of any tax liability.

(6) The tax commission may, by rule, prescribe exclusive methods for electronically signing or verifying a return or other document transmitted electronically to the commission that shall have the same validity and consequences as manual signing by the taxpayer or other individual effecting the signature or verification.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 3, 2000.

CHAPTER 16
(H.B. No. 448)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO UPDATE REFERENCES 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, ~~1999~~ 2000.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this sec-

tion 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, 2000.

Approved March 3, 2000.

CHAPTER 17
(H.B. No. 449)

AN ACT

RELATING TO COUNTY FAIR BOARDS; AMENDING SECTION 22-204, IDAHO CODE, TO PROVIDE THAT COUNTY FAIR BOARD MEMBERS MAY FILE ANOTHER FORM OF FINANCIAL RESPONSIBILITY SUITABLE TO THE BOARD OF COUNTY COMMISSIONERS IN LIEU OF A SURETY BOND AND TO PROVIDE THAT THE FAIR BOARD SHALL MEET IN SUCH TIMES AND PLACES AS THE COUNTY FAIR BOARD DEEMS NECESSARY IN COMPLIANCE WITH THE OPEN MEETING LAW; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 22-204, Idaho Code, be, and the same is hereby amended to read as follows:

22-204. DUTIES OF COUNTY FAIR BOARD -- BONDS OF MEMBERS -- MEETINGS -- FURTHER DUTIES. The county fair board shall be charged with the care and custody of all property belonging to the county and used for fair purposes, and shall be responsible for all moneys received by it, raised by tax levy or levies for fair purposes as well as all receipts from the operation of the fair and any other moneys received from other sources for fair purposes. Each member of the county fair board shall file with the board of county commissioners a bond <u>or other form of financial responsibility suitable to the county commissioners</u> in the sum of not less than one thousand dollars ($1,000) to be approved by the board of county commissioners. The county fair board shall conduct all of its business at the place designated by the board of county commissioners as the place for conducting the county fair, which shall be the place of business of the county fair board. It shall meet at ~~its place of business on the first Monday of January each year, and thereafter bi-monthly on the first Monday of the month, except as herein otherwise provided; provided, that it shall meet on the first Monday after the creation of such board under the provisions hereof~~ <u>such times and places as the county fair board deems necessary in compliance with the open meeting law.</u>

It shall safely keep or cause to be safely kept all moneys coming into its care, custody or possession in strict compliance with the provisions of the public depository law of this state. It shall formu-

late in writing and file in its office all plans adopted by it from time to time in connection with the conduct of the business of the county fair, and also file a copy of the same with the board of county commissioners of the county. It shall keep or cause to be kept proper records of its proceedings, business transactions, and true and proper accounts of all moneys received by it and expended or on hand; and it shall require proper vouchers evidencing all disbursements of money. The records of the board shall be open to inspection by any taxpayer or voter within the county during all regular office hours. The board shall publish in at least one (1) issue of the official newspaper of the county a detailed statement of all moneys received and expended in connection with the operation of any fair or fairs, within ninety (90) days after the holding of any such fair within the county.

It shall take charge of and manage all such property as the county may have acquired or set aside for fair purposes pursuant to the provisions of section 31-822, Idaho Code. It may recommend to the board of county commissioners that such board purchase such real and personal property as may be needed for fair purposes. It shall have power to employ labor, award prizes, make exhibition contracts, fix and charge admission and entrance fees, let contracts for concessions or services to be conducted at the fair or under the direction of the county fair board, but if any concession or service is to extend for a period of less than twelve (12) days in a calendar year, the concession or service may be awarded without bid, and do all other things necessary for holding county fairs. It shall fix the salaries of the secretary and treasurer and prescribe the time and manner of payment. The county fair board shall not have the power to create any indebtedness in excess of the amount to be derived from the special levies for each year and the estimated income from annual fair receipts, nor shall it mortgage or otherwise pledge or encumber any of the real or personal property owned by the county and used for fair purposes.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 3, 2000.

CHAPTER 18
(H.B. No. 457)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3069, IDAHO CODE, TO REQUIRE TAXPAYERS TO REPORT TO THE STATE TAX COMMISSION ADJUSTMENTS TO INCOME TAXES MADE BY OTHER STATES OR TERRITORIES WHICH RESULT IN A CHANGE OF THE AMOUNT OF CREDIT FOR TAXES PAID TO ANOTHER STATE OR TERRITORY; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3069A, IDAHO CODE, TO PROVIDE A SPECIAL STATUTE OF LIMITATIONS ON REFUNDS OR ASSESSMENTS OF INCOME TAXES RESULTING FROM CHANGES TO THE CREDIT FOR TAXES PAID TO ANOTHER STATE OR TERRITORY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-3069, Idaho Code, be, and the same is hereby amended to read as follows:

63-3069. NOTICE OF ADJUSTMENT OF FEDERAL OR STATE TAX LIABILITY. (1) Upon final determination of any deficiency or refund of federal taxes written notice shall be immediately sent to the state tax commission by the taxpayer.

(2) Upon final determination of any deficiency or refund of income tax due to another state or territory to which the credit for taxes paid another state or territory applies, as provided in section 63-3029, Idaho Code, written notice shall be immediately sent to the state tax commission by the taxpayer.

SECTION 2. 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 63-3069A, Idaho Code, and to read as follows:

63-3069A. SPECIAL STATUTE OF LIMITATIONS. When a final determination of any income tax due to another state or territory changes the amount of the credit for taxes paid to another state or territory as provided in section 63-3029, Idaho Code:

(1) A claim for any credit or refund resulting from the change shall be filed within the later of:

(a) The time required by section 63-3072, Idaho Code; or

(b) One (1) year of the date the adjustment became final under the laws of the other state or territory.

(2) The period of limitation for issuing a notice of deficiency shall not expire until the later of:

(a) The time provided by section 63-3068, Idaho Code; or

(b) One (1) year from the date of delivery to the state tax commission by the taxpayer of the notice required by section 63-3069, Idaho Code.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 3, 2000.

CHAPTER 19
(H.B. No. 467)

AN ACT

RELATING TO THE INCOME TAX; AMENDING SECTION 63-3046, IDAHO CODE, TO REDUCE THE PENALTY APPLICABLE TO PERSONS WHO FILE INCOME TAX RETURNS WITH THE STATE TAX COMMISSION BUT DO NOT PAY THE TAX SHOWN ON THE RETURN AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-3046, Idaho Code, be, and the same is hereby amended to read as follows:

63-3046. PENALTIES AND ADDITIONS TO THE TAX IN CASE OF DEFICIENCY. (a) If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five ~~per cent~~ percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.

(b) If any part of any deficiency is due to fraud with intent to evade tax, then fifty ~~per cent~~ percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.

(c) In the event the return required by this chapter is not filed, ~~or--in the event the return is filed but the tax shown thereon to be due is not paid,~~ there may be collected a penalty of five ~~per cent~~ percent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until ~~such~~ the return is filed or the penalty amounts to twenty-five ~~per cent~~ percent (25%) of the tax due on such returns.

(d) In the event the return required by this chapter is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of one-half percent (0.5%) of the tax due on such return for each month elapsing after the later of the due date of such return or the date the return was filed until the tax is paid or the penalty amounts to twenty-five percent (25%) of the tax due on such returns.

(e) (1) If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten ~~per cent~~ percent (10%) of the amount of any underpayment attributable to such understatement.

(2) For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

(i) Ten ~~per cent~~ percent (10%) of the tax required to be shown on the return for the taxable year, or

(ii) Five thousand dollars ($5,000).

(3) In the case of a corporation, paragraph (~~d~~e)(2)(ii) of this section shall be applied by substituting ten thousand dollars ($10,000) for five thousand dollars ($5,000).

(4) For purposes of paragraph (~~d~~e)(2) of this section, the term "understatement" means the excess of:

(i) The amount of tax required to be shown on the return for the taxable year, over

(ii) The amount of the tax imposed which is shown on the return.

(5) The amount of the understatement under paragraph (4) shall be reduced by that portion of the understatement which is attributable to:

(i) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or

(ii) Any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

(6) In the case of any item attributable to a tax shelter as defined in section 6661 of the Internal Revenue Code:

(i) Paragraph (5)(ii) shall not apply, and

(ii) Paragraph (5)(i) shall not apply unless (in addition to meeting the requirements of such paragraph) the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment.

(7) The state tax commission may waive all or any part of the addition to tax provided by this section on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

(~~e~~f) (1) Any person who fails to file a statement of payment to another person required by this chapter, including the duplicate statement of tax withheld on wages, on the date prescribed therefor (including any extension of time for filing) shall, be subject to a penalty of two dollars ($2.00) for each month or part of a month each statement is not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars ($2,000).

(2) Any employer required to register under the provisions of section 63-3035, Idaho Code, who fails to register after receiving written notice from the state tax commission of the requirement to register shall be subject to a penalty of one hundred dollars ($100) for each month or part of a month after the date of the notice during which the failure occurs.

(3) The penalties provided in this subsection shall not apply if the person shows that the failure to register is due to reasonable cause and not to willful neglect.

(4) The state tax commission shall give notice of any penalty provided in this subsection and shall assess the penalties in the manner provided for deficiencies of tax.

(~~f~~g) If the penalty to be added to the tax by subsection (a), (b), (c), (d), ~~or~~ (e) or (f) of this section is less than ten dollars ($10.00), the penalty to be added to the tax shall be a minimum of ten dollars ($10.00).

(~~g~~h) A processing charge to be determined and established annually by the state tax commission shall be collected from any person who draws or delivers a check, draft or order for the payment of money in complete or partial satisfaction of the tax imposed by this chapter if that person does not have sufficient funds in or credit with the bank or depository upon which the check, draft or order is drawn. Money collected under this subsection shall be paid to the state tax commission to defer costs of handling such checks, drafts or orders.

SECTION 2. This act shall be in full force and effect on and after January 1, 2001.

Approved March 3, 2000.

CHAPTER 20
(H.B. No. 474)

AN ACT

RELATING TO THE CIRCUIT BREAKER PROPERTY TAX REDUCTION; AMENDING SECTION 63-701, IDAHO CODE, TO REVISE THE DEFINITION OF OWNER AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year in which the claim was filed a claimant must be an owner of a homestead and be:

(a) Not less than sixty-five (65) years old; or

(b) A fatherless or motherless child under the age of eighteen (18) years of age; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States veterans administration; or

(f) A person as specified in 42 USC 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant and used as the primary dwelling place of the claimant and occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. Homestead does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and any person or persons who live in the same dwelling, and share its furnishings, facilities, accommodations or expenses. The term includes any person owing a duty of support to the applicant pursuant to section 32-1002, Idaho Code,

unless the person qualifies as a "nonhousehold member" pursuant to subsection (6) of this section. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (9)(b) of this section.

(4) "Household income" means all income received by all persons of a household in a calendar year while members of the household.

(5) "Income" means the sum of federal adjusted gross income as defined in the internal revenue code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income, alimony, support money, income from inheritances, nontaxable strike benefits, the nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act, state unemployment insurance laws, and veterans disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the internal revenue code), nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities, worker's compensation and the gross amount of loss of earnings insurance. It does not include capital gains, gifts from nongovernmental sources or inheritances. To the extent not reimbursed, cost of medical care as defined in section 213(d) of the internal revenue code, incurred by the household may be deducted from income. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse, provided however, that the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant does not file a federal tax return the claimant's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant filed a federal tax return.

(6) "Nonhousehold member" means any nonspouse who lives in the claimant's dwelling for the purpose of providing protective oversight, caregiving, or personal care services to the claimant, or who is receiving disability benefits pursuant to subsection (1)(d) or (e) of this section, or who is over age sixty-five (65) and lives in the claimant's dwelling and receives protective oversight, caregiving or personal care services provided by the claimant.

(7) "Occupied" means actual use and possession.

(8) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who as grantor created a revocable or irrevocable trust and named himself as beneficiary of that trust, or who is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation which holds title in fee simple or holds a certificate of motor vehicle title ~~and~~ <u>or</u> who has retained or been granted a life estate. "Owner" shall not include any person that otherwise occupies

property as beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered ownership for determining qualification for property tax reduction benefits, however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property is held by a person who has died without timely filing a claim for property tax reduction, the estate shall be the "owner."

(9) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and:

(i) At least six (6) months during the prior year; or

(ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or

(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(16), Idaho Code, or a dwelling other than the one ~~(1)~~ upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

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, 2000.

Approved March 3, 2000.

CHAPTER 21
(H.B. No. 480)

AN ACT

RELATING TO REAL PROPERTY IN THE BUNKER HILL CLEANUP SITE; AMENDING SECTION 39-107a, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND WELFARE MAY MANAGE, LEASE OR DISPOSE OF CERTAIN PROPERTY IN THE BUNKER HILL AREA FOR THE PURPOSE OF FACILITATING APPROPRIATE OPERATION AND MAINTENANCE ACTIVITIES, ENCOURAGING ECONOMIC DEVELOPMENT OF THE SILVER VALLEY OR ASSISTING LOCAL GOVERNMENTAL ENTITIES AND TO PROVIDE THAT THE MANAGEMENT, LEASE OR DISPOSAL OF THE PROPERTY SHALL NOT BE SUBJECT TO THE STATE SURPLUS PROPERTY LAW 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 39-107a, Idaho Code, be, and the same is hereby amended to read as follows:

39-107a. REAL PROPERTY IN BUNKER HILL CLEANUP SITE. Notwithstanding any other provision of law to the contrary, the department of health and welfare may accept transfer from the United States of any real property or interest in real property acquired by the United States for remediation purposes concerning the Bunker Hill Superfund Site pursuant to 42 U.S.C. section 9604(j). The state of Idaho shall incur no liability nor be subject to any claims related to the existence, release or threatened release of any hazardous substance or contaminant or pollutant on, or from, any such real property. ~~Any such real--property which has a public use or commercial value and which is not useful or usable by the~~ The department of health and welfare may, in its sole discretion, manage, lease or dispose of such property for the purpose of facilitating appropriate operation and maintenance activities, encouraging economic development of the Silver Valley or assisting local governmental entities. The management, lease or disposal of such property shall not be subject to ~~sections 58-331 through 58-335~~ chapter 3, title 58, Idaho Code~~, except that any~~. Any receipts from the management, lease or disposal of such property shall be deposited in the Bunker Hill Cleanup Trust Fund established by the Trust Fund Declaration of the state of Idaho dated May 2, 1994 (Attachment ~~N~~M, Consent Decree, United States of America v. Asarco, Inc. No. CV-94-0206-N-HLR (D. Idaho)) for the purpose of funding institutional control or operation and maintenance activities regarding the site.

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 3, 2000.

CHAPTER 22
(H.B. No. 498)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE BOARD OF NURSING, BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS, REAL ESTATE COMMISSION AND BUREAU OF OCCUPATIONAL LICENSES FOR FISCAL YEAR 2000; 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 238, Laws of 1999, there is hereby appropriated to the Board of Nursing, Board of Professional Engineers and Land Surveyors, Real Estate Commission, and the Bureau of Occupational Licenses in the Department of Self-Governing Agencies the following amounts to be expended for the designated programs according to the designated expense classes from the listed fund for the period July 1, 1999, through June 30, 2000:

A. BOARD OF NURSING:	
FOR:	
Operating Expenditures	$ 47,500
FROM:	
State Regulatory Fund	$ 47,500
B. BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS:	
FOR:	
Operating Expenditures	$ 69,600
FROM:	
State Regulatory Fund	$ 69,600
C. REAL ESTATE COMMISSION:	
FOR:	
Operating Expenditures	$ 50,000
FROM:	
State Regulatory Fund	$ 50,000
D. BUREAU OF OCCUPATIONAL LICENSES:	
FOR:	
Operating Expenditures	$ 9,000
FROM:	
State Regulatory Fund	$ 9,000
GRAND TOTAL	$176,100

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 3, 2000.

CHAPTER 23
(H.B. No. 499)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 2000; INCREASING THE NUMBER OF AUTHORIZED FULL-TIME POSITIONS; 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 1999, there is hereby appropriated to the Department of Fish and Game the following amounts to be expended for the designated program according to the designated expense classes from the listed funds for the period July 1, 1999, through June 30, 2000:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. FISHERIES:				
FROM:				
Fish and Game Fund		$77,200	$159,800	$237,000
Fish and Game Federal Fund	$78,000			78,000
TOTAL	$78,000	$77,200	$159,800	$315,000

SECTION 2. In addition to the full-time positions authorized in Section 2, Chapter 256, Laws of 1999, the Department of Fish and Game is authorized four (4) additional positions for a total of no more than five hundred (500) full-time equivalent positions at any point during the period July 1, 1999, through June 30, 2000, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee shall be notified promptly of any positions so authorized.

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 3, 2000.

CHAPTER 24
(H.B. No. 532)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE CAPITOL COMMISSION FOR FISCAL YEAR 2000; 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 342, Laws of 1999, there is hereby appropriated to the Depart-

ment of Administration the following amount to be expended for the designated program according to the designated expense class from the listed fund for the period July 1, 1999, through June 30, 2000:

A. CAPITOL COMMISSION:

FOR:	
Operating Expenditures	$20,000
FROM:	
Capitol Endowment 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 March 3, 2000.

CHAPTER 25
(H.B. No. 533)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF HEALTH AND WELFARE FOR MEDICAL ASSISTANCE SERVICES FOR FISCAL YEAR 2000; 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 190, Laws of 1999, there is hereby appropriated to the Department of Health and Welfare for Medical Assistance Services the following amounts to be expended according to the designated expense classes from the listed funds for the period July 1, 1999, through June 30, 2000:

	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:			
General Fund	$ 480,400	$ 6,563,700	$ 7,044,100
Cooperative Welfare Fund (Federal)	2,325,300	27,137,600	29,462,900
TOTAL	$2,805,700	$33,701,300	$36,507,000

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 3, 2000.

CHAPTER 26
(H.B. No. 447)

AN ACT

RELATING TO THE MINE LICENSE TAX AND THE IDAHO INCOME TAX; AMENDING SECTION 47-1203, IDAHO CODE, TO PROVIDE AN AUTOMATIC EXTENSION OF TIME FOR FILING MINE LICENSE TAX RETURNS; AMENDING SECTION 48-603B, IDAHO CODE, TO PERMIT TAX RETURN PREPARERS TO SUPPLY THEIR FEDERAL PREPARER IDENTIFICATION NUMBER IN LIEU OF THEIR SOCIAL SECURITY NUMBER ON STATE INCOME TAX RETURNS THEY PREPARE FOR OTHERS; AMENDING SECTION 63-3022A, IDAHO CODE, TO PROVIDE THAT THE DEDUCTION FOR CERTAIN RETIREMENT BENEFITS MAY BE SUBJECT TO ADDITIONAL LIMITATIONS OF LAW AND RULE APPLICABLE TO PART-YEAR OR NONRESIDENT INDIVIDUALS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3027B, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3030, IDAHO CODE, TO DELETE A REQUIREMENT TO FILE AN INCOME TAX RETURN FOR TRUSTS AND ESTATES IF NOT REQUIRED TO FILE A FEDERAL RETURN AND FOR PARTNERSHIPS AND S-CORPORATIONS WITHOUT A RESIDENT PARTNER OR SHAREHOLDER; AMENDING SECTION 63-3032, IDAHO CODE, TO CONFORM THE DUE DATE OF TAX RETURNS OF FARMER'S COOPERATIVES TO THE FEDERAL DUE DATE WITHOUT EXTENSIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3036, IDAHO CODE, TO ELIMINATE FILING INCOME TAX WITHHOLDING BY FARMERS NOT REQUIRED TO WITHHOLD FEDERAL TAXES; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 47-1203, Idaho Code, be, and the same is hereby amended to read as follows:

47-1203. STATEMENT OF NET PROCEEDS FROM MINING OR EXTRACTING ORES -- OR FROM ROYALTY. (a) Every person, copartnership, company, joint stock company, trust, corporation, or association mining or receiving royalties from any quartz vein or lode, or placer or rock in place mining claim, containing gold, silver, copper, lead, zinc, coal, phosphate, limestone, or other precious or valuable minerals or metals, or mineral or metal deposits, must, on or before the fifteenth day of the fourth month following the close of the taxable year make a tax return to the state tax commission, stating specifically the items of income and the deductions allowed by this act. For the purpose of enforcing this act, the income tax returns filed in accordance with the provisions of the Idaho Income Tax Act shall be open to inspection by the officer designated to enforce this act.

(b) In the event the taxpayer is entitled to an automatic extension of time ~~is granted~~ to file the income tax return under section 63-3033, Idaho Code, an automatic six (6) month extension is granted to file the return required under this act. ~~if a copy of the approved extension of time is attached to the return when filed.~~ 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

due date to date of payment at the rate provided in section 63-3045, Idaho Code.

SECTION 2. That Section 48-603B, Idaho Code, be, and the same is hereby amended to read as follows:

48-603B. UNFAIR TAX RETURN PREPARATION PRACTICES. (1) As used in this section, unless the context otherwise requires:

(a) "Tax preparer" means a person who, for a fee, engages in the business of assisting with, or preparing, federal, state, or local government income tax returns.

(b) "Fee" means any moneys or valuable consideration paid or promised to be paid for services rendered or to be rendered by any person or persons functioning as or conducting the business of a tax preparer.

(2) The following acts or omissions related to the conduct of the business of the tax preparer, which are done by the tax preparer or any employee, partner, officer, or member of the tax preparer are unlawful:

(a) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading.

(b) Causing or allowing a consumer to sign any document in blank relating to a tax return thereof.

(c) Failing or refusing to give to a consumer a copy of any document requiring his signature, as soon as the consumer signs such document.

(d) Failing to maintain a copy of any tax return prepared for a consumer for the applicable statute of limitation period on federal tax returns and state tax returns.

(e) Making false promises of a character likely to influence, persuade, or induce a consumer to authorize the tax preparation service.

(3) (a) It is unlawful for any person, including an individual, firm, corporation, association, partnership, joint venture, or any employee or agent therefor, to use or disclose any information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns unless such use or disclosure is within any of the following:

(i) Consented to in writing by the taxpayer in a separate document.

(ii) Expressly authorized by state or federal law.

(iii) Necessary to the preparation of the return.

(iv) Pursuant to court order.

(b) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns if he does either of the following:

(i) Advertises, or gives publicity to the effect that he prepares or assists others in the preparation of state or federal income tax returns.

(ii) Prepares or assists others in the preparation of state or federal income tax returns for compensation.

(4) (a) It is unlawful for any person, including any individual,

association, partnership, joint venture, or any employee or agent therefor, to fail to sign any state income tax return, or to fail to include his name, address, and social security number or preparer identification number issued under 26 U.S.C. 6109 on any state income tax return, which he prepares for another for compensation, or which he assists another in the preparation of for compensation.

(b) It is unlawful for any corporation to fail to include its name and address on any state income tax return which it prepares for another for compensation, or which it assists another in the preparation of for compensation.

(5) A person who renders mere mechanical assistance in the preparation of a return, declaration, statement, or other document is not considered, for the purposes of this section, as preparing the return, declaration, statement or other document.

SECTION 3. That Section 63-3022A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022A. DEDUCTION OF CERTAIN RETIREMENT BENEFITS. (a) ~~For--taxable--years--commencing-on-or-after-January-1,-1973,-a~~An amount specified by subsection (b) of this section of the following retirement benefits may be deducted by an ~~Idaho-resident~~ individual from taxable income if such ~~Idaho--resident~~ individual has either attained age sixty-five (65) years, or has attained age sixty-two (62) years and is classified as disabled:

(1) Retirement annuities paid by the United States of America to a retired civil service employee or the unremarried widow of a retired civil service employee.

(2) Retirement benefits paid from the firemen's retirement fund of the state of Idaho to a retired fireman or the unremarried widow of a retired fireman.

(3) Retirement benefits paid from the policemen's retirement fund of a city within this state to a retired policeman or the unremarried widow of a retired policeman.

(4) Retirement benefits paid by the United States of America to a retired member of the military services of the United States or the unremarried widow of such member.

(b) The amount of retirement benefits that may be deducted from taxable income shall be an amount not in excess of maximum retirement benefits under the social security act, as amended, on the date on which this act is passed and approved, including adjustments to be made based upon consumer price index adjustments provided in section 215 of the social security act. The state tax commission shall ascertain benefit changes made in accordance with the social security act and publish the appropriate deduction amounts provided by this section reflecting such changes annually. Maximum retirement benefits under the social security act shall mean:

(1) In the case of a taxpayer who files a joint return with his spouse for the tax year, an amount equal to the maximum social security benefits payable for the tax year to a man attaining age sixty-five (65) years in the tax year who has earned the maximum earnings creditable under social security for the years used in

the computation of his benefits, and whose spouse has no social security benefits except those payable on his record of earnings.

(2) In the case of a taxpayer who is not married, an amount equal to maximum social security benefits payable for the tax year to a person attaining age sixty-five (65) years in the tax year who has earned the maximum earnings creditable under social security for the years used in the computation of his benefits.

(3) In the case of an unremarried widow, an amount equal to the maximum social security benefits payable for the tax year to a widow attaining age sixty-five (65) years in the tax year who has no social security benefits except those to which she is entitled on her deceased husband's record and whose husband had received no reduced retirement benefits prior to his death and whose husband had earned the maximum earnings creditable under social security for the years used in the computation of his benefits under social security.

(4) Maximum retirement benefits shall, in every case, take into consideration and be adjusted to reflect adjustments that would be made to such amounts had they been received as social security benefits as the result of the receipt of earnings in excess of earnings limitations. The terms in this paragraph are those defined in the social security act.

(5) Taxpayers not described in paragraphs (1), (2), (3) and (4) of this subsection may not deduct any amount of retirement benefits under this section.

(c) The total deduction under this section may not exceed the total amount of retirement benefits or annuities which are described in subsection (a) of this section and which are included in the taxpayer's gross income in the tax year. If the taxpayer or the taxpayer's spouse receives retirement benefits under the federal railroad retirement act or the federal social security act in the tax year, then the amount of any retirement annuities computed under subsection (b) of this section shall be reduced by the amount of such federal railroad retirement act and federal social security act retirement benefits received by either the taxpayer or the taxpayer's spouse, and the lesser of the amount so computed or the total amount of retirement benefits or annuities which are described in subsection (a) of this section and which are included in the taxpayer's gross income shall constitute the allowable deduction. Furthermore, the allowable deduction as calculated under this section may be subject to additional limitations under section 63-3026A(6), Idaho Code, and the rules promulgated thereunder.

(d) As used in this section, the word "widow" shall include a widower.

SECTION 4. That Section 63-3027B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3027B. WATER'S-EDGE ELECTION. (a) Notwithstanding the provisions of subsections (~~r~~s) and (~~s~~t) of section 63-3027, Idaho Code, a qualified taxpayer, as defined in paragraph (3) of subsection (b) of this section whose income is subject to the tax imposed under this chapter, may elect to determine its income derived from or attribut-

able to sources within this state pursuant to a water's-edge election in accordance with the provisions of this chapter, as modified by sections 63-3027B through 63-3027E, Idaho Code. A taxpayer who makes a water's-edge election shall take into account the income and apportionment factors of only affiliated corporations in a unitary relationship with the taxpayer, other than corporations filing elections under section 936 of the Internal Revenue Code, and which either file a federal income tax return under the Internal Revenue Code or are included in a federal consolidated return.

(b) For purposes of this section:

(1) The phrase "over fifty ~~per-cent~~ percent (50%) of the voting stock directly or indirectly owned or controlled" shall be substituted for the phrase "at least eighty ~~per-cent~~ percent (80%)" each place it appears in section 1504 of the Internal Revenue Code.

(2) Any combined return shall include only corporations the voting stock of which is more than fifty ~~per-cent~~ percent (50%) owned directly or indirectly by a common owner or owners.

(3) A "qualified taxpayer" is a corporation which files, with the state income tax return on which the water's-edge election is made, a consent to the reasonable production of documents within the taxing jurisdiction. The consent shall remain in effect so long as the water's-edge election is in effect.

(4) "Water's-edge combined group" shall mean all corporations or entities properly includable in the election of a taxpayer in subsection (a) of this section.

(5) The only income of a foreign sales corporation to be taken into account shall be the income subject to federal taxation, taking into account the provisions of section 921 of the Internal Revenue Code.

(c) A water's-edge election may be disregarded, and the income of the taxpayer determined without regard to the provisions of this section pursuant to those conditions which may be required by the state tax commission under subsection (b) of section 63-3027C, Idaho Code, if any corporation fails to comply with:

(1) The domestic disclosure spreadsheet filing requirements defined in section 63-3027E, Idaho Code; or

(2) This state's legal and procedural requirements.

SECTION 5. 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, or is 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 required to file a federal return under the Internal Revenue Code, 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 required to file a federal return under the Internal Revenue Code, 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~~ in 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.

SECTION 6. That Section 63-3032, Idaho Code, be, and the same is hereby amended to read as follows:

63-3032. TIME FOR FILING INCOME TAX RETURNS. (1) Except as provided in section 63-3033, Idaho Code:

(a) Returns made on the basis of the calendar year shall be filed in the office of the Idaho state tax commission on or before the ~~15th~~ fifteenth day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed in the office of the Idaho state tax commission on or before the ~~15th~~ fifteenth day of the fourth month following the close of the fiscal year.

(b) In the case of a return for any period of less than one (1) year, the return shall be filed on or before the date required in this section, or on or before such date as required for such tax period by the ~~i~~Internal ~~r~~Revenue ~~c~~Code, whichever is later.

(2) Returns made by farmer's cooperatives to the extent the cooperative is taxable under section 63-3025B, Idaho Code, shall be due on or before September 15~~th~~ following the close of the calendar year or on or before the ~~15th~~ fifteenth day of the ninth month following the close of the fiscal year. The provisions of section 63-3033, Idaho Code, shall not apply to returns due under this subsection.

SECTION 7. That Section 63-3036, Idaho Code, be, and the same is hereby amended to read as follows:

63-3036. STATE WITHHOLDING TAX FOR FARMERS. (1) Every farmer who is an employer required by the provisions of the Internal Revenue Code to withhold, collect, and pay income tax on wages paid by such employer to any employee shall at the time of the payment of wages, salaries, bonuses or other emoluments to an employee, deduct and retain therefrom an amount determined in accordance with section 63-3035, Idaho Code, and the amount so withheld and deducted shall be held by said farmer-employer in trust for the state of Idaho and for the payment thereof to the state tax commission. Provided, that no tax need be withheld from an employee whose wages, salaries, bonuses and other emoluments total less than one thousand dollars ($1,000) for the tax year.

(2) The tax so withheld by a farmer-employer subject to this section shall be paid to the state tax commission:

(a) Except as provided in paragraph (b) of this subsection, on or before the last day of February of the year following the year in which such deduction was made.

(b) In the case of an employer who is a "covered employer" paying wages for "agricultural labor," as those terms are defined in the employment security law in chapter 13, title 72, Idaho Code, on or before the date on which contributions are due from the employer to the department of labor under the employment security law.

(3) The farmer-employer shall deliver to the state tax commission a return upon such form as shall be prescribed by said state tax commission showing the amounts of wages, salaries, bonuses or other emoluments paid to his employee, the amount deducted therefrom in accordance with this section, and such other pertinent and necessary information as the state tax commission may require on or before the date payments required by this section are due.

(4) The farmer-employer making such a deduction as provided for in this section shall furnish to the employee annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of the tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and at the same time every employer shall file a copy thereof with the state tax commission. The provisions of subsections (d), (e), (f), (g) and (h) of section 63-3035, Idaho Code, shall be applicable to the tax withheld by the farmer-employer under this section.

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, and retroactively to January 1, 2000.

Approved March 3, 2000.

CHAPTER 27
(S.B. No. 1336)

AN ACT

RELATING TO WATER QUALITY; AMENDING SECTION 39-6604, IDAHO CODE, TO PROVIDE THE BIG PAYETTE LAKE WATER QUALITY COUNCIL WILL ASSIST AND COORDINATE THE IMPLEMENTATION OF THE ACCEPTED PLAN WITH FEDERAL, STATE AND LOCAL AUTHORITIES FOR SEVEN YEARS AFTER THE ACCEPTANCE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-6606, IDAHO CODE, TO PROVIDE THE BIG PAYETTE LAKE WATER QUALITY COUNCIL AND ALL OF ITS COMMITTEES WILL AUTOMATICALLY DISBAND SEVEN YEARS AFTER THE PLAN IS ADOPTED BY THE LEGISLATURE AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 39-6604, Idaho Code, be, and the same is hereby amended to read as follows:

39-6604. DECLARATION OF POLICIES AND PURPOSES. The council shall develop and implement a program that includes:

(1) The assembly of all historical data on water quality studies in the lake.

(2) An assessment of present and projected land and water uses related to the lake.

(3) The performance of a comprehensive, scientifically-based study of water quality in the lake. This study will include, but not be limited to, all point and nonpoint sources of nutrients, bacteria, sediments and potential pollution.

(4) The continued collection of important data after the initial study is completed as required by and for use in a nutrient load/lake response predictive model which shall be developed as part of the initial study.

(5) The preparation of a water quality management plan upon completion of the initial study, such plan to be updated regularly as new knowledge becomes available.

(6) The submittal of such plan to the legislature which shall accept, modify or reject the plan. The council will assist and coordinate the implementation of the accepted plan with federal, state and local authorities for ~~two (2)~~ seven (7) years after acceptance, after which the council and its committees will disband and be succeeded by appropriate ~~multi-agency~~ multiagency oversight of the plan, its modification, and maintenance of the nutrient load/lake response predictive model. The city council of McCall and the Valley county

commission may establish appropriate public committees to advise in matters related to the implementation of the plan on a continuing basis.

(7) An active public participation program with stakeholders and other interested parties in the design of the study, and the preparation and implementation of the plan, from the beginning of the council's activities and until its disbandment. This program shall include regular reports to the public through forums, printed material and otherwise of lake conditions, findings of the study and progress in the development and implementation of the plan.

SECTION 2. That Section 39-6606, Idaho Code, be, and the same is hereby amended to read as follows:

39-6606. DUTIES OF COUNCIL. The council shall have the following duties:

(1) To coordinate activities related to the study of water quality in the lake, the development of a water quality management plan, and the implementation of that plan until disbandment as provided herein.

(2) To conduct a public awareness program to educate the general public on methods and responsibilities to protect the lake.

(3) To make an examination, as the council deems necessary, of environmental conditions in, upon and around the lake. The objective shall be to obtain a scientifically sound baseline study for planning future action by appropriate authorities.

(4) To undertake and complete a management plan with recommendations for the lake based upon such examination and study. The plan to be prepared shall specifically identify and address lake protection concerns upon the lake and within the surrounding watershed where land use, scenic values, water uses, residential development, wildlife habitat, fisheries, industry, commerce and other forms of human activity are both influenced by the lake and may reasonably be expected to significantly impact the water quality of the lake.

(5) To promote, until disbandment, the implementation of the plan by serving in an advisory capacity to those city, planning and zoning, county, state and federal authorities with responsibilities affecting lake management or lake water quality. The council may recommend, as appropriate, the adoption of any statutes, ordinances, rules and regulations needed to implement the plan.

(6) To consult with the public and keep the public informed through public forums and written reports of all activities of the council.

(7) The duties of the council are ongoing and continuous until its disbandment. The council shall have the authority to complete the examination and study and prepare the plan complete with recommendations for the lake and its tributaries.

(8) The council and all its committees will automatically disband ~~two (2)~~ seven (7) years after the plan, as and/or if, modified, is adopted by the legislature. Before disbandment, the council shall assist local, city, state and federal authorities in the establishment of a ~~multi-agency~~ multiagency oversight capability to succeed the council.

(9) The council shall not have any regulatory or enforcement powers.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 3, 2000.

CHAPTER 28
(S.B. No. 1352)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE BUREAU OF OCCUPATIONAL LICENSES FOR FISCAL YEAR 2000; AMENDING SECTION 54-4705, IDAHO CODE, TO DELETE THE BOARD OF ACUPUNCTURE FUND, TO REQUIRE THAT ALL FEES COLLECTED BY THE BOARD OF ACUPUNCTURE BE PAID TO THE BUREAU OF OCCUPATIONAL LICENSES AND BE DEPOSITED IN THE STATE TREASURY TO THE CREDIT OF THE OCCUPATIONAL LICENSES FUND AND TO MAKE A TECHNICAL CORRECTION; 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 238, Laws of 1999, there is hereby appropriated to the Bureau of Occupational Licenses in the Department of Self-Governing Agencies the following amount to be expended according to the designated expense class from the listed fund for the period July 1, 1999, through June 30, 2000:

FOR:	
Operating Expenditures	$12,000
FROM:	
State Regulatory Fund	$12,000

SECTION 2. That Section 54-4705, Idaho Code, be, and the same is hereby amended to read as follows:

54-4705. BOARD OF ACUPUNCTURE -- POWERS AND DUTIES -- FUNDS. (1) The board shall have the authority to:

(a) Determine the qualifications of persons applying for licensure, certification and acupuncture technician certificates pursuant to this chapter and define, by rule, the appropriate scope of acupuncture services that may be rendered to the public in this state;

(b) Hire or appoint employees, including an executive director, investigators, attorneys, consultants and independent hearing examiners;

(c) Establish, pursuant to the administrative procedures act, such rules as are necessary for the administration of this chapter, including standards for professional conduct that reflect current practice standards and promote inclusion of innovations and advances in acupuncture;

(d) Conduct investigations and examinations and hold hearings;
(e) Collect fees and other funds as prescribed by this chapter;
(f) Contract, sue and be sued, and pursue other matters lawful in this state;
(g) Provide such other services and perform such other functions as are necessary and desirable to fulfill its purposes.

(2) ~~There--is-hereby-created-the-board-of-acupuncture-fund-in-the state-treasury-where-all-funds-received-pursuant-to-the-provisions--of this--chapter--shall--be-deposited.-All-costs-and-expenses-incurred-by the-board-under-the-provisions-of--this--chapter--shall--be--a--charge against--and-paid-from-said-fund-for-such-purposes,-and-the-funds-collected-hereunder-shall-be-immediately-available-for-the-administration of-this-chapter.-In-no-instance-shall-the-state-board--of--acupuncture fund--be--obligated--to-pay-any-claims-which,-in-aggregate-with-claims already-allowed,-exceed-the-income-to-the-state-board--of--acupuncture fund--which--has--been--derived--from-the-application-of-this-chapter. Money-paid-into-the-state-board-of-acupuncture-fund-pursuant--to--this chapter--is-hereby-continuously-appropriated-to-the-board-for-expenditure-in-the-manner-prescribed-herein-to-defray--the--expenses--of--the board-in-carrying-out-and-enforcing-the-provisions-of-this-chapter~~ All fees received under the provisions of this chapter shall be paid to the bureau of occupational licenses and deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund.

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 3, 2000.

CHAPTER 29
(S.B. No. 1401)

AN ACT
REDUCING THE APPROPRIATION TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2000; AND DECLARING AN EMERGENCY.

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

SECTION 1. The appropriation to the Department of Juvenile Corrections for the Institutions Program made in Section 1, Chapter 230, Laws of 1999, is hereby reduced by the following amount from the designated expense class from the listed fund for the period July 1, 1999, through June 30, 2000:

FOR:	
Trustee and Benefit Payments	$2,254,200
FROM:	
General Fund	$2,254,200

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 March 3, 2000.

CHAPTER 30
(H.B. No. 402)

AN ACT

RELATING TO THE PUBLIC EMPLOYMENT RETIREMENT SYSTEM; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1365, IDAHO CODE, TO AUTHORIZE THE PUBLIC EMPLOYEE RETIREMENT SYSTEM BOARD TO ESTABLISH AND ADMINISTER AN UNUSED SICK LEAVE POOL FOR THE VOLUNTARY PARTICIPATION OF PERSI EMPLOYERS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 59-1365, Idaho Code, and to read as follows:

59-1365. VOLUNTARY UNUSED SICK LEAVE POOL. The board is authorized to establish and administer an unused sick leave pool for the voluntary participation of employer units not eligible to participate in other statutorily created sick leave arrangements. The pool shall be funded entirely by the contributions of participating employer units and the board may charge reasonable administrative expenses for administration. The requirements, rates and parameters for participation in the pool will be set forth by rules of the board.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 6, 2000.

CHAPTER 31
(S.B. No. 1342)

AN ACT

RELATING TO LICENSED MOTOR VEHICLE DEALERS; AMENDING SECTION 49-121, IDAHO CODE, TO REVISE THE DEFINITION OF "TEMPORARY SUPPLEMENTAL LOT" TO PROVIDE AN EXCEPTION TO THE RESTRICTION THAT BUSINESS SHALL BE CONDUCTED IN A COUNTY ADJACENT TO THE COUNTY OF THE PRINCIPAL PLACE OF BUSINESS, TO PERMIT NONFRANCHISED DEALERS TO DISPLAY OR SELL PRODUCTS AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-121, Idaho Code, be, and the same is hereby amended to read as follows:

49-121. DEFINITIONS -- T.

(1) "Temporary supplemental lot" means a location other than the principal place of business, or supplemental lot within the same or adjacent county as the principal place of business, where a licensed dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten (10) days for a specific purpose such as auto shows, auctions, shopping center promotions, tent sales, etc. Temporary supplemental lots shall meet all local zoning and building codes for the type of business being conducted. The requirements for a principal place of business shall not be applicable to temporary supplemental lot locations. The adjacent county restriction shall not apply if the dealer holds the franchise for the products to be displayed or sold and has approval from a manufacturer for the location where the proposed temporary supplemental lot license will be issued by the department. Nonfranchised dealers shall be permitted to temporarily display or sell their products within a one hundred seventy-five (175) mile radius of their principal place of business, upon approval by the department.

(2) "Tires" means:

(a) Metal. Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(b) Pneumatic. Every tire in which compressed air is designed to support the load.

(c) Snow tire. Every rubber tire with tread design or material embedded in the tire to improve winter traction except studded tires.

(d) Solid rubber. Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(e) Studded tire. Every tire with built-in lugs of tungsten carbide or other suitable material designed to contact the road surface for improved winter traction.

(3) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purposes of travel.

(4) "Traffic lane" or "lane of travel" means that portion of the roadway for movement of a single line of vehicles.

(5) "Traffic-control device" means any device, whether manually, electrically or mechanically operated, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

(6) "Trailer" means:

(a) General. Every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle.

(b) Fifth-wheel trailer. A vehicular unit equipped in the same manner as a travel trailer but constructed with a raised forward section that allows a bi-level floor plan. This style is designed

to be towed by a vehicle equipped with a device known as a fifth-wheel hitch, which is typically installed in the bed of a pickup truck.

(c) Fold down camping trailer. A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls, which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters, for recreational, camping or travel use.

(d) Park trailer. A trailer designed to be towed by a motorized vehicle, and of such size and weight as not to require a special highway movement permit. It is designed for seasonal or temporary living quarters and may be connected to utilities necessary for operation of installed fixtures and appliances. It is built on a single permanent chassis and constructed to permit set up by persons without special skills.

(e) Pole trailer. Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(f) Semitrailer. Every vehicle without motive power, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.

(g) Travel trailer. A vehicular unit, mounted on wheels designed to provide temporary living quarters for recreational, camping, travel or emergency use and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle.

(h) Utility trailer. (See "Utility Trailer,"~~;~~ section 49-122, Idaho Code)

(7) "Transportation,"~~;~~ for the purposes of chapter 22, ~~of--this~~ title 49, Idaho Code, means the movement of any regulated quantity of hazardous material or hazardous waste within, through, or to any destination in this state upon the highways of this state.

(8) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer, except in chapter 22, title 49, Idaho Code, where it means any person who transports a hazardous material or hazardous waste within, through, or to any destination upon the highways of this state.

(9) "Truck" means:

(a) Refuse/sanitation. Any vehicle designed and used solely for the purpose of transporting refuse.

(b) General. Every motor vehicle exceeding eight thousand (8,000) pounds gross weight designed, used or maintained primarily for the transportation of property.

(c) Pickup truck. Every motor vehicle eight thousand (8,000) pounds gross weight or less which is designed, used or maintained primarily for the transportation of property.

(d) Truck camper. A portable unit constructed to provide temporary living quarters for recreational, travel or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pickup truck.

(e) Truck tractor. Every motor vehicle designed and used primarily for drawing other vehicles but not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(10) "True mileage driven" means the mileage of the vehicle as registered by the odometer within the manufacturer's designed tolerance.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 13, 2000.

CHAPTER 32
(S.B. No. 1341)

AN ACT

RELATING TO PARKING PRIVILEGES FOR PERSONS WITH A DISABILITY; AMENDING SECTION 49-410, IDAHO CODE, TO PROVIDE SPECIFIC LIMITATIONS RELATING TO PARKING FOR VEHICLES IDENTIFIED BY SPECIAL PLATES OR CARDS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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, but excluding any commercial vehicle with a registered maximum gross weight over sixteen thousand (16,000) pounds.

(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. 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 agencies and taxicabs.

(5) 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 (7) of this section.

(6) 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.

(7) 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 subsections (4) and (8) 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, to areas where vehicular parking is prohibited for periods

in excess of forty-eight (48) hours, or to areas where parking is prohibited for certain periods of time in order to allow snow removal, street construction or maintenance or for other emergency purposes. Nothing herein shall prohibit the designation of parking spaces for use by disabled persons for unlimited periods of time.

(8) 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.

(9) 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 collected shall be retained by the city or county whose law enforcement official issued the citation.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 9, 2000.

CHAPTER 33
(S.B. No. 1340)

AN ACT

RELATING TO COMMUNITY SERVICE FEES; AMENDING SECTION 31-3201C, IDAHO CODE, TO PROVIDE THAT COMMUNITY SERVICE FEES SHALL BE PAID TO THE DISTRICT COURT AND DEPOSITED IN THE COUNTY TREASURY FOR PAYMENT TO THE STATE INSURANCE FUND; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 31-3201C, Idaho Code, be, and the same is hereby amended to read as follows:

31-3201C. COMMUNITY SERVICE FEE. The court shall charge a fee of sixty cents (60¢) per hour of community service to be remitted to the state insurance fund for purposes of providing worker's compensation insurance for persons performing community service. This per hour fee shall be paid by each person found guilty of any felony or misdemeanor

and community service is provided as part of the sanction or as a condition of a withheld judgment or probation. The court may waive such fee if it determines the person is indigent and unable to pay such fee. Such fees shall be in addition to all other fines and fees levied. Such fees shall be paid to the district court and deposited in the county ~~treasurer who shall pay such fees~~ treasury for payment to the state insurance fund. ~~with their worker's compensation premium.~~

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 9, 2000.

CHAPTER 34
(S.B. No. 1313)

AN ACT

RELATING TO PROGRAMS FOR OLDER PERSONS; AMENDING SECTION 67-5008, IDAHO CODE, TO DELETE THE REQUIREMENT THAT ANY INCREASES IN STATE FUNDING FOR THE STATE SENIOR SERVICES PROGRAM MUST BE EXPENDED FOR IN-HOME SERVICES OR ADULT DAY CARE AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-5008, Idaho Code, be, and the same is hereby amended to read as follows:

67-5008. PROGRAMS FOR OLDER PERSONS. The commission shall upon reviewing recommendations from local area councils on aging, as required by the Older Americans Act of 1965, as amended, allocate to local designated area agencies grants or contracts for the following purposes:

(1) Transportation -- For operating expenses only.

(2) Congregate meals -- For direct costs to provide nutritionally balanced meals to older persons at congregate meal sites.

(3) In-home services -- For direct provision of case management, homemaker, chore, telephone reassurance, home delivered meals, friendly visiting, shopping assistance, in-home respite and other in-home services to older persons living in ~~non-institutional~~ noninstitutional circumstances. Fees for specific services shall be based upon a variable schedule, according to ~~regulations~~ rules established by the Idaho commission on aging, based upon ability to pay for such services.

(4) Adult day care -- For direct services to older persons and their ~~care-givers~~ caregivers.

~~(5) Any increases in state funding for the state senior services program after state fiscal year 1982 must be expended for in-home services or adult day care.~~

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 9, 2000.

CHAPTER 35
(S.B. No. 1361)

AN ACT

RELATING TO PENALTIES FOR ORDINANCE VIOLATIONS; AMENDING SECTION 31-714, IDAHO CODE, TO PROVIDE THAT A BOARD OF COUNTY COMMISSIONERS MAY PROVIDE INFRACTION PENALTIES FOR VIOLATION OF COUNTY ORDINANCES; AMENDING SECTION 50-302, IDAHO CODE, TO PROVIDE THAT CITIES MAY PROVIDE INFRACTION PENALTIES FOR VIOLATION OF CITY ORDINANCES AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 31-714, Idaho Code, be, and the same is hereby amended to read as follows:

31-714. ORDINANCES -- PENALTIES. The board of county commissioners may pass all ordinances and rules and make all regulations, not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein, and may enforce obedience to such ordinances with such fines or <u>penalties, including infraction penalties,</u> as the board may deem proper; provided, that the punishment of any offense shall be by fine of not more than three hundred dollars ($300) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.

SECTION 2. That Section 50-302, Idaho Code, be, and the same is hereby amended to read as follows:

50-302. PROMOTION OF GENERAL WELFARE -- PRESCRIBING PENALTIES. (1) Cities shall make all such ordinances, ~~by-laws~~ <u>bylaws,</u> rules, regulations and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry. Cities may enforce all ordinances by <u>fine, including an infraction penalty,</u> or incarceration; provided, however, except as provided in subsection (2) of this section, that the maximum punishment of any offense shall be by fine of not more than three hundred dollars ($300) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.

(2) Any city which is participating in a federally mandated program, wherein penalties or enforcement remedies are required by the terms of participation in the program, may enforce such requirements by ordinance, to include a criminal or civil monetary penalty not to exceed one thousand dollars ($1,000), or imprisonment for criminal offenses not to exceed six (6) months, or to include both a fine and imprisonment for criminal offenses.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 9, 2000.

CHAPTER 36
(S.B. No. 1443)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE MILITARY DIVISION FOR FISCAL YEAR 2000; DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE FUND; EXPRESSING LEGISLATIVE INTENT REGARDING THE MILO CREEK CONTAINMENT PROJECT; EXPRESSING LEGISLATIVE INTENT THAT THE MILITARY DIVISION CONTINUE TO SEEK FUNDS FROM NONSTATE SOURCES; DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE NATURAL RESTORATION FUND; 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 UNEXPENDED AND UNENCUMBERED MONEYS; DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE PERMANENT BUILDING 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 254, Laws of 1999, 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 expense classes from the listed funds for the period July 1, 1999, through June 30, 2000:

A. BUREAU OF HAZARDOUS MATERIALS:	
FOR:	
Operating Expenditures	$ 22,400
FROM:	
General Fund	$ 22,400
B. BUREAU OF DISASTER SERVICES:	
FOR:	
Operating Expenditures	$3,500,000
FROM:	
Federal Grant Fund	$2,000,000
Natural Restoration Fund	1,500,000
TOTAL	$3,500,000
GRAND TOTAL	$3,522,400

SECTION 2. The State Controller shall make a cash transfer of $22,400 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. It is legislative intent that the moneys appropriated to the Bureau of Disaster Services in Section 1 of this act shall only be used to pay for the costs of the Milo Creek Containment Project.

SECTION 4. It is legislative intent that the Military Division continue to seek funds for the Milo Creek Containment Project from nonstate sources, and that any additional funds so obtained be used instead of funds appropriated to the Bureau of Disaster Services from the Natural Restoration Fund in Section 1 of this act.

SECTION 5. Any other provision of law notwithstanding, the State Controller shall transfer $1,500,000 from the State Highway Restricted Disaster Fund to the Natural Restoration Fund for the purposes of the appropriation to the Bureau of Disaster Services in Section 1 of this act.

SECTION 6. Any other provision of law notwithstanding, the State Controller shall transfer the $2,000,000 appropriated to the Bureau of Disaster Services in Section 1 of this act from the Federal Grant Fund to the Natural Restoration Fund.

SECTION 7. There is hereby reappropriated to the Military Division the unexpended and unencumbered balance of moneys appropriated to the Bureau of Disaster Services in Section 1 of this act for the period July 1, 1999, through June 30, 2000, to be used only for nonrecurring expenditures related to the Milo Creek Containment Project for the period July 1, 2000, through June 30, 2001.

SECTION 8. Any unexpended and unencumbered moneys appropriated for the Milo Creek Containment Project remaining in the Natural Restoration Fund on June 30, 2001, shall be deposited in the State Highway Restricted Disaster Fund, up to a maximum of $1,500,000.

SECTION 9. Any other provision of law notwithstanding, the State Controller shall transfer $1,500,000 from the General Fund to the Permanent Building Fund.

SECTION 10. 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 9, 2000.

CHAPTER 37
(S.B. No. 1287, As Amended)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATE PROGRAMS; AMENDING SECTION 49-403A, IDAHO CODE, TO PROVIDE THAT THE SURVIVING SPOUSE OF A DECEASED PURPLE HEART RECIPIENT MAY REAPPLY FOR SPECIAL PURPLE HEART RECIPIENT LICENSE PLATES IF THE DECEASED PURPLE HEART RECIPIENT DIED WITHIN FIVE YEARS OF REAPPLICATION FOR THE PLATES; AMENDING SECTION 49-415, IDAHO CODE, TO ALLOW THE SURVIVING SPOUSE OF A DECEASED FORMER PRISONER OF WAR TO RETAIN AND DISPLAY THE FORMER PRISONER OF WAR LICENSE PLATE ON A VEHICLE OWNED BY THE SURVIVING SPOUSE AND TO ALLOW THE SURVIVING SPOUSE TO REAPPLY FOR THE PLATES IF THE DECEASED FORMER PRISONER OF WAR DIED WITHIN FIVE YEARS OF REAPPLICATION FOR THE LICENSE PLATES; AMENDING SECTION 49-415A, IDAHO CODE, TO ALLOW THE SURVIVING SPOUSE OF A DECEASED CONGRESSIONAL MEDAL OF HONOR RECIPIENT TO RETAIN AND DISPLAY THE CONGRESSIONAL MEDAL OF HONOR LICENSE PLATE ON A VEHICLE OWNED BY THE SURVIVING SPOUSE AND TO ALLOW THE SURVIVING SPOUSE TO REAPPLY FOR THE PLATES IF THE DECEASED CONGRESSIONAL MEDAL OF HONOR RECIPIENT DIED WITHIN FIVE YEARS OF REAPPLICATION FOR THE LICENSE PLATES; AMENDING SECTION 49-415B, IDAHO CODE, TO ALLOW THE SURVIVING SPOUSE OF A DECEASED PEARL HARBOR SURVIVOR VETERAN TO RETAIN AND DISPLAY THE PEARL HARBOR SURVIVOR LICENSE PLATE ON A VEHICLE OWNED BY THE SURVIVING SPOUSE AND TO ALLOW THE SURVIVING SPOUSE TO REAPPLY FOR THE PLATES IF THE DECEASED PEARL HARBOR SURVIVOR VETERAN DIED WITHIN FIVE YEARS OF REAPPLICATION FOR THE LICENSE PLATES; AMENDING SECTION 49-418, IDAHO CODE, TO ALLOW THE SURVIVING SPOUSE OF A DECEASED QUALIFIED VETERAN TO RETAIN AND DISPLAY THE VETERAN LICENSE PLATE ON A VEHICLE OWNED BY THE SURVIVING SPOUSE, TO ALLOW THE SURVIVING SPOUSE TO REAPPLY FOR THE PLATES IF THE DECEASED QUALIFIED VETERAN DIED WITHIN FIVE YEARS OF REAPPLICATION FOR THE LICENSE PLATES AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

SECTION 1. That Section 49-403A, Idaho Code, be, and the same is hereby amended to read as follows:

49-403A. PURPLE HEART RECIPIENT -- LICENSE PLATES. (1) Purple heart recipient license plates are available to any applicant who is a veteran or an active or retired member of any of the armed forces of the United States, reserve forces or Idaho national guard, and who furnishes proof of entitlement by providing one (1) of the following documents:

(a) A copy of form DD214 or equivalent document showing an award of the purple heart medal;

(b) A copy of the certificate presented with the medal; or

(c) A copy of the military order describing the award of the medal to the applicant.

(2) In addition to the regular registration fee, the applicant shall be charged the plate fee required in section 49-450, Idaho Code. Whenever title or interest in a vehicle registered under the provi-

sions of this section is transferred or assigned, the registration shall expire, but the purple heart recipient may transfer his 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. A purple heart recipient shall not register more than two (2) vehicles under the provisions of this section.

(3) Purple heart recipient license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased purple heart recipient. In addition, the surviving spouse of a deceased purple heart recipient is eligible to reapply for and shall be issued purple heart recipient license plates if the deceased purple heart recipient died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

(4) The purple heart recipient license plates shall be of a color and design acceptable to the military order of the purple heart association and approved by the department, utilizing a numbering system as determined by the department.

SECTION 2. 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).

(5) Former prisoner of war license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased former prisoner of war. In addition, the surviving spouse of the

deceased former prisoner of war is eligible to reapply for and shall be issued former prisoner of war license plates if the deceased former prisoner of war died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

SECTION 3. 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.

(4) Congressional medal of honor license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased congressional medal of honor recipient. In addition, the surviving spouse of a deceased congressional medal of honor recipient is eligible to reapply for and shall be issued congressional medal of honor license plates if the deceased congressional medal of honor recipient died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

SECTION 4. 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 sec-

tion 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.

(4) Pearl Harbor survivor license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased Pearl Harbor survivor veteran. In addition, the surviving spouse of a deceased Pearl Harbor survivor veteran is eligible to reapply for and shall be issued Pearl Harbor survivor license plates if the deceased Pearl Harbor survivor veteran died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

SECTION 5. That Section 49-418, Idaho Code, be, and the same is hereby amended to read as follows:

49-418. VETERANS PLATES. (1) 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, 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.

(6) Veterans license plates may be retained and displayed on vehicles owned by the surviving spouse of a qualified veteran. In addition, the surviving spouse of a deceased qualified veteran is eligible to reapply for and shall be issued veterans license plates if the deceased qualified veteran died on or after January 1 of the five (5) years preceding the date of reapplication for the plates. Such plates shall be used on a vehicle owned by the surviving spouse.

SECTION 6. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 9, 2000.

CHAPTER 38
(H.B. No. 460)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3022L, IDAHO CODE, TO PROVIDE AN ELECTION FOR THE METHOD OF REPORTING CERTAIN INCOME EARNED IN IDAHO BY BENEFICIARIES OF TRUSTS AND ESTATES AND TO CLARIFY THAT ENTITIES PAYING THE TAX FOR INDIVIDUALS MAKING THE ELECTION DO NOT INCREASE THEIR OWN TAXABLE INCOME OR LOSS; AMENDING SECTION 63-3082, IDAHO CODE, TO PROVIDE THAT TRUSTS AND ESTATES THAT ARE PAYING THE TAX OF BENEFICIARIES ALSO PAY THE PERMANENT BUILDING FUND TAX; AMENDING SECTION 63-3021, IDAHO CODE, TO PROVIDE A CORRECT CITATION; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE A DATE CHANGE AND TO STRIKE LANGUAGE RENDERED IMMATERIAL AND INCONSTANT; AMENDING SECTION 63-3026A, IDAHO CODE, TO PROVIDE A CORRECT CITATION; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3022L, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022L. INDIVIDUALS WHO ARE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS OR MEMBERS OF A CORPORATION OR PARTNERSHIP OR BENEFICIARIES OF A TRUST OR ESTATE. (1) Individuals who are officers, directors, shareholders, partners or members of a corporation or partnership transacting business in Idaho or who are beneficiaries of a trust or estate with income taxable in Idaho may elect to have Idaho ~~taxable~~ tax relating to income described in subsection (2) of this section reported and ~~taxed as Idaho taxable income of~~ paid by the corporation,

~~or~~ partnership, trust or estate. Income subject to the election in this subsection shall be taxed at the rate applicable to corporations. The election shall be made on the return of the corporation, ~~or~~ partnership, trust or estate from which the income is received. ~~and on which the income is reported in Idaho taxable income.~~ The election in this section is not available to an individual who has Idaho taxable income in addition to income described in subsection (2) of this section.

(2) The election in subsection (1) of this section applies to:

(a) Wages, salary and other compensation paid by the corporation, ~~or~~ partnership, trust or estate to such officers, directors, shareholders, partners, ~~or~~ members or beneficiaries to the extent the compensation is Idaho taxable income of the individual to whom it is paid under section 63-3026A, Idaho Code; and

(b) The share of any income, loss, deduction or credit of an S corporation, ~~or~~ partnership, trust or estate required to be included on such shareholder's, partner's, ~~or~~ member's or beneficiary's federal return except that such amount shall first be apportioned and allocated in the manner provided in section 63-3027, Idaho Code.

(c) When the gross income attributable to an individual under paragraphs (a) and (b) of this subsection (2) is less than the filing requirement of the individual under section 63-3030, Idaho Code, the income is not income under this subsection.

(3) If no election is made and an officer, director, shareholder, partner, ~~or~~ member, or beneficiary of a corporation, ~~or~~ partnership, trust or estate transacting business in Idaho fails to file an Idaho income tax return reporting all or any part of the items described in subsection (2) of this section or fails to pay any tax due thereon, such corporation, ~~or~~ partnership, trust or estate shall ~~include~~ be liable for tax on such items ~~in its Idaho taxable income and be taxed~~ at the rate applicable to corporations.

(4) The provisions of this section shall not apply to a corporation, other than an S corporation, with less than fifty percent (50%) of its income taxable within this state.

SECTION 2. 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 tax of an individual officer, director, shareholder, partner or member of a corporation or partnership, or of a beneficiary of a trust or estate is ~~taxed as Idaho taxable income of~~ paid by the corporation, ~~or~~ partnership, trust or estate, the corporation, ~~or~~ partnership, trust or estate shall also pay the tax imposed in subsection (1) of this section for each individual.

(3) For purposes of this section, a husband and wife filing a

joint federal return may be deemed a single individual.

SECTION 3. 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(~~k~~j), 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 4. 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 63-3022M, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(a) 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.

(b) Add the net operating loss deduction used in arriving at taxable income.

(c) (1) A net operating loss for any taxable year commencing on and after January 1, ~~1999~~ 2000, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars ($100,000) to the two (2) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the two (2) preceding years may be subtracted in the next twenty (20) 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 two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) 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 (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. However, if at least one (1) corporation within a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred, then the net operating loss may be subtracted. Net operating losses incurred by a person, other than a corporation, in business activities not taxable by Idaho may not be subtracted.

(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.

(e) In the case of a corporation, subtract an amount determined under section 78 of the Internal Revenue Code to be taxable as dividends.

(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.

(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.~~

~~(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.

(~~i~~h) 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.

(~~j~~i) In the case of a corporation, including any corporation

included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, add any capital loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. However, do not add any capital loss deducted if a corporation, including any corporation in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. 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 (c) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(~~k~~j) 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) The standard deduction as defined in section 63, Internal Revenue Code.

(2) 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.

(~~l~~k) 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.

(~~m~~l) 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.

(~~n~~m) 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.

SECTION 5. 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(kj), Idaho Code, if applicable, and the exemptions, as defined in section 151 of the Internal Revenue 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 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, 2000.

Approved March 22, 2000.

CHAPTER 39
(H.B. No. 395)

AN ACT

RELATING TO MASTER ELECTRICIANS; AMENDING SECTIONS 54-1002, 54-1006 AND 54-1017, IDAHO CODE, TO DELETE JOURNEYMAN IN REFERENCE TO MASTER ELECTRICIANS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 54-1002, Idaho Code, be, and the same is hereby amended to read as follows:

54-1002. LICENSE ESSENTIAL TO ENGAGE IN BUSINESS -- LICENSURE AUTHORITY EXCLUSIVE TO THE STATE. (1) It shall be unlawful for any person, partnership, company, firm, association or corporation, to act, or attempt to act, as an electrical contractor or special electrical contractor in this state until such person, partnership, company, firm, association or corporation, shall have received a license as an electrical contractor, as herein defined, issued pursuant to the provisions of this chapter by the administrator of the division of building safety.

(2) It shall be unlawful for any person to act as a journeyman electrician in this state until such person shall have received a license as a journeyman electrician, as herein defined, issued pursuant to the provisions of this act, by the administrator of the division of building safety, provided, however, that any person who has been issued a master electrician's license pursuant to this chapter may act as a journeyman electrician.

(3) It shall be unlawful for any person to act as a specialty electrician in this state until such person shall have received a license as a specialty electrician, as herein defined, issued pursuant to the provisions of this act, by the administrator of the division of building safety, provided however, that any person who has been issued a master ~~journeyman~~ electrician's license or a journeyman electrician's license pursuant to this act may act as a specialty electrician.

(4) Licensure of electrical contractors, journeyman electricians, master ~~journeyman~~ electricians, specialty electricians, specialty electrical contractors and registration of apprentice electricians shall be within the exclusive jurisdiction of the state pursuant to this chapter and no local jurisdiction shall have the authority to require additional licensure or to issue licenses to persons licensed under this chapter which are inconsistent with the provisions of this

chapter or rules promulgated by the division of building safety. The state shall investigate all local infractions and state violations of this chapter and prosecute the same. The local jurisdictions will assist the state by requesting investigations within their jurisdictions. Nothing in this chapter shall restrict a city or county from imposing stricter public safety rules, notwithstanding any provision of Idaho Code.

SECTION 2. That Section 54-1006, Idaho Code, be, and the same is hereby amended to read as follows:

54-1006. IDAHO ELECTRICAL BOARD. (1) The Idaho electrical board, hereinafter known as the board, is hereby created and made a part of the division of building safety. It shall be the responsibility and duty of the administrator of the division of building safety to administer and enforce the provisions of this act, to serve as secretary to the Idaho electrical board, and to appoint the chief electrical inspector.

(2) The board shall consist of nine (9) members to be appointed by the governor with power of removal for cause. Two (2) members shall be licensed journeymen or master electricians; two (2) members shall be employees or officers of licensed electrical contractors; one (1) member shall be a licensed specialty journeyman or contractor; one (1) member shall be an employee or officer of an electrical power provider; one (1) member shall be an employee or officer of a manufacturing plant or other large power user; one (1) member shall be an employee or director of a manufacturer or distributor of electrical supplies or materials; and one (1) member shall be from the public at large not directly associated with the electrical industry. Board members shall be appointed for a term of four (4) years. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(3) All members of the board shall be citizens of the United States, residents of this state for not less than two (2) years and shall be qualified by experience, knowledge and integrity in formulating rules for examinations, in passing on the fitness and qualifications of applicants for electrical contractor and journeyman electrician licenses and in establishing standards for electrical products to be used in electrical installations coming under the provisions of this act.

(4) The members of the board shall, at their first regular meeting following the effective date of this act and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board. In the event the chairman is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the board shall constitute a quorum.

(5) The board is authorized and directed to prescribe and amend rules consistent with this act for the administration of this chapter and to effectuate the purpose thereof, and for the examination and licensing of electrical contractors, journeyman electricians, master ~~journeyman~~ electricians, specialty electricians, specialty electrical contractors, specialty electrical trainees and apprentice electri-

cians. The board shall also establish the classifications for specialty electrician and specialty electrical contractor licensing and the fees to be charged for permits and inspections of electrical systems. The board shall establish by administrative rule the fines to be paid for citations issued for violations of this act and the rules of the Idaho electrical board.

(6) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(g), Idaho Code.

SECTION 3. That Section 54-1017, Idaho Code, be, and the same is hereby amended to read as follows:

54-1017. VIOLATIONS OF ACT A MISDEMEANOR. Any person, partnership, company, firm, association or corporation who shall engage in the trade, business or calling of an electrical contractor, journeyman electrician, master ~~journeyman~~ electrician, specialty electrician, specialty electrical contractor, specialty electrical trainee or apprentice electrician without a license or required registration as provided for by this act, or who shall violate any of the provisions of this act, or the rules of the Idaho electrical board or of the administrator of the division of building safety herein provided for, or who shall refuse to perform any duty lawfully enjoined upon him by the administrator within the prescribed time; or who shall fail, neglect, or refuse to obey any lawful order given or made by the administrator shall be guilty of a misdemeanor and shall be subject to the civil penalties established by administrative rule but not to exceed one thousand dollars ($1,000). Each day of such violation shall constitute a separate offense. A violation will be considered a second or additional offense only if it occurs within one (1) year from the first violation.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved March 22, 2000.

CHAPTER 40
(H.B. No. 411)

AN ACT

RELATING TO THE BOARD OF DENTISTRY; AMENDING SECTION 54-912, IDAHO CODE, TO AUTHORIZE THE APPOINTMENT OF AN EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 54-912, Idaho Code, be, and the same is hereby amended to read as follows:

54-912. BOARD OF DENTISTRY -- POWERS AND DUTIES. The board shall

have the following powers and duties:

(1) To ascertain the qualifications and fitness of applicants to practice dentistry, a dental specialty or dental hygiene; to prepare, conduct and grade qualifying examinations; to issue in the name of the board a certificate of qualification to applicants found to be fit and qualified to practice dentistry or dental hygiene.

(2) To prescribe rules for a fair and wholly impartial method of licensure and examination of applicants to practice dentistry, a dental specialty or dental hygiene.

(3) To define by rule what shall constitute accepted and approved schools, colleges, institutions, universities or departments thereof for the teaching of dentistry or dental hygiene and to determine, accept and approve those that comply therewith.

(4) To promulgate other rules required by law or necessary or desirable for its enforcement and administration; to define by rule the terms unprofessional conduct or practices injurious to the public as the terms are used in section 54-924, Idaho Code, to furnish applications, certificates, licenses and other necessary forms.

(5) To inspect or cause to be inspected the offices or operating rooms of all persons licensed under this chapter.

(6) Upon its own motion or upon any complaint, to initiate and conduct investigations on all matters relating to the practice of dentistry or dental hygiene and to conduct hearings or proceedings on its own or through its designated hearing officer, to revoke, suspend or otherwise condition certificates of qualification or licenses of persons practicing dentistry or dental hygiene and, on such terms as the board shall deem appropriate, to revoke, suspend, or otherwise condition such licenses, provided such hearings and proceedings shall be had in conformance with the provisions of chapter 52, title 67, Idaho Code. Final decisions of the board shall be subject to judicial review as provided in chapter 52, title 67, Idaho Code.

(7) The board, its designated hearing officer, or representative shall have power to administer oaths, the power to engage in discovery as provided in the Idaho rules of civil procedure and chapter 52, title 67, Idaho Code, including, but not limited to, the power to take depositions of witnesses within or without the state in the manner provided by law in civil cases, and shall have power throughout the state of Idaho to require the attendance of witnesses and the production of books, records and papers as it may desire at any hearing before it of any matter which it has authority to investigate, and for that purpose the board or its designated hearing officer may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where the witness resides, or may be found, which shall be served and returned in the same manner as a subpoena in a criminal case is served and returned. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases and shall be paid from the state board of dentistry fund in the same manner as other expenses of the board are paid. In any case of disobedience to, or neglect of, any subpoena or subpoena duces tecum served upon any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, it shall be the duty of the district court, or any judge

thereof, of any county in this state in which the disobedience, neglect or refusal occurs, upon application by the board to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or for refusal to testify. The licensed person accused in the proceedings shall have the same right of subpoena upon making application to the board.

(8) The board shall establish an office and may appoint an ~~administrator~~ executive director who need not be a member of the board or a person licensed to practice dentistry or dental hygiene, and may employ other personnel, including attorneys and hearing officers, as may be necessary to assist the board. The board shall prescribe the duties of the ~~administrator~~ executive director and these duties shall include the preparation of all papers and records under law for the board, and shall include enforcement activities as to the board may from time to time appear advisable, and the ~~administrator~~ executive director shall act for and on behalf of the board in such manner as the board may authorize, keep records, property and equipment of the board and discharge other duties as the board may from time to time prescribe. The compensation of the ~~administrator~~ executive director or other personnel shall be determined by the board and the ~~administrator~~ executive director shall be bonded to the state in the time, form and manner prescribed in chapter 8, title 59, Idaho Code.

(9) To report annually to the associations on the status of the state board of dentistry account and furnish the associations a written report on all receipts and expenditures during the preceding year.

(10) Provide, by rule, for reasonable fees for administrative costs and assess costs reasonably and necessarily incurred in the enforcement of this chapter when a licensee has been found to be in violation of this chapter.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 22, 2000.

CHAPTER 41
(H.B. No. 408)

AN ACT

RELATING TO THE STATE BOARD OF PODIATRY; AMENDING SECTION 54-604, IDAHO CODE, TO PROVIDE THAT RECOMMENDATIONS TO THE GOVERNOR FOR APPOINTMENTS TO THE BOARD OF PODIATRY SHALL BE FROM THE IDAHO PODIATRIC MEDICAL ASSOCIATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 54-604, Idaho Code, be, and the same is hereby amended to read as follows:

54-604. ESTABLISHMENT OF STATE BOARD OF PODIATRY. There is hereby established in the department of self-governing agencies a state board

of podiatry to be composed of five (5) members to be appointed by the governor in the manner hereinafter set forth. Four (4) of said members shall be podiatrists, duly licensed under the laws of the state of Idaho, and who shall have been continuously engaged in the practice of podiatry for a period of not less than five (5) years prior to his appointment. The fifth member of the board shall be a layman, a resident of the state of Idaho for a period of not less than five (5) years prior to his appointment. With reference to the first board, the four (4) podiatrists shall be appointed for terms of one (1), two (2), three (3) and four (4) years, respectively. The lay board member shall be appointed for a term of three (3) years. Thereafter, all appointments to the board shall be made for terms of four (4) years. Vacancies upon the board, occurring for any reason, shall be filled by the governor. The governor in making appointments shall give consideration to but shall not be bound by the recommendations received from the Idaho ~~Podiatry~~ Podiatric Medical Association.

Within thirty (30) days from the appointment of the board by the governor, the board shall organize itself, select a chairman, a vice chairman and secretary. The chairman and the secretary shall be podiatrists. The board shall meet annually for the purpose of conducting examinations and transacting any other business which may lawfully come before it. The board may meet in special session at the call of the chairman, or at the call of not less than two-thirds (2/3) of the membership of the board. The members of the board shall each be compensated as provided by section 59-509(g), Idaho Code.

Examinations of applicants may be conducted by the board, or by designated representatives of the board.

A quorum will consist of at least three (3) members of the board. The chairman, or person acting as such, will vote only in the case of a tie.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 22, 2000.

CHAPTER 42
(H.B. No. 403)

AN ACT

RELATING TO ASSESSMENTS TO THE SPECIAL INDEMNITY FUND; AMENDING SECTION 72-327, IDAHO CODE, TO PROVIDE THAT WITHIN THIRTY DAYS SUBSEQUENT TO SEPTEMBER 1 AND APRIL 1, WORKER'S COMPENSATION INSURERS SHALL PAY TO THE INDUSTRIAL COMMISSION FOR DEPOSIT IN THE SPECIAL INDEMNITY FUND AN ASSESSMENT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 72-327, Idaho Code, be, and the same is hereby amended to read as follows:

72-327. ASSESSMENT -- METHOD OF CALCULATION AND PRORATION -- TIME FOR PAYMENT. (1) The state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho, in addition to all other payments required by statute, shall, within thirty (30) days after April 1, 1998, and ~~on or before~~ within thirty (30) days subsequent to September 1 and April 1 of each successive year thereafter, pay to the industrial commission for deposit in the industrial special indemnity fund an assessment as follows:

(a) The total annual assessment payable in the manner set forth in this section shall be equal in amount to two (2) times the amount of all expenses of the industrial special indemnity fund incurred during the immediately preceding fiscal year less the existing cash balance of the industrial special indemnity fund as of the thirtieth day of June of the immediately preceding fiscal year;

(b) The total annual assessment shall be apportioned on a pro rata percentage basis among and between the state insurance fund, every authorized self-insurer and every surety authorized under the Idaho insurance code or by the director of the department of insurance to transact worker's compensation insurance in Idaho based upon the proportionate share of the total gross amount of indemnity benefits paid on Idaho worker's compensation claims during the applicable reporting period;

(c) The amount of each responsible entity's or person's assessment which is due and payable within thirty (30) days subsequent to September 1 of any year shall be calculated by dividing one-half (1/2) of the total annual assessment amount by the responsible party's proportionate share of the total gross amount of indemnity benefits paid during the preceding period of time from January 1 through June 30. The amount of each responsible entity's or person's assessment which is due and payable within thirty (30) days subsequent to April 1 of any year shall be calculated by dividing one-half (1/2) of the total applicable assessment amount by the responsible entity's or person's proportionate share of the total gross indemnity benefits paid on open worker's compensation claims during the preceding period of time from July 1 through December 31. In no case shall the amount of any such assessment be less than two hundred dollars ($200).

(2) In arriving at the total gross amount of indemnity benefits paid, the amount of indemnity benefits shall include those payments provided for or made under the provisions of the worker's compensation law with respect to "income benefits" as defined in section 72-102, Idaho Code.

(3) For the purposes of this section, the responsible entities or persons shall report to the industrial commission their total gross indemnity benefits paid during the six (6) month period from July 1 through December 31 no later than January 31 of the next succeeding year and shall report their total gross indemnity benefits paid during the six (6) month period from January 1 through June 30 no later than July 31 of said year.

(4) A penalty for the late filing of any report required by this

section will be assessed in accordance with the rules of the industrial commission.

(5) The industrial special indemnity fund shall certify to the industrial commission annually the amount of the assessment payable under this section and the industrial commission shall prepare and submit to each responsible entity or person notice of its pro rata amount payable hereunder on or before April 1, 1998, and thereafter on or before September 1 and April 1 of each succeeding year.

(6) For the purposes of this section, the cash balance of the industrial special indemnity fund in any fiscal year shall mean all money deposited or invested by the state treasurer to the credit of the industrial special indemnity fund pursuant to sections 72-325 and 72-326, Idaho Code, and all interest earned thereon.

(7) For purposes of this section, the term "fiscal year" shall mean that period of time commencing upon July 1 in any year and ending upon June 30 of the next succeeding year.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 22, 2000.

CHAPTER 43
(S.B. No. 1544)

AN ACT
APPROPRIATING MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 2001; 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 Industrial Commission the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. COMPENSATION:					
FROM:					
Industrial Administration Fund	$2,011,600	$ 835,200	$101,000	$ 997,100	$ 3,944,900
Federal Grant Fund	2,700	2,300			5,000
Miscellaneous Revenue Fund		20,500			20,500
TOTAL	$2,014,300	$ 858,000	$101,000	$ 997,100	$ 3,970,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. REHABILITATION:					
FROM:					
Industrial Administration Fund	$2,510,100	$ 612,800	$ 65,200		$ 3,188,100
III. CRIME VICTIMS COMPENSATION:					
FROM:					
Crime Victims Compensation Fund	$ 366,100	$ 155,500	$ 8,100	$2,105,400	$ 2,635,100
Federal Grant Fund				516,000	516,000
TOTAL	$ 366,100	$ 155,500	$ 8,100	$2,621,400	$ 3,151,100
IV. ADJUDICATION:					
FROM:					
Industrial Administration Fund	$1,315,700	$ 399,500	$ 44,300		$ 1,759,500
GRAND TOTAL	$6,206,200	$2,025,800	$218,600	$3,618,500	$12,069,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Industrial Commission is authorized no more than one hundred thirty-eight (138) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 22, 2000.

CHAPTER 44
(S.B. No. 1541)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC UTILITIES COMMISSION FOR FISCAL YEAR 2001; 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 Public Utilities Commission the following amount, to be expended according to the designated expense classes from the listed fund for the period July 1, 2000, through June 30, 2001:

FOR:	
Personnel Costs	$2,859,300
Operating Expenditures	1,312,900
Capital Outlay	48,800
TOTAL	$4,221,000
FROM:	
Public Utilities Commission Fund	$4,221,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Public Utilities Commission is authorized no more than forty-nine (49) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 22, 2000.

CHAPTER 45
(S.B. No. 1540)

AN ACT

APPROPRIATING MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR FISCAL YEAR 2001; EXPRESSING LEGISLATIVE INTENT WITH REGARD TO CERTAIN TRANSFERS BEING CONTINUOUSLY APPROPRIATED; LIMITING AUTHORIZED FULL-TIME EQUIVALENT POSITIONS; AUTHORIZING THE TRANSFER OF HIGHWAY FUNDS TO THE AERONAUTICS FUND; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES FOR CONTRACT CONSTRUCTION AND RIGHT-OF-WAY ACQUISITION; AND REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES.

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

SECTION 1. There is hereby appropriated to the Idaho Transportation Department the following amounts, to be expended for the designated programs according to the designated expense classes from the listed fund sources for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. MANAGEMENT AND SUPPORT:					
FROM:					
State Highway Fund (Dedicated)	$10,757,700	$ 6,140,000	$ 768,000		$ 17,665,700
State Highway Fund (Federal)	216,800	1,073,100			1,289,900
State Highway Fund (Billing)	65,600	63,900			129,500
TOTAL	$11,040,100	$ 7,277,000	$ 768,000		$ 19,085,100

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
II. PLANNING:					
FROM:					
State Highway Fund (Dedicated)	$ 433,100	$ 261,000	$ 245,100		$ 939,200
State Highway Fund (Federal)	1,650,600	1,270,900	440,000		3,361,500
State Highway Fund (Billing)		40,900			40,900
TOTAL	$ 2,083,700	$ 1,572,800	$ 685,100		$ 4,341,600
III. MOTOR VEHICLES:					
FROM:					
State Highway Fund (Dedicated)	$10,604,800	$ 5,911,700	$ 674,900		$ 17,191,400
State Highway Fund (Billing)		44,400			44,400
TOTAL	$10,604,800	$ 5,956,100	$ 674,900		$ 17,235,800
IV. HIGHWAY OPERATIONS:					
FROM:					
State Highway Fund (Dedicated)	$56,745,400	$31,812,600	$ 16,451,100		$105,009,100
State Highway Fund (Federal)	11,429,000	4,475,700			15,904,700
Idaho Traffic Safety Fund (Federal)				1,600,000	1,600,000
State Highway Fund (Billing)		426,500			426,500
State Highway Fund (Local)	219,800	93,900			313,700
TOTAL	$68,394,200	$36,808,700	$ 16,451,100	$1,600,000	$123,254,000
V. CAPITAL FACILITIES:					
FROM:					
State Highway Fund (Dedicated)			$ 4,800,000		$ 4,800,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
VI. CONTRACT CONSTRUCTION & RIGHT-OF-WAY ACQUISITION:					
FROM:					
State Highway Fund (Dedicated)			$ 55,099,700		$ 55,099,700
State Highway Fund (Federal)			198,280,600	$4,033,600	202,314,200
State Highway Fund (Local)			3,529,200		3,529,200
TOTAL			$256,909,500	$4,033,600	$260,943,100
VII. AERONAUTICS:					
FROM:					
State Aeronautics Fund (Dedicated)	$ 617,300	$ 481,500	$ 70,100	$ 500,000	$ 1,668,900
State Aeronautics Fund (Federal)		260,700			260,700
State Aeronautics Fund (Billing)	131,100	141,000			272,100
TOTAL	$ 748,400	$ 883,200	$ 70,100	$ 500,000	$ 2,201,700
VIII. PUBLIC TRANSPORTATION:					
FROM:					
State Highway Fund (Dedicated)	$ 109,700	$ 48,700	$ 1,300	$ 223,000	$ 382,700
State Highway Fund (Federal)	348,000	49,900	5,000	2,836,700	3,239,600
TOTAL	$ 457,700	$ 98,600	$ 6,300	$3,059,700	$ 3,622,300
GRAND TOTAL	$93,328,900	$52,596,400	$280,365,000	$9,193,300	$435,483,600

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 accordance with Section 67-3519, Idaho Code, the Idaho Transportation Department is authorized no more than one thousand eight hundred twenty-nine (1,829) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, for the programs specified in Section 1 of this act, unless specifi-

cally authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 4. The Idaho Transportation Department is authorized to transfer up to $71,300 from the State Highway Fund to the State Aeronautics Fund during the fiscal year. It is legislative intent that the moneys transferred be used to offset operating costs of the aircraft pool program or be used to establish a reserve for capital replacement costs of the aircraft pool program.

SECTION 5. There is hereby reappropriated to the Idaho Transportation Department any unexpended and unencumbered balances of the State Highway Fund appropriated for the Contract Construction and Right-of-Way Acquisition program for fiscal year 2000, to be used for Contract Construction and Right-of-Way Acquisition only for the period July 1, 2000, through June 30, 2001.

SECTION 6. All unexpended and unencumbered moneys previously appropriated to the Idaho Transportation Department from funds deposited to the restricted disaster State Highway Fund are hereby reappropriated to the Idaho Transportation Department for the period July 1, 2000, through June 30, 2001.

Approved March 22, 2000.

CHAPTER 46
(S.B. No. 1539)

AN ACT
APPROPRIATING MONEYS FOR THE IDAHO WOMEN'S COMMISSION FOR FISCAL YEAR 2001; 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 Idaho Women's Commission the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$28,900	$12,000	$40,900
Miscellaneous Revenue Fund		6,700	6,700
TOTAL	$28,900	$18,700	$47,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho Women's Commission is authorized no more than fifty-two hundredths (0.52) full-time equivalent positions at any point during the

period July 1, 2000, through June 30, 2001, 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 22, 2000.

CHAPTER 47
(S.B. No. 1538)

AN ACT

APPROPRIATING MONEYS TO THE EXECUTIVE OFFICE OF THE GOVERNOR FOR FISCAL YEAR 2001; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND EXPRESSING LEGISLATIVE INTENT REGARDING THE PARENTS AS TEACHERS PROGRAM.

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 expense classes from the listed funds for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
FROM:				
I. GOVERNOR'S OFFICE ADMINISTRATION:				
General Fund	$1,193,600	$281,400	$32,500	$1,507,500
II. GOVERNOR'S EXPENSE ALLOWANCE:				
TO BE EXPENDED PURSUANT TO SECTION 67-808d, IDAHO CODE:				
FROM:				
General Fund		9,900		9,900
III. SOCIAL SERVICES:				
FROM:				
Miscellaneous Revenue Fund	$ 41,000	$ 50,800		$ 91,800
Federal Grant Fund	369,500	69,100		438,600
TOTAL	$ 410,500	$119,900		$ 530,400
IV. ACTING GOVERNOR PAY:				
FROM:				
General Fund	$ 19,200			$ 19,200
GRAND TOTAL	$1,623,300	$411,200	$32,500	$2,067,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Executive Office of the Governor is authorized no more than twenty-four (24) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, for the programs specified in Section 1 of this act, unless specifically authorized by the Gover-

nor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. It is legislative intent that family participation in any Parents as Teachers program will be strictly voluntary and that families not be repeatedly contacted to participate in this program. Further, the pilot program is to be based on the premise that the parent is the child's first and most influential teacher, and that home visits by parent educators are intended to: (a) strengthen parent-child relationships; (b) encourage learning and self-reliance; and (c) promote the health and hygiene of children. It is also legislative intent that the program remain consistent with the Legislature's welfare reform initiatives to promote individual and family self-reliance. Notwithstanding the provisions of Section 9-349, Idaho Code, it is the intent of the Legislature that any records, notes, information or data on the family shall be considered the property of that family, and shall not be made available to any agency, political subdivision or any governmental institution without the written authorization of the parent or guardian that has legal custody of the child involved.

Approved March 22, 2000.

CHAPTER 48
(S.B. No. 1537)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE HUMAN RIGHTS COMMISSION FOR FISCAL YEAR 2001; 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 Human Rights Commission the following amounts, to be expended according to the designated expense classes from the listed funds, for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
FROM:			
General Fund	$425,700	$139,000	$564,700
Federal Grant Fund	100,400	58,300	158,700
Miscellaneous Revenue Fund		6,700	6,700
TOTAL	$526,100	$204,000	$730,100

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Human Rights Commission is authorized no more than ten (10) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 22, 2000.

CHAPTER 49
(S.B. No. 1533)

AN ACT

RELATING TO THE SALES TAX ACCOUNT; PROVIDING LEGISLATIVE INTENT; AND AMENDING SECTION 63-3638, IDAHO CODE, TO INCREASE ANNUAL DISTRIBUTIONS TO THE PERMANENT BUILDING FUND AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. LEGISLATIVE INTENT. It is legislative intent that any distribution of the sales and use tax moneys to the Permanent Building Fund shall be made after distributions pursuant to Section 63-3638, Idaho Code, are made to local governments.

SECTION 2. That Section 63-3638, Idaho Code, be, and the same is hereby amended to read as follows:

63-3638. SALES TAX -- DISTRIBUTION. All moneys collected under this chapter, except as may otherwise be required in section 63-3203, Idaho Code, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) Five ~~hundred--thousand~~ million dollars ($5,000,000) per year is continuously appropriated and shall be distributed to the permanent building ~~account~~ fund, provided by section 57-1108, Idaho Code.

(c) Four million eight hundred thousand dollars ($4,800,000) per year is continuously appropriated and shall be distributed to the water pollution control account established by section 39-3605, Idaho Code.

(d) (1) An amount equal to the sum required to be certified by the chairman of the Idaho housing and finance association to the state tax commission pursuant to section 67-6211, Idaho Code, in each year is continuously appropriated and shall be paid to any capital reserve fund, established by the Idaho housing and finance association pursuant to section 67-6211, Idaho Code. Such amounts, if any, as may be appropriated hereunder to the capital reserve fund of the Idaho housing and finance association shall be repaid for distribution under the provisions of this section, subject to the provisions of section 67-6215, Idaho Code, by the Idaho housing and finance association, as soon as possible, from any moneys available therefor and in excess of the amounts which the associa-

tion determines will keep it self-supporting.

(2) An amount equal to the sum required by the provisions of section 63-709, Idaho Code, is continuously appropriated and shall be paid as provided by section 63-709, Idaho Code.

(3) An amount required by the provisions of chapter 53, title 33, Idaho Code.

(e) Six percent (6%) is hereby appropriated and shall be paid to the county treasurer of each county in amounts to be determined as follows:

(1) Each taxing district other than school districts shall be entitled to a base share of sales tax moneys equal to the amount distributed to that district for the fourth calendar quarter of 1979. The computation shall not include any distributions made to the credit of either the former county school levy or the state water pollution control levy. The percentage so determined for each taxing district shall be applied each quarter to the above percentage of sales tax. The resulting sums shall be paid to the county treasurer of each county for distribution to each taxing district, except school districts, which received sales tax moneys in 1979. Whenever a taxing district is dissolved, the dissolved district's share of sales moneys shall be credited continuously to the county current expense fund.

(2) Whenever the amount of nonschool district sales tax moneys distributed exceeds in any quarter the total amount of moneys distributed to nonschool districts for the base quarter, which is the fourth calendar quarter of 1979, by ten percent (10%), or more, the excess of the base quarter shall be paid to the county treasurer of each county for distribution to each taxing district in the county, except school districts, in the following manner.

The state tax commission shall compute the percentage that the average amount of taxes collected from assessments for the years 1965, 1966 and 1967 on the personal property described as business inventory in subsections (1) and (2) of section 63-602W, Idaho Code, for each county bears to the average total amount of taxes collected from assessments for said years on the personal property described as business inventory in subsections (1) and (2) of section 63-602W, Idaho Code, for all counties in the state. The percentage so determined for each county shall be applied to the sales tax distributed under this subsection and the resulting sum shall be paid to the county treasurer of each county for distribution to each taxing district, except school districts, in the county as follows:

(i) Each year the county commissioners in each county shall take the tax charge, applicable to the current property roll equalized by county commissioners sitting as a board of equalization, of each taxing district within the county, except school districts, and divide it by the total current tax charges applicable to the current property roll of all taxing districts, except school districts, within said county and the resulting percentages shall be applied to the county's proportionate share of said sales tax account and the resulting amount shall be distributed to each taxing district in the county periodically but not less frequently than

quarterly by the county auditor and applied by such taxing districts in the same manner and in the same proportions as revenues from property taxation.

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

(3) All moneys distributed pursuant to subsection (e) of this section shall be subject to the redistribution provisions of section 40-801, Idaho Code, where applicable.

(f) One dollar ($1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, ~~allterrain~~ all-terrain vehicle or other vehicle processed by the county assessor or the Idaho transportation department excepting those applications in which any sales or use taxes due have been previously collected by a retailer, shall be a fee for the services of the assessor of the county or the Idaho transportation department in collecting such taxes, and shall be paid into the current expense fund of the county or state highway account established in section 40-702, Idaho Code.

(g) Seven and three-quarters percent (7.75%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state operating fund, and the moneys in the revenue sharing account will be paid by the tax commission as follows:

(1) One-half (1/2) shall be paid to the various cities as follows:

(i) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the population of that city bears to the population of all cities within the state; and

(ii) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the preceding year's market value for assessment purposes for that city bears to the preceding year's market value for assessment purposes for all cities within the state.

(2) One-half (1/2) shall be paid to the state's general account or to the various counties as follows:

(i) One million three hundred twenty thousand dollars ($1,320,000) shall be distributed one forty-fourth (1/44) to each of the various counties; and

(ii) The balance of such amount shall be paid to the various counties, and each county shall be entitled to an amount in the proportion that the population of that county bears to the population of the state.

(h) Any moneys remaining over and above those necessary to meet and reserve for payments under other subsections of this section shall be distributed to the general account.

Approved March 22, 2000.

CHAPTER 50
(S.B. No. 1461)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE CORRECT REFERENCES AND TO CLARIFY DEPOSIT OF CERTAIN FEES; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-418C, IDAHO CODE, TO ESTABLISH A FIREFIGHTERS SPECIAL LICENSE PLATE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-402, Idaho Code, be, and the same is hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds shall be:

Vehicles one (1) and two (2) years old $48.00
Vehicles three (3) and four (4) years old $36.00
Vehicles five (5) and six (6) years old $36.00
Vehicles seven (7) and eight (8) years old $24.00
Vehicles over eight (8) years old $24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers numbered 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all motorcycles and all-terrain vehicles the annual fee shall be nine dollars ($9.00). For operation of an ATV off the public highways, the fee specified in section 67-7122, Idaho Code, shall also be paid. Registration exemptions provided in section 49-426(2), Idaho Code, apply to all-terrain vehicles and motorcycles used for the purposes described in that subsection (2).

(3) For all motor homes the fee shall be as specified in subsec-

tion (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(4) Registration fees shall not be subject to refund.

(5) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96) hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

(6) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars ($25.00) and an annual program fee of fifteen dollars ($15.00) for all special license plate programs for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416 and 49-418, Idaho Code. For special plates issued pursuant to sections 49-406 and 49-406A, Idaho Code, there shall be an initial program fee of twenty-five dollars ($25.00) but there shall be no annual renewal fee. For special plates issued pursuant to sections 49-417, 49-417A, 49-417B, 49-418A, 49-418B, 49-418C, 49-419, 49-419A and 49-420, Idaho Code, there shall be an initial program fee of thirty-five dollars ($35.00) and an annual program fee of twenty-five dollars ($25.00). ~~For special plates issued pursuant to section 49-418A, Idaho Code, the initial program fee and the annual renewal fee shall be fifty dollars ($50.00).~~ The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited ~~as~~ in the state highway account and shall be used to fund the cost of administration of special license plate programs, unless otherwise specified by law. ~~for each program.~~

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 49-418C, Idaho Code, and to read as follows:

49-418C. FIREFIGHTERS LICENSE PLATES. (1) On and after January 1, 2001, 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 firefighters license plates in lieu of regular license plates. Availability of firefighters 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 plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer to the Idaho fire chiefs association in Boise, Idaho, and shall be used exclusively for the fire safety education of firefighters, fire chiefs and the general public.

(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 firefighters license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. The distinguishing feature of the license plate shall be a representation of firefighters in action. The design and any slogan on the plate shall be acceptable to the Idaho fire chiefs association and shall be 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 Idaho fire chiefs association.

(5) Sample firefighters license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the Idaho fire chiefs association. 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, 2001.

Approved March 22, 2000.

CHAPTER 51
(S.B. No. 1435)

AN ACT

RELATING TO PROHIBITION ON RELEASE AND USE OF PERSONAL INFORMATION CONTAINED IN MOTOR VEHICLE AND DRIVER RECORDS; AMENDING SECTION 49-203, IDAHO CODE, TO PROVIDE THAT PERSONAL INFORMATION IN AN INDIVIDUAL'S MOTOR VEHICLE OR DRIVER RECORD MAY BE DISCLOSED FOR BULK DISTRIBUTION FOR SURVEYS, MARKETING OR SOLICITATIONS OR IN RESPONSE TO REQUESTS WITHOUT REGARD FOR THE INTENDED USE, BUT ONLY IF THE DEPARTMENT HAS OBTAINED THE WRITTEN CONSENT OF THE PERSON TO WHOM SUCH PERSONAL INFORMATION PERTAINS AND TO MAKE A TECHNICAL CORRECTION; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-203, Idaho Code, be, and the same is hereby amended to read as follows:

49-203. PROHIBITION ON RELEASE AND USE OF PERSONAL INFORMATION CONTAINED IN MOTOR VEHICLE AND DRIVER RECORDS. (1) Except as otherwise provided, the department and any officer, employee, agent or contractor thereof, shall not knowingly disclose to any person or entity personal information about any individual when such information was obtained from a motor vehicle or driver record.

(2) Personal information shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act (15 USC 1231 et seq.), the Motor Vehicle Information and Cost Savings Act (49 USC 32101 et seq.), the National Traffic and Motor Vehicle Safety Act of 1966, the Anti Car Theft Act of 1992, and the Clean Air Act (42 USC 7401 et seq., as amended.)

(3) Personal information may be disclosed if the requesting person demonstrates in such form and manner as the department prescribes, that he has obtained the written consent of the individual to whom the personal information pertains.

(4) Personal information may be disclosed on proof of the identity of the person requesting a record, and representation by such person that the use of the personal information will be strictly limited to any of the following described uses:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.

(b) For use in matters of motor vehicle or driver safety and theft; motor vehicle emissions, motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original records of motor vehicle manufacturers.

(c) For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only:

(i) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

(ii) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purpose of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, state or local court or agency or before any self-regulatory body, including the services of process, investigation~~, and~~ in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state or local court.

(e) For use in research activities, and for use in producing statistical reports, so long as personal information is not pub-

lished, redisclosed or used to contact individuals.

(f) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees or contractors, in connection with claims investigation activities, rating or underwriting.

(g) For use in providing notice to the owners of towed or impounded vehicles.

(h) For use by any licensed private investigative agency or licensed security service for any purpose permitted under the provisions of title 49, Idaho Code.

(i) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 USC 31101 et seq.).

(j) For bulk distribution for surveys, marketing, or solicitations if the department has ~~implemented methods and procedures to ensure that:~~

~~(i) Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and~~

~~(ii) The information will be used, rented, or sold solely for bulk distribution for surveys, marketing and solicitations, and that surveys, marketing and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them~~ obtained the written consent of the person to whom such personal information pertains.

(k) For any other use specifically authorized under Idaho Code, if such use is related to public safety or the operation of a motor vehicle.

(l) For use in connection with the operation of private toll transportation facilities, including companies that operate parking facilities for the purpose of providing notice to the owners of vehicles who have used the facility.

(5) Personal information obtained in an individual's motor vehicle or driver record shall be disclosed in response to requests for individual motor vehicle or driver records without regard to the intended use of such personal information if the department has:

~~(a) Provided in a clear and conspicuous manner on forms for issuance or renewal of driver's licenses or permits, identification cards, motor vehicle titles or motor vehicle registrations that personal information collected by the department may be disclosed to any business or person; and~~

~~(b) Provided in a clear and conspicuous manner on such forms an opportunity for the individual to prohibit such disclosure~~ obtained the written consent of the person to whom such personal information pertains.

(6) Authorized recipients of personal information may redisseminate such information only for those purposes set forth in paragraphs (a) through (l) of subsection (4) of this section. For the purposes of this subsection (6), "authorized recipients" means an individual, organization or entity who receives personal information for uses permitted in paragraphs (a) through (l) of subsection (4) of this section and includes record redisseminators who agree to

redisseminate such information only for the purposes set forth in paragraphs (a) through (l) of subsection (4) of this section.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after June 1, 2000.

Approved March 22, 2000.

CHAPTER 52
(S.B. No. 1409)

AN ACT

RELATING TO DRIVER AND MOTOR VEHICLE RECORDS; AMENDING SECTION 49-203, IDAHO CODE, TO LIMIT DISCLOSURE OF SPECIFIED PERSONAL INFORMATION; AMENDING SECTION 49-321, IDAHO CODE, TO FURTHER DESCRIBE RECORDS TO BE MAINTAINED BY THE DEPARTMENT; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-203, Idaho Code, be, and the same is hereby amended to read as follows:

49-203. PROHIBITION ON RELEASE AND USE OF PERSONAL INFORMATION CONTAINED IN MOTOR VEHICLE AND DRIVER RECORDS. (1) Except as otherwise provided, the department and any officer, employee, agent or contractor thereof, shall not knowingly disclose to any person or entity personal information about any individual when such information was obtained from a motor vehicle or driver record.

(2) Personal information shall be disclosed, except as restricted in subsection (6) of this section, for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act (15 USC 1231 et seq.), the Motor Vehicle Information and Cost Savings Act (49 USC 32101 et seq.), the National Traffic and Motor Vehicle Safety Act of 1966, the Anti Car Theft Act of 1992, and the Clean Air Act (42 USC 7401 et seq., as amended.)

(3) Personal information may be disclosed if the requesting person demonstrates in such form and manner as the department prescribes, that he has obtained the written consent of the individual to whom the personal information pertains.

(4) Personal information may be disclosed, except as restricted in subsection (6) of this section, on proof of the identity of the person requesting a record, and representation by such person that the use of the personal information will be strictly limited to any of the following described uses:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.

(b) For use in matters of motor vehicle or driver safety and theft; motor vehicle emissions, motor vehicle product alterations, recalls or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original records of motor vehicle manufacturers.

(c) For use in the normal course of business by a legitimate business or its agents, employees or contractors, but only:

(i) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

(ii) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purpose of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, state or local court or agency or before any self-regulatory body, including the services of process, investigation, and anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state or local court.

(e) For use in research activities, and for use in producing statistical reports, so long as personal information is not published, redisclosed or used to contact individuals.

(f) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees or contractors, in connection with claims investigation activities, rating or underwriting.

(g) For use in providing notice to the owners of towed or impounded vehicles.

(h) For use by any licensed private investigative agency or licensed security service for any purpose permitted under the provisions of title 49, Idaho Code.

(i) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 USC 31101 et seq.).

(j) For bulk distribution for surveys, marketing, or solicitations if the department has implemented methods and procedures to ensure that:

(i) Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

(ii) The information will be used, rented, or sold solely for bulk distribution for surveys, marketing and solicitations, and that surveys, marketing and solicitations will not be directed at those individuals who have requested in a timely fashion that they not be directed at them.

(k) For any other use specifically authorized under Idaho Code,

if such use is related to public safety or the operation of a motor vehicle.

(l) For use in connection with the operation of private toll transportation facilities, including companies that operate parking facilities for the purpose of providing notice to the owners of vehicles who have used the facility.

(5) Personal information obtained in an individual record shall be disclosed, except as restricted in subsection (6) of this section, in response to requests for individual motor vehicle or driver records without regard to the intended use of such personal information if the department has:

(a) Provided in a clear and conspicuous manner on forms for issuance or renewal of driver's licenses or permits, identification cards, motor vehicle titles or motor vehicle registrations that personal information collected by the department may be disclosed to any business or person; and

(b) Provided in a clear and conspicuous manner on such forms an opportunity for the individual to prohibit such disclosure.

(6) In addition to the restrictions and prohibitions on the disclosure of personal information contained in motor vehicle and driver records, an individual's photograph, digitized image of a photograph, digitized signature, social security number, and medical or disability information shall not be disclosed without the written consent of the person to whom such information pertains, except for uses permitted under subsections (4)(a) and (4)(d) of this section.

(7) Authorized recipients of personal information may redisseminate such information only for those purposes set forth in paragraphs (a) through (l) of subsection (4) of this section. For the purposes of this subsection (67), "authorized recipients" means an individual, organization or entity who receives personal information for uses permitted in paragraphs (a) through (l) of subsection (4) of this section and includes record redisseminators who agree to redisseminate such information only for the purposes set forth in paragraphs (a) through (l) of subsection (4) of this section.

SECTION 2. 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. (l) 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 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after June 1, 2000.

Approved March 22, 2000.

CHAPTER 53
(S.B. No. 1387)

AN ACT

RELATING TO PUBLIC DRINKING WATER SYSTEMS; AMENDING SECTION 39-3624, IDAHO CODE, TO PROVIDE THAT IT IS THE POLICY OF THE STATE OF IDAHO TO PROVIDE FINANCIAL AND TECHNICAL ASSISTANCE TO COMMUNITY WATER SYSTEMS AND NONPROFIT NONCOMMUNITY WATER SYSTEMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3625, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3626, IDAHO CODE, TO CLARIFY THAT GRANTS OR LOANS TO COMMUNITY PUBLIC WATER SYSTEMS AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS MAY BE MADE; AMENDING SECTION 39-3627, IDAHO CODE, TO AUTHORIZE AGREEMENTS WITH AND PAYMENTS TO COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 39-3624, Idaho Code, be, and the same is hereby amended to read as follows:

39-3624. DECLARATION OF POLICY -- DESIGNATION OF DIRECTOR. The legislature, recognizing that water is one (1) of the state's most valuable natural resources, has adopted water quality <u>and public drinking water</u> standards and authorized the director of the department of health and welfare to implement these standards. In order to provide and maintain maximum water quality in the state for domestic, industrial, agricultural (irrigation and stockwatering), mining, manufacturing, electric power generation, municipal, fish culture, artificial ground water recharge, transportation and recreational purposes <u>and to provide safe drinking water to the public</u> at the earliest pos-

sible date, and to conform to the expressed intent of congress to abate pollution of ground waters, streams and lakes and to provide safe drinking water to the public, the legislature declares the purpose of this act is to enhance and preserve the quality and value of the water resources of the state of Idaho and to assist in the prevention, control, abatement and monitoring of water pollution. In consequence of the benefits resulting to the public health, welfare and economy it is hereby declared to be the policy of the state of Idaho to protect this natural resource and to provide safe drinking water to the public by assisting in monitoring, preventing and controlling water pollution; to support and aid technical and planning research leading to the prevention and control of water pollution~~,~~; ~~and~~ to provide financial and technical assistance to municipalities and other agencies in the abatement and prevention of water pollution; and to provide financial and technical assistance to community water systems and nonprofit noncommunity water systems. The director of the department of health and welfare shall administer this act and nothing herein shall be construed as impairing or in any manner affecting the statutory authority or jurisdiction of municipalities in providing domestic water, sewage collection and treatment.

SECTION 2. That Section 39-3625, Idaho Code, be, and the same is hereby amended to read as follows:

39-3625. DEFINITIONS. ~~A.~~(1) "Sewage treatment works" means any facility for the purpose of collecting, treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(2) "Community water system" means a public drinking water system that serves at least fifteen (15) service connections used by year-round residents or serves at least twenty-five (25) year-round residents.

(3) "Nonprofit noncommunity water system" means a public drinking water system that is not a community water system and is governed by section 501 of the Internal Revenue Code and includes, but is not limited to: state agencies, municipalities and nonprofit organizations such as churches and schools.

~~B.~~(4) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works or best management practices, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, and the inspection and supervision of the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices.

~~C.~~(5) "Eligible construction project" means a project for construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or for a project for the application of best management practices as set forth in the approved state water quality plan, in related project areas:

~~1.~~(a) For which approval of the Idaho board of health and welfare is required under section 39-118, Idaho Code;

~~2.~~(b) Which is, in the judgment of the Idaho board of health and welfare, eligible for water pollution abatement assistance or for provision of safe drinking water, whether or not federal funds are then available therefor;

~~3.~~(c) Which conforms with applicable rules of the Idaho board of health and welfare;

~~4.~~(d) Which is, in the judgment of the Idaho board of health and welfare, necessary for the accomplishment of the state's policy of water purity as stated in section 39-3601, Idaho Code; and

~~5.~~(e) Which is needed, in the judgment of the Idaho board of health and welfare, to correct existing water pollution problems or public health hazards and to provide reasonable reserve capacity to prevent future water pollution problems or public health hazards or to provide for safe drinking water.

~~D.~~(6) "Municipality" means any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.

~~E.~~(7) "Board" means the Idaho board of health and welfare.

~~F.~~(8) "Department" means the Idaho department of health and welfare.

~~G.~~(9) "Director" means the director of the Idaho department of health and welfare.

~~H.~~(10) "Nondomestic wastewater" means wastewater whose source of contamination is not principally human excreta.

~~I.~~(11) "Best management practice" means practices, techniques or measures identified in the state water quality plan which are determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

~~J.~~(12) "Nonpoint source pollution" means water pollution that comes from many varied, nonspecific and diffused sources and can be categorized by the general land disturbing activity that causes the pollution.

~~K.~~(13) "Training program" means any course of training established to provide sewage treatment plant operating personnel and public drinking water system personnel with increased knowledge to improve their ability to operate and maintain sewage treatment works and public drinking water systems.

SECTION 3. That Section 39-3626, Idaho Code, be, and the same is hereby amended to read as follows:

39-3626. AUTHORIZATION OF GRANTS AND LOANS -- DESIGNATION OF

ADMINISTERING AGENCY -- RESERVATION OF FUNDS FOR OPERATIONS -- CRITERIA -- PRIORITY PROJECTS -- ELIGIBLE PROJECTS. ~~A.~~(1) The state of Idaho is hereby authorized to make grants and loans at or below market interest rates, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works, to community public water systems and nonprofit noncommunity public water systems or application of best management practices and to provide for training of treatment plant operating personnel.

~~B.~~(2) The Idaho board of health and welfare through the department of health and welfare shall be the agency for administration of funds authorized for grants or loans under this act, and may reserve up to four percent (4%) of the moneys accruing annually to the water pollution control and wastewater facility loan accounts to be appropriated annually for the purpose of operating the water quality programs established pursuant to this chapter. The board may also reserve up to six percent (6%) of the moneys accruing annually to the water pollution control account to be appropriated annually for the purpose of conducting water quality studies including monitoring.

~~C.~~(3) In allocating state construction grants and loans under this act, the Idaho board of health and welfare shall give consideration to water pollution control needs, ~~and~~ protection of public health and provision of safe drinking water.

~~D.~~(4) Pursuant to subsection ~~C.~~(3) of this section, the Idaho board of health and welfare shall establish a list of priority municipal sewage facility projects and a list of priority community and nonprofit noncommunity public water systems.

SECTION 4. That Section 39-3627, Idaho Code, be, and the same is hereby amended to read as follows:

39-3627. PAYMENTS BY STATE BOARD OF HEALTH AND WELFARE -- CONTRACTS WITH MUNICIPALITIES AND COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS -- RULES -- APPROVAL OF ATTORNEY GENERAL -- AUDIT OF PAYMENTS. ~~A.~~(1) The Idaho board of health and welfare may make payments not to exceed ninety percent (90%) of the estimated reasonable cost of an eligible construction project funded by a grant. Payments may be made which are equal to one hundred percent (100%) of the estimated reasonable cost of an eligible construction project funded by a loan.

~~B.~~(2) The Idaho board of health and welfare may, in the name of the state of Idaho, enter into contracts with municipalities and community and nonprofit noncommunity public water systems and any such municipality and community and nonprofit noncommunity public water system may enter into a contract with the Idaho board of health and welfare, concerning eligible construction projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

~~1.~~(a) An estimate of the reasonable cost of the project as determined by the Idaho board of health and welfare.

~~2.~~(b) An agreement by the municipality or community and nonprofit noncommunity public drinking water system, binding for the actual service life of the sewage treatment works or the actual service life of the community and nonprofit noncommunity public drinking

water system:

~~a.~~(i) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 39-118, Idaho Code.

~~b.~~(ii) To commence operation of the sewage treatment works or community and nonprofit noncommunity public drinking water system on completion of the project, and not to discontinue operation or dispose of the sewage treatment works or community and nonprofit noncommunity public drinking water system without the approval of the board of health and welfare.

~~c.~~(iii) To operate and maintain the sewage treatment works or community and nonprofit noncommunity public drinking water system in accordance with applicable provisions and rules of the board.

~~d.~~(iv) To make available on an equitable basis the services of the sewage treatment works or community and nonprofit noncommunity public drinking water system to the residents and commercial and industrial establishments of areas it was designed to serve.

~~e.~~(v) To provide for the payment of the municipality's share or the community and nonprofit noncommunity public drinking water system's share of the cost of the project when the project is built using grant funds.

~~f.~~(vi) To develop and to secure the approval of the department of plans for the operation and maintenance of the sewage treatment works or community and nonprofit noncommunity public drinking water system; and of plans and programs for the recovery of the capital costs and operating expenses of the works or system.

~~g.~~(vii) To allow the board to make loans of up to one hundred percent (100%) and supplemental grants based upon financial capability to a municipality for the estimated reasonable cost of an eligible project, which may include treatment of nondomestic wastewater.

~~h.~~(viii) To provide for the accumulation of funds through the use of taxing powers, through charges made for services, through revenue bonds, or otherwise, for the purposes of: (1) capital replacement, (2) future improvement, betterment, and extension of such works occasioned by increased wastewater loadings on the works, and (3) establishing a fund dedicated solely to repayment of principal and interest of loans made subsequent to this chapter.

~~i.~~(ix) To commence annual principal and interest payments not later than one (1) year from the date construction is completed and to provide for full amortization of loans not later than twenty (20) years from the date project construction is completed.

~~3.~~(c) The terms under which the Idaho board of health and welfare may unilaterally terminate the contract and/or seek repayment from the municipality or community and nonprofit noncommunity public drinking water system of sums already paid pursuant to the contract for noncompliance by the municipality with the terms and conditions of the contract and the provisions of this chapter.

~~C.~~(3) The board may adopt rules necessary for the making and enforcing of contracts hereunder and establishing procedures to be followed in applying for state construction grants or loans or training grants herein authorized as shall be necessary for the effective administration of the grants and loans program.

~~D.~~(4) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.

SECTION 5. This act shall be in full force and effect on and after July 1, 2000.

Approved March 22, 2000.

CHAPTER 54
(S.B. No. 1381)

AN ACT
RELATING TO CLASSIFICATION AND RETENTION OF COUNTY RECORDS; AMENDING SECTION 31-871, IDAHO CODE, TO RECLASSIFY CERTAIN DOCUMENTS.

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

SECTION 1. That Section 31-871, Idaho Code, be, and the same is hereby amended to read as follows:

31-871. CLASSIFICATION AND RETENTION OF RECORDS. (1) County records shall be classified as follows:

(a) "Permanent records" shall consist of, but not be limited to, the following: proceedings of the governing body, ordinances, resolutions, building plans and specifications for commercial projects and government buildings, bond register, warrant register, budget records, general ledger, cash books and records affecting the title to real property or liens thereon, and other documents or records as may be deemed of permanent nature by the board of county commissioners.

(b) "Semipermanent records" shall consist of, but not be limited to, the following: claims, contracts, canceled checks, warrants, duplicate warrants, license applications, building applications for commercial projects and government buildings, departmental reports, purchase orders, vouchers, duplicate receipts, bonds and coupons, registration and other election records, financial records, and other documents or records as may be deemed of semipermanent nature by the board of county commissioners.

(c) "Temporary records" shall consist of, but not be limited to, the following: correspondence not related to subsections (1) and (2) of this section, building applications, plans, and specifications for noncommercial and nongovernment projects after the structure or project receives final inspection and approval, cash

receipts subject to audit, and other records as may be deemed temporary by the board of county commissioners.

(d) Those records not included in subsection (1)(a), (b) or (c) of this section shall be classified as permanent, semipermanent or temporary by the board of county commissioners and upon the advice of the office of the prosecuting attorney.

(2) County records shall be retained as follows:

(a) Permanent records shall be retained for not less than ten (10) years.

(b) Semipermanent records shall be kept for not less than five (5) years after date of issuance or completion of the matter contained within the record.

(c) Temporary records shall be retained for not less than two (2) years.

(d) Records may only be destroyed by resolution of the board of county commissioners after regular audit and upon the advice of the prosecuting attorney. A resolution ordering destruction must list, in detail, records to be destroyed. Such disposition shall be under the direction and supervision of the board's clerk.

(e) The provisions of this section shall control the classification and retention schedules of all county records unless otherwise provided in Idaho Code or any applicable federal law.

Approved March 22, 2000.

CHAPTER 55
(S.B. No. 1369)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-504, IDAHO CODE, TO PROVIDE THAT THE SEVENTY-TWO HOUR TIME PERIOD FOR TEMPORARY PERMITS SHALL BE CALCULATED EXCLUDING WEEKEND DAYS AND LEGAL HOLIDAYS OBSERVED BY THE STATE OF IDAHO AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-504, Idaho Code, be, and the same is hereby amended to read as follows:

49-504. APPLICATIONS TO DEPARTMENT FOR CERTIFICATES -- PROCEDURE -- IDENTIFICATION NUMBERS. (1) Application for a certificate of title shall be made upon a form furnished by the department and shall contain a full description of the vehicle including the make, identification numbers, and the odometer reading at the time of sale or transfer, and whether the vehicle is new or used, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, and the name and address of the person to whom the certificate of title shall be delivered, and any other information as the department may require. The application shall be filed with the department, and if a certificate of title has previously been issued

for that vehicle in this state, shall be accompanied by the certificate of title duly assigned, unless otherwise provided for in this chapter. The department may promulgate rules ~~and regulations~~ to provide for exceptions to the odometer requirement.

(2) If a certificate of title has not previously been issued for the vehicle in this state, the application, unless otherwise provided for in this chapter, shall be accompanied by a proper bill of sale or a duly certified copy thereof, or by a certificate of title, bill of sale or other evidence of ownership required by the law of any other state from which the vehicle was brought into this state, and a vehicle identification number inspection completed by any city, county or state peace officer or other special agent authorized by the department.

(3) In the case of a new vehicle being titled for the first time, no certificate of title or registration shall be issued unless the application is indorsed by a franchised new vehicle dealer licensed to sell a new vehicle. Each application shall be accompanied by a manufacturers' certificate of origin or manufacturers' statement of origin executed by the manufacturer and delivered to his agent or his franchised vehicle dealer. The certificate or statement of origin shall be in a form prescribed by the board and shall contain the year of manufacture or the model year of the vehicle, the manufacturer's vehicle identification number, the name of the manufacturer, the number of cylinders, a general description of the body, if any, and the type or model. Upon sale of a new vehicle, the manufacturer, his agent or franchised dealer shall execute and deliver to the purchaser an assignment of the certificate or statement, together with any lien or encumbrance to which the vehicle is subject.

(4) The department shall retain the evidence of title presented by the applicant and on which the certificate of title is issued. The department shall maintain an identification numbers index of registered vehicles, and upon receiving an application for a certificate of title, shall first check the identification number shown in the application against the index. The department, when satisfied that the applicant is the owner of the vehicle and that the application is in proper form, shall issue in the name of the owner of the vehicle a certificate of title bearing a title number, the date issued and a description of the vehicle as determined by the department, together with a statement of the owner's title and of all liens or encumbrances upon the vehicle, and whether possession is held by the owner under a lease, contract or conditional sale, or other like agreement.

(5) In all cases of transfer of vehicles the application for certificates of title shall be filed within thirty (30) calendar days after the delivery of the vehicles. Licensed dealers need not apply for certificate of title for vehicles in stock or when they are acquired for stock purposes.

(6) In the case of the sale of a vehicle by a dealer to a general purchaser or user, the certificate of title shall be obtained in the name of the purchaser by the dealer upon application signed by the purchaser. If a lien is to be recorded, the title documentation as required in this section shall be submitted to the department by the dealer or the lienholder upon application signed by the purchaser. A copy of this application shall be given to the purchaser to be used as

a seventy-two (72) hour temporary permit. In all other cases the certificates shall be obtained by the purchaser and the seller's bill of sale shall serve as a seventy-two (72) hour permit. The seventy-two (72) hour time period for temporary permits shall be calculated excluding weekend days and legal holidays observed by the state of Idaho. This temporary permit allows operation of any noncommercial vehicle or unladened commercial vehicle or vehicle combination without license plates for the period of time specified in the permit. A ladened commercial vehicle or vehicle combination may also operate without license plates for the period of time specified in the temporary permit provided that the owner or operator has also obtained a permit issued under the provisions of section 49-432, Idaho Code, and provided user fees have been paid for the ladened weight and mileage.

(7) If the vehicle has no identification number, then the department shall designate an identification number for that vehicle at the time of issuance of the certificate of title. The identification number shall be permanently affixed to or indented upon the frame of the vehicle and legibly maintained by the owner at all times while a certificate of title to the vehicle shall be issued and outstanding.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 22, 2000.

CHAPTER 56
(S.B. No. 1332)

AN ACT

RELATING TO MOTOR VEHICLE DRIVER'S LICENSES AND IDENTIFICATION CARDS; AMENDING SECTION 49-306, IDAHO CODE, AS AMENDED BY SECTION 9, CHAPTER 81, LAWS OF 1999, SECTION 1, CHAPTER 317, LAWS OF 1999, SECTION 1, CHAPTER 318, LAWS OF 1999, SECTION 1, CHAPTER 319, LAWS OF 1999, AND SECTION 2, CHAPTER 360, LAWS OF 1999, TO PROVIDE A ONE-YEAR COMMERCIAL DRIVER'S LICENSE FOR PERSONS AGED TWENTY YEARS, TO PROVIDE A ONE-YEAR CLASS D DRIVER'S LICENSE FOR PERSONS AGED SEVENTEEN YEARS OR TWENTY YEARS, TO CLARIFY THAT AN EIGHT-YEAR LICENSE IS AVAILABLE ONLY TO PERSONS AGED TWENTY-ONE TO SIXTY-THREE YEARS, TO PROVIDE FOR DISTRIBUTION OF FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-319, IDAHO CODE, AS AMENDED BY SECTION 12, CHAPTER 81, LAWS OF 1999, SECTION 2, CHAPTER 317, LAWS OF 1999, AND SECTION 3, CHAPTER 318, LAWS OF 1999, TO CLARIFY DATES OF EXPIRATION AND RENEWAL FOR COMMERCIAL AND NON-COMMERCIAL DRIVER'S LICENSES, TO PROVIDE A FIVE-DAY EXTENSION FOR RENEWAL OF DRIVER'S LICENSES FOR PERSONS WHOSE LICENSES EXPIRE ON THEIR EIGHTEENTH BIRTHDAY OR ON THEIR TWENTY-FIRST BIRTHDAY, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-2444, IDAHO CODE, AS AMENDED BY SECTION 2, CHAPTER 79, LAWS OF 1999, SECTION 21, CHAPTER 81, LAWS OF 1999, SECTION 3, CHAPTER 317, LAWS OF 1999, AND SECTION 4, CHAPTER 318, LAWS OF 1999, TO PROVIDE A FIVE-DAY EXTENSION FOR RENEWAL OF AN IDENTIFICATION CARD FOR PERSONS

WHOSE CARDS EXPIRE ON THEIR EIGHTEENTH BIRTHDAY OR ON THEIR TWENTY-FIRST BIRTHDAY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-306, Idaho Code, as amended by Section 9, Chapter 81, Laws of 1999, Section 1, Chapter 317, Laws of 1999, Section 1, Chapter 318, Laws of 1999, Section 1, Chapter 319, Laws of 1999, and Section 2, Chapter 360, Laws of 1999, 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 (4-year) license with endorsements - age 21 years and older $28.50

(b) Class A, B, C (3-year) license with endorsements - ~~under~~ age 18 to 21 years $17.50

(c) Class A, B, C (1-year) license with endorsements - age 20 years $11.25

(d) Class D (3-year) license - under age 18 years $17.50

(~~d~~e) Class D (3-year) license - age 18 to 21 years $17.50

(f) Class D (1-year) license - age 17 years or age 20 years $11.25

(~~e~~g) Four-year Class D license - age 21 years and older .. $24.50

(~~c~~h) Eight-year Class D license - ages 21 to 63 years $41.00

(~~d~~i) Class A, B, C instruction permit $19.50

(~~e~~j) Class D instruction permit $11.50

(~~f~~k) Duplicate driver's license or permit issued under section 49-318, Idaho Code $11.50

(~~g~~l) Driver's license extension issued under section 49-319, Idaho Code ..... $ 6.50

(~~h~~m) License classification change (upgrade) $15.50

(~~i~~n) Endorsement addition $11.50

(~~j~~o) Class A, B, C skills tests ..... not more than $55.00

(~~k~~p) Class D skills test $15.00

(~~l~~q) Motorcycle endorsement skills test .....$ 5.00

(~~m~~r) Knowledge test ..... $ 3.00

(~~n~~s) Seasonal driver's license $27.50

(~~o~~t) One time motorcycle "M" endorsement $11.50

(~~p~~u) Motorcycle endorsement instruction permit $11.50

(~~q~~v) Restricted driving permit $35.00

(2) Every application shall state the true and full name, date of birth, sex, declaration of Idaho residency, Idaho residence address and mailing address, if different, of the applicant, height, weight, hair color, and eye color, and the applicant's social security number as verified by the applicant's social security card or by the social

security administration.

(a) The requirement that an applicant provide a social security number as verified by his social security card or by the social security administration shall apply only to applicants who have been assigned a social security number.

(b) An applicant who has not been assigned a social security number shall:

(i) Present written verification from the social security administration that the applicant has not been assigned a social security number; and

(ii) Submit a birth certificate, passport or other documentary evidence issued by an entity other than a state or the United States; and

(iii) Submit such proof as the department may require that the applicant is lawfully present in the United States.

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 acceptable to the examiner or the department and date of birth as set forth in a certified copy of his birth certificate when obtainable, or another document which provides satisfactory evidence of a person's date of birth acceptable to the examiner or the department.

(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 ~~four-year~~ driver's license <u>except an eight-year class D license,</u> or instruction permit application fees, application for a duplicate driver's license or permit, classification change, seasonal

driver's license and additional endorsement, and ten dollars ($10.00) from each eight-year class D driver's license, 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; and

(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 four-year driver's license or seasonal driver's license, and four dollars ($4.00) of each fee for an eight-year class D driver's license, and one dollar and fifty cents ($1.50) of each fee charged for driver's licenses pursuant to subsections (1)(b), ~~(c) and~~ (d) and (e) of this section, and fifty cents (50¢) of each fee charged for driver's licenses pursuant to subsections (1)(c) and (f) of this section, shall be deposited in the emergency medical services account II created in section 39-146A, Idaho Code, and four dollars ($4.00) of each ~~such~~ fee charged pursuant to subsections (1)(a), (g) and (s) of this section shall be deposited in the emergency medical services account III created in section 39-146B, 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, and ten dollars ($10.00) of each fee charged for a license pursuant to subsection (1)(b) of this section, and five dollars and forty-one cents ($5.41) of each fee charged for a license pursuant to subsection (1)(c) of this section 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) Four dollars ($4.00) of each fee for a class A, B~~,~~ or C instruction permit shall be deposited in the emergency medical services account III created in section 39-146B, Idaho Code; and

(e) 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

(f) 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

(g) Five dollars and thirty cents ($5.30) of each fee for a four-year class D driver's license, and ten dollars and sixty cents ($10.60) of each fee for an eight-year class D driver's license, and four dollars ($4.00) of each fee charged for a license pursuant to subsections (1)~~(c)-and~~ (d) and (e) of this section, and one dollar and thirty-three cents ($1.33) of each fee charged for a license pursuant to subsection (1)(f) of this section shall be deposited in the driver training account; and

(h) Seven dollars and twenty cents ($7.20) of each fee for a four-year class D driver's license, and fourteen dollars and forty cents ($14.40) of each fee for an eight-year class D driver's license, and six dollars ($6.00) of each fee charged for a license pursuant to subsections (1)~~(c)-and~~ (d) and (e) of this section, and four dollars and eight cents ($4.08) of each fee charged for a license pursuant to subsection (1)(f) of this section shall be deposited in the highway distribution account; and

(i) 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

(j) 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

(k) 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

(l) One dollar ($1.00) of each fee for a class A, B, C or ~~or~~ four-year D driver's license, and two dollars ($2.00) of each fee for an eight-year class D driver's license, and one dollar ($1.00) of each fee charged for a license pursuant to subsections (1)(b), ~~(c)--and~~ (d) and (e) of this section, and thirty-four cents (34¢) of each fee charged for a license pursuant to subsections (1)(c) and (f) of this section shall be deposited in the motorcycle safety program fund established in section 33-4904, Idaho Code; and

(m) 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 not more than fifty dollars ($50.00) 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.

(12) 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 (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 2. That Section 49-319, Idaho Code, as amended by Section 12, Chapter 81, Laws of 1999, Section 2, Chapter 317, Laws of 1999, and Section 3, Chapter 318, Laws of 1999, be, and the same is hereby amended to read as follows:

49-319. EXPIRATION AND RENEWAL OF DRIVER'S LICENSE. (1) Every noncommercial Idaho driver's license issued to a driver ~~under~~ shall expire and be renewable as follows:

(a) T~~t~~wenty-one (21) years of age ~~and sixty-three (63) years of age~~ or older shall expire on the licensee's birthday in the fourth year following the issuance of the driver's license.

(b) At the option of the applicant, for drivers twenty-one (21) years of age through sixty-two (62) years of age, the driver's license shall expire either on the licensee's birthday in the fourth year or the eighth year following the issuance of the driver's license.

(c) Every driver's license issued to a driver under eighteen (18) years of age shall expire ~~on~~ five (5) days after the licensee's eighteenth birthday.

(d) Every driver's license issued to a driver eighteen (18) years of age but under twenty-one (21) years of age shall expire ~~on~~ five (5) days after the licensee's twenty-first birthday.

(e) Except licenses issued to drivers under twenty-one (21) years of age, e~~E~~very driver's license that is not, as provided by law, suspended, revoked or disqualified in this state or any other jurisdiction shall be renewable on or before its expiration, ~~except those issued to drivers under twenty-one (21) years of age,~~ but not more than twelve (12) months before, upon application, payment of the required fee, and satisfactory completion of the required eyesight examination.

(2) Every commercial driver's license issued to a person twenty-one (21) years of age or older shall expire on the licensee's birthday in the fourth year following issuance of the license, and any Class A,

B or C license issued to a person eighteen (18), nineteen (19) or twenty (20) years of age shall expire five (5) days after the licensee's twenty-first birthday. There shall be no option for an eight-year Class A, B or C license.

(3) An applicant who is issued a driver's license in another jurisdiction after an Idaho driver's license has been issued is not eligible for renewal or a duplicate of the Idaho driver's license. The applicant may apply for a new Idaho driver's license as provided in section 49-306, Idaho Code.

(~~3~~4) 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.

(~~4~~5) Except for drivers under twenty-one (21) years of age, w~~W~~hen a driver's license has been expired for ~~less~~ fewer 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 application for renewal is made. If the driver's license is expired for twelve (12) months or more, the applicant shall be required to take the knowledge, skills for the class of license or endorsement being applied for, and vision tests and the application shall expire on the licensee's birthday in the fourth year following issuance of the driver's license for drivers ~~under~~ twenty-one (21) years of age ~~and drivers sixty-three (63) years of age~~ or older. At the option of the applicant, for drivers twenty-one (21) years of age through sixty-two (62) years of age, the renewed license shall expire either on the licensee's birthday in the fourth year or the eighth year following issuance.

(~~5~~6) (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 two (2) 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.

(~~6~~7) 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.

(~~7~~8) The department may use a mail renewal process for four-year class D licenses based on criteria established by rule.

(~~8~~9) 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 3. That Section 49-2444, Idaho Code, as amended by Section 2, Chapter 79, Laws of 1999, Section 21, Chapter 81, Laws of 1999, Section 3, Chapter 317, Laws of 1999, and Section 4, Chapter 318, Laws of 1999, be, and the same is hereby amended to read as follows:

49-2444. IDENTIFICATION CARD ISSUED -- FOUR-YEAR OR EIGHT-YEAR. (1) The department shall issue a distinguishing 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 be taken without headgear or other clothing or device that disguises or otherwise conceals the face or head of the applicant. A waiver may be 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 any driver's license issued by any other jurisdiction within the United States, or until he executes an affidavit that he does not possess an identification card or any driver's license.

Identification cards issued to persons under eighteen (18) years of age shall include a notation "under 18 until (month, day, year)," and identification cards issued to persons eighteen (18) years of age to twenty-one (21) years of age shall include a notation "under 21 until (month, day, year)." The nonrefundable fee for a four-year identification card issued to persons twenty-one (21) years of age or older 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. The nonrefundable fee for identification cards issued to

persons under twenty-one (21) years of age shall be six dollars and fifty cents ($6.50), of which five dollars ($5.00) shall be retained by the county and credited to the current expense fund, and one dollar and fifty cents ($1.50) shall be deposited in the state treasury to the credit of the highway distribution account. The nonrefundable fee for an eight-year identification card shall be fifteen dollars ($15.00) of which ten dollars ($10.00) shall be retained by the county and credited to the current expense fund, and five dollars ($5.00) shall be deposited in the state treasury to the credit of the highway distribution account. At the option of the applicant, the identification card issued to a person twenty-one (21) years of age or older shall expire either on the cardholder's birthday in the fourth year or the eighth year following issuance of the card. Every identification card issued to a person under eighteen (18) years of age shall expire ~~on~~ <u>five (5) days after</u> the person's eighteenth birthday. Every identification card issued to a person eighteen (18) years of age but under twenty-one (21) years of age shall expire ~~on~~ <u>five (5) days after</u> the person's twenty-first birthday.

(2) Every identification card, except those issued to persons under twenty-one (21) years of age, 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, at the option of the applicant, on the applicant's birthday in the fourth year or the eighth year following reissuance 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 thirty (30) 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.

(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.

(9) The department may issue a no-fee identification card to an individual whose driver's license has been cancelled and voluntarily surrendered as provided in section 49-322(4), Idaho Code. The identification card may be renewed at no cost to the applicant as long as the driver's license remains cancelled.

SECTION 4. This act shall be in full force and effect on and after January 1, 2001.

Approved March 22, 2000.

CHAPTER 57
(H.B. No. 540)

AN ACT

RELATING TO RECORDS EXEMPT FROM DISCLOSURE; AMENDING SECTION 9-340B, IDAHO CODE, TO PROVIDE THAT OPERATION AND SECURITY MANUALS, PLANS OR CODES OF COUNTY JAILS AND BUILDINGS OWNED OR LEASED BY IDAHO STATE GOVERNMENT, A COUNTY OR A CITY SHALL BE EXEMPT FROM DISCLOSURE, TO FURTHER DEFINE A TERM AND TO DEFINE A TERM; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 9-340B, Idaho Code, be, and the same is hereby amended to read as follows:

9-340B. RECORDS EXEMPT FROM DISCLOSURE -- LAW ENFORCEMENT RECORDS, INVESTIGATORY RECORDS OF AGENCIES, WORKER'S COMPENSATION. The following records are exempt from disclosure:

(1) 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.

(2) 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 petitioned or charged with an offense which would be a criminal offense if committed by an adult, the name, offense of which the juvenile was 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.

(3) (a) 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.

(b) Operation and security manuals, plans or codes of county jails and buildings owned or leased by Idaho state government, a county or a city. "Operation manuals" are those internal documents of any state government agency, county or city building or jail that define the procedures utilized to maintain security within the building or jail. "Plans or codes" relate only to those documents, the release of which could jeopardize the safety of workers in those buildings, or adversely affect the public safety.

(4) Voting records of the sexual offender classification board. In accordance with section 18-8315, Idaho Code, the written record of the vote to classify an offender as a violent sexual predator by each board member in each case reviewed by that board member shall be exempt from disclosure to the public and shall be made available upon request only to the governor, the chairman of the senate judiciary and rules committee, and the chairman of the house of representatives judiciary, rules and administration committee, for all lawful purposes.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) The worker's compensation records of the Idaho industrial commission provided that the industrial commission shall make such records available:

(a) To the parties in any worker's compensation claim and to the

industrial special indemnity fund of the state of Idaho; or

(b) 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

(c) 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

(d) 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.

(10) Records of investigations compiled by the commission on aging involving vulnerable adults, as defined in section 18-1505, Idaho Code, alleged to be abused, neglected or exploited.

(11) Criminal history records and fingerprints, as defined by section 67-3001, Idaho Code, and compiled by the department of law enforcement. Such records shall be released only in accordance with chapter 30, title 67, Idaho Code.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 24, 2000.

CHAPTER 58
(H.B. No. 603)

AN ACT

RELATING TO RECORDS EXEMPT FROM DISCLOSURE; AMENDING SECTION 9-340C, IDAHO CODE, TO REQUIRE THAT CERTAIN RECORDS CONCERNING AN INVESTIGATION OF A LICENSED NURSING FACILITY ARE SUBJECT TO DISCLOSURE UNDER TERMS SPECIFIED AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 9-340C, Idaho Code, be, and the same is hereby amended to read as follows:

9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records are exempt from disclosure:

(1) 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.

(2) 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.

(3) 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.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(5) 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.

(6) 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 neces-

sary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

(7) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(8) 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.

(9) 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.

(10) The records, finding, determinations and decision of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) 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.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) 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.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records ~~on and after~~ as soon as the facility in question has received the report, and no later than the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality,

no record shall be released under this section which specifically identifies any nursing facility resident.

(1~~0~~9) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

Approved March 24, 2000.

CHAPTER 59
(H.B. No. 437)

AN ACT

RELATING TO VETERANS OF THE ARMED FORCES; AMENDING SECTION 39-106, IDAHO CODE, TO DELETE AN INCORRECT REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 65-201, IDAHO CODE, TO ESTABLISH THE DIVISION OF VETERANS SERVICES IN THE DEPARTMENT OF SELF-GOVERNING AGENCIES, TO PROVIDE THAT THE ADMINISTRATOR OF THE DIVISION SHALL BE APPOINTED BY THE GOVERNOR AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 65-202, IDAHO CODE, TO PROVIDE THAT THE ADMINISTRATOR MAY PRESCRIBE QUALIFICATIONS FOR PERSONNEL EMPLOYED IN VETERANS HOMES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 65-204, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-901, IDAHO CODE, TO PROVIDE THAT VETERANS HOMES ARE ESTABLISHED IN THE DIVISION OF VETERANS SERVICES IN THE DEPARTMENT OF SELF-GOVERNING AGENCIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 66-906, IDAHO CODE, TO PROVIDE FOR SUCCESSION TO PROPERTY OF DECEASED RESIDENTS OF VETERANS HOMES; AMENDING SECTION 66-907, IDAHO CODE, TO PROVIDE THAT THE ADMINISTRATOR OF THE DIVISION OF VETERANS SERVICES IN THE DEPARTMENT OF SELF-GOVERNING AGENCIES SHALL ESTABLISH ADMISSIONS CRITERIA FOR VETERANS HOMES AND ESTABLISH CHARGES FOR CERTAIN RESIDENTS; AMENDING SECTION 67-2601, IDAHO CODE, TO CREATE THE DIVISION OF VETERANS SERVICES IN THE DEPARTMENT OF SELF-GOVERNING AGENCIES AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 39-106, Idaho Code, be, and the same is hereby amended to read as follows:

39-106. DIRECTOR -- ADDITIONAL POWERS AND DUTIES. 1. The director shall exercise the following powers and duties in addition to all other powers and duties inherent in the position:

a. Prescribe such rules ~~and regulations~~ as may be necessary for the administration of the department, the conduct and duties of the employees, the orderly and efficient management of department business, and the custody, use and preservation of department records, papers, books and property belonging to the state.

b. Employ such personnel as may be deemed necessary, prescribe

their duties and fix their compensation within the limits provided by the state personnel system law.

c. Administer oaths for all purposes required in the discharge of his duties.

d. Prescribe the qualifications of all personnel of the department on a nonpartisan merit basis, in accordance with the Idaho personnel system law, provided, however, that the administrators in charge of any division of the department, and the administrators in charge of ~~the state veterans homes,~~ state hospital north, state hospital south, and Idaho state school and hospital shall serve at the pleasure of the director.

e. Create such units, sections and subdivisions as are or may be necessary for the proper and efficient functioning of the department.

2. All of the executive and administrative duties, powers and functions transferred to the administrator of the department of environmental and community services by chapter 87, ~~L~~laws of 1973, are hereby transferred to the director of the department of health and welfare, who shall be the successor in law to all contractual obligations entered into by his predecessors in law.

3. All rights and title to property transferred to and vested in the department of environmental and community services by chapter 87, ~~L~~laws of 1973, are hereby transferred to and vested in the department of health and welfare. The department established by this act is empowered to acquire, by purchase or exchange, any property which in the judgment of the department is ~~not~~ needful for the operation of the facilities and programs for which it is responsible and to dispose of, by sale or exchange, any property which in the judgment of the department is not needful for the operation of the same.

4. All codes, rules, regulations, standards, plans, licenses, permits and certificates heretofore adopted by the board of environmental and community services, or the department of environmental and community services, pursuant to chapter 87, ~~L~~laws of 1973, shall remain in full force and effect until superseded by rules, regulations, standards, plans, licenses, permits and certificates duly adopted or issued under the provisions of this act.

SECTION 2. That Section 65-201, Idaho Code, be, and the same is hereby amended to read as follows:

65-201. DIVISION OF VETERANS SERVICES -- CREATION OF COMMISSION -- APPOINTMENT OF MEMBERS -- DISCONTINUANCE OF COMMISSION. (1) There is hereby established in the department of ~~health and welfare~~ self-governing agencies the division of veterans services. The division shall be headed by an administrator who shall be appointed by the ~~director of the department~~ governor from a nomination list of eligible candidates for administrator submitted by the veterans affairs commission. The administrator may be removed from office by the ~~director of the department of health and welfare~~ governor only with the consent of the veterans affairs commission.

(2) There is hereby created an advisory commission to be known as the Idaho veterans affairs commission to consist of five (5) persons, all of whom shall be appointed by the governor of the state of Idaho.

~~not--more--than-thirty-(30)-days-after-the-effective-date-of-this-act.~~ Said appointees shall have had active service in any war or conflict officially engaged in by the government of the United States and have been honorably discharged from such service. No more than two (2) of said commission shall be residents of the same judicial district of the state of Idaho. ~~Of-the-members-of-the-commission--serving--on--the effective--date-of-this-act,-the-terms-of-three-(3)-such-members-shall expire-on-the-third-Monday-in-January,-1987,--and--the--terms--of--the remaining--members--shall-expire-on-the-third-Monday-in-January,-1988. Members-of-the-commission-serving-on-the-effective-date--of--this--act shall--draw--lots--to--determine--the--length-of-term-for-each-member. Thereafter,-u~~Upon the expiration of a member's term, the subsequent appointment shall be made by the governor and shall be for a term of three (3) years. Such subsequent terms shall expire on the third Monday in January of the appropriate year. The governor shall have power to fill any and all vacancies occurring in said commission. The governor shall have the further full power to discontinue said commission by proclamation whenever the governor determines that the government of the United States, or the state of Idaho, shall have made adequate provision for the care and assistance of honorably discharged and destitute veterans of the armed forces.

SECTION 3. That Section 65-202, Idaho Code, be, and the same is hereby amended to read as follows:

65-202. POWERS AND DUTIES. The administrator of the division of veterans services shall have full power and authority on behalf of the state of Idaho, in recognition of the services rendered by disabled or destitute servicemen and servicewomen honorably discharged from the armed forces of the United States, to oversee the management and operation of the ~~V~~veterans H~~h~~omes in the state, and provide such care and extend such financial relief and assistance to said disabled or destitute, honorably discharged servicemen and servicewomen and to those dependent upon such honorably discharged, disabled or destitute servicemen and servicewomen as the commission shall determine to be reasonably required by such disabled or destitute servicemen and servicewomen and their dependents under such rules ~~and-regulations~~ as the administrator may, from time to time adopt; and said administrator shall have power and authority to render such financial assistance to any person honorably discharged from the armed forces of the United States, regardless of the period during which he or she shall have served; provided, however, that no financial aid or direct relief shall be granted to any discharged person unless he or she shall have served during one (1) of the periods hereinafter referred to and shall come under the definition of veteran set out in section 65-203, Idaho Code.

With the approval of the commission, the administrator may prescribe the qualifications of all personnel on a nonpartisan merit basis in accordance with the Idaho personnel system law for employment of personnel in veterans homes.

SECTION 4. That Section 65-204, Idaho Code, be, and the same is hereby amended to read as follows:

65-204. RULES ~~AND--REGULATIONS~~ -- EMPLOYMENT OF ASSISTANTS. The commission shall advise the administrator of the division of veterans services ~~and-the-board-of-health-and-welfare~~ in the adoption of rules ~~and-regulations~~ with respect to all matters of administration hereunder and to carry into effect the purposes of this chapter and employ such assistants as it may deem advisable. The commission is authorized to name the administrator of the division of veterans services as executive secretary.

SECTION 5. That Section 66-901, Idaho Code, be, and the same is hereby amended to read as follows:

66-901. ESTABLISHMENT OF HOMES. On and after July 1, 2000, t~~T~~here shall be established in the division of veterans services in the department of ~~health-and-welfare~~ self-governing agencies in this state homes for veterans which shall hereafter be known and designated as Idaho S~~s~~tate ~~V~~veterans ~~H~~homes, which institutions shall be homes for honorably discharged male and female veterans who had actual service during any war or conflict officially engaged in by the government of the United States and for members of the state national guard disabled while in the line of duty who did not refuse military duty on account of conscientious objection; provided, that before a person is admitted to a home he shall be a bona fide resident of this state.

SECTION 6. That Section 66-906, Idaho Code, be, and the same is hereby amended to read as follows:

66-906. SUCCESSION TO PROPERTY OF DECEASED RESIDENT. Hereafter, the application of any person for membership in a veterans home of this state, and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the ~~director--of-the-department-of-health-and-welfare~~ administrator of the division of veterans services in the department of self-governing agencies of the state of Idaho that on the death of said applicant, while a member of such home, leaving no heirs at law next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said ~~department-of health-and-welfare~~ division of veterans services in the department of self-governing agencies of the state of Idaho for the sole use and benefit of said home, the proceeds to be disposed of in such manner as may be ordered by the ~~said-director~~ administrator of the division, and that all personal property of said applicant which, upon his death, while a member, shall at once pass to and vest in said ~~director~~ administrator, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five (5) years after the death of such member. The ~~director-of-the-department-of-health-and welfare-of-the-state-of-Idaho~~ administrator of the division of veterans services is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant, and as to contain the consent of the applicant to accept membership upon the conditions herein provided.

SECTION 7. That Section 66-907, Idaho Code, be, and the same is hereby amended to read as follows:

66-907. ADMISSIONS TO AND CHARGES FOR RESIDENCE AT HOMES. The ~~board of health and welfare~~ administrator of the division of veterans services in the department of self-governing agencies with the advice of the veterans affairs commission is hereby authorized and directed to establish appropriate admissions criteria for the homes and to establish ~~by regulation~~ charges for residence in those cases where residents have available resources for this purpose.

SECTION 8. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department 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.

(2) The department shall consist of the following:

(a) ~~a~~Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; Idaho prune commission, as provided by chapter 30, title 22, Idaho Code; and the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code.~~;~~ ~~and,~~

(b) ~~p~~Professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of denturitry, as provided by chapter 33, title 54, Idaho Code; state board of engineering examiners, as provided by chapter 12, title 54, Idaho Code; board of environmental health specialists examiners, as provided by chapter 24, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; board of hearing aid dealers and fitters, as provided by chapter 29, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho

Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code, and its associated physical therapist advisory board, as provided by chapter 22, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; public works contractors licensing board, as provided by chapter 19, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; and the board of examiners of residential care facility administrators, as provided by chapter 42, title 54, Idaho Code.

(c) ~~t~~The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) ~~t~~The division of building safety, to be headed by a division administrator and comprised of four (4) bureaus: plumbing, electrical, buildings, and logging and industrial safety. The division administrator and bureau chiefs shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 40, title 39, Idaho Code, relating to manufactured homes and recreational vehicles; chapter 41, title 39, Idaho Code, relating to modular buildings; chapter 21, title 44, Idaho Code, relating to manufactured home dealer and broker licensing; chapter 10, title 54, Idaho Code, relating to electrical contractors and journeymen; chapter 26, title 54, Idaho Code, relating to plumbing and plumbers; and shall perform such additional duties as are imposed upon him by law. The division administrator shall cooperate with the industrial commission and aid and assist the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, and at the request of the commission shall make inspection of appliances, tools, equipment, machinery, practices or conditions, and make a written report to the commission. The administrator shall make recommendations to the commission to aid the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, provided however, that nothing herein shall be construed as transferring to the administrator any of the authority or powers now vested in the industrial commission.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under

chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

SECTION 9. This act shall be in full force and effect on and after July 1, 2000.

Approved March 27, 2000.

CHAPTER 60
(S.B. No. 1331)

AN ACT

RELATING TO THE GENERAL FUND; AMENDING SECTION 14-413, IDAHO CODE, TO HAVE CERTAIN ESTATE TAX RECEIPTS CURRENTLY BEING REMITTED TO THE RESOURCE CONSERVATION AND RANGELAND DEVELOPMENT ACCOUNT AND THE WATER POLLUTION CONTROL ACCOUNT BE REMITTED TO THE GENERAL FUND OF THE STATE OF IDAHO; AMENDING SECTION 63-2520, IDAHO CODE, TO DELETE THE PERCENTAGE DISTRIBUTION FROM THE CIGARETTE TAX TO THE WATER POLLUTION CONTROL ACCOUNT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-2564, IDAHO CODE, TO HAVE MONEYS CURRENTLY REMITTED TO THE WATER POLLUTION CONTROL ACCOUNT BE REMITTED TO THE GENERAL FUND OF THE STATE OF IDAHO AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 14-413, Idaho Code, be, and the same is hereby amended to read as follows:

14-413. DISTRIBUTION OF RECEIPTS. The commission shall collect all taxes and moneys that may be due under this act, and remit such moneys to the state treasurer. Such moneys shall be distributed as follows:

(1) Ten percent (10%) of such moneys shall be distributed into a suspense account for payment to the county treasurer of the county in which venue for probate and administration lies, pursuant to section 15-3-201, Idaho Code, regardless of whether such probate or administration was, in fact, instituted. Such moneys shall be paid by the commission to the appropriate counties not less than quarterly, and shall be credited to the county current expense fund.

(2) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid through the state refund account, and those moneys are hereby continuously appropriated for that purpose. Such refunds shall be authorized for the purpose of repaying overpayments made under the transfer and inheritance tax act, for the purpose of repaying any other erroneous receipts under such tax, for the purpose of repaying any tax, penalty, or interest illegally assessed or collected, or for the purpose of paying any judgment

rendered against the commission under the terms and provisions of this act.

(3) The balance remaining after distributing the amounts in subsections (1) and (2) of this section shall be distributed ~~as follows:~~

~~(a) Ten percent (10%) shall be distributed to the resource conservation and rangeland development account created in section 22-2730, Idaho Code; and~~

~~(b) The remainder shall be distributed to the water pollution control account~~ to the general fund of the state of Idaho.

SECTION 2. That Section 63-2520, Idaho Code, be, and the same is hereby amended to read as follows:

63-2520. DISTRIBUTION OF MONEYS COLLECTED. Revenues received from the taxes imposed by this chapter, and any revenues received from licenses, permits, penalties, interest, or deficiency additions, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) The balance remaining with the state treasurer after deducting the amount described in paragraph (a) above shall be distributed as follows:

(1) 43.3% of such balance shall be distributed to the permanent building account created by section 57-1108, Idaho Code.

(2) ~~6.7% of such balance shall be distributed to the water pollution control account.~~

~~(3)~~ 1% of such balance shall be distributed to the central tumor registry account. The amount of money so distributed to the central tumor registry account shall not exceed the fiscal year's appropriation, and at such time as the appropriation has been distributed to the central tumor registry account during any fiscal year, all such distributions in excess of the appropriation shall be made instead to the general ~~account~~ fund of the state of Idaho.

(~~4~~3) 2.5% of such balance shall be distributed to the cancer control account created by section 57-1702, Idaho Code. Revenues received in the cancer control account shall be paid over to the state treasurer by the state tax commission to be distributed as follows:

(i) Such amounts as are appropriated for purposes specified in section 57-1702, Idaho Code, shall be expended as appropriated;

(ii) Any balance remaining in the cancer control account on June 30 of any fiscal year after the amounts withdrawn by appropriation have been deducted, shall be reserved for transfer to the general ~~account~~ fund on July 1 and the state controller shall order such transfer.

(~~5~~4) All remaining moneys shall be distributed to the general ~~account~~ fund of the state of Idaho.

SECTION 3. That Section 63-2564, Idaho Code, be, and the same is hereby amended to read as follows:

63-2564. DISTRIBUTION OF TAX REVENUES. (1) The revenues received from the taxes imposed by section 63-2552, Idaho Code, and any penalties, interest, or deficiency additions, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account, sufficient to pay current refund claims. All refunds authorized by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) From the balance remaining with the state treasurer after deducting the amounts in subsection (a) ~~above~~ of this section, all remaining moneys shall be remitted directly ~~to the water pollution control account established in chapter 36, title 39, Idaho Code,~~ to the general fund of the state of Idaho and shall be remitted to that ~~account~~ fund periodically, but no less frequently than quarterly.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved March 28, 2000.

CHAPTER 61
(S.B. No. 1548)

AN ACT

APPROPRIATING MONEYS FOR THE IDAHO SCHOOL FOR THE DEAF AND THE BLIND FOR FISCAL YEAR 2001; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; REAPPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES; AND SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the State Board of Education for the Idaho School for the Deaf and the Blind the following amounts, to be expended from the listed funds for the period July 1, 2000, through June 30, 2001:

FROM:	
General Fund	$6,886,500
Idaho School for the Deaf and the Blind Income Fund	115,000
Federal Grant Fund	116,000
Miscellaneous Revenue Fund	93,100
TOTAL	$7,210,600

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Idaho School for the Deaf and the Blind is authorized no more than one hundred twenty-two and fifty-two hundredths (122.52) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 reappropriated to the State Board of Education for the Idaho School for the Deaf and the Blind, subject to the provisions of Section 4 of this act, the unexpended and unencumbered balance of any funds appropriated by Section 1, Chapter 225, Laws of 1999, to be used for nonrecurring expenditures only for the period July 1, 2000, through June 30, 2001.

SECTION 4. The General Fund reappropriation granted in Section 3 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 2000, is zero, the reappropriation granted in Section 3 of this act is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 2000, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount reappropriated in Section 3 of this act shall be in the proportion that the reappropriation for the Idaho School for the Deaf and the Blind bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 28, 2000.

CHAPTER 62
(S.B. No. 1463)

AN ACT

RELATING TO OPERATING FEES FOR COMMERCIAL, NONCOMMERCIAL AND FARM VEHICLES; AMENDING SECTION 49-434, IDAHO CODE, TO INCREASE THE FEE FOR VEHICLES REGISTERED BETWEEN EIGHT THOUSAND ONE POUNDS AND SIXTEEN THOUSAND POUNDS AND TO CORRECT CODIFIER'S ERRORS.

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

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 ~~Reigstration~~ Registration Fee Noncommercial and Farm Vehicles	Commercial Vehicles
8,001-16,000 inc.	$ ~~31.08~~48.00	$ ~~30.60~~48.00
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, the annual registration fee for trailers shall

be:

(a) Trailer or semitrailer in a combination of vehicles ...$15.00

(b) Rental utility trailer with a gross weight of two thousand (2,000) pounds or less $8.00

(c) Rental utility trailer with a gross weight over two thousand (2,000) pounds $15.00

(4) As an option to the trailer and semitrailer annual registration, the department may provide extended registration.

(a) For trailers and semitrailers, 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) The registration document shall be the official record of the status of the extended registration. No pressure-sensitive validation sticker shall be required.

(e) For rental utility trailers, the optional registration period shall not extend beyond five (5) years. The fee shall be as specified in subsection (3)(b) or (c) of this section. A pressure-sensitive sticker shall be used to validate the license plate. The license plate shall become void if the owner's interest in the rental utility trailer changes during the five (5) year period. 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 plate shall be returned to the department if it is not entered on the renewal application.

(5) A fleet registration option is available to owners who have twenty-five (25) or more commercial or farm vehicles or any combination thereof. Such owners may register all of their company vehicles with the department in lieu of registering with a county assessor. To qualify the fleet must be owned and operated under the unified control of one (1) person and the vehicles must be physically garaged and maintained in two (2) or more counties. Fleet registration shall not include fleets of rental vehicles. The department shall provide a registration application to the owner and the owner shall provide all information that the department determines is necessary. The department shall devise a special license plate numbering system for fleet-registered vehicles as an alternative to county license plates. The fleet registration application and all subsequent registration renewals shall include the physical address where a vehicle is principally used, garaged and maintained. The fleet owner shall report the physical address to the department upon initial registration, on each renewal, and at any time a vehicle registered under this option is permanently transferred to another location.

(6) If the ownership of a vehicle changes during the 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 vehicle registration fee if the plate is not transferred by the owner to another vehicle. A license plate shall not be transferred to another owner when the ownership of a vehicle changes. The owner shall obtain a replacement plate, validation sticker if required, and a registration document when a plate is lost, destroyed or becomes illegi-

ble.

(7) 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.

(8) 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
~~60,001-62,000~~	~~30.05~~
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.

(9) 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
~~60,001-62,000~~	~~22.45~~
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.

(10) 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 (8) or (9) 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.

(11) 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.

(12) 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 combi-

nation 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.

(13) An applicant for registration of a commercial vehicle, a non-commercial 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), (2), (3) and (4) 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 (8) or (9) 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.

(14) 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.

Approved March 28, 2000.

CHAPTER 63
(S.B. No. 1398, As Amended)

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 49, TITLE 22, IDAHO CODE, TO ESTABLISH THE BEEF CATTLE ENVIRONMENTAL CONTROL ACT, TO PROVIDE A SHORT TITLE, TO PROVIDE A DECLARATION OF POLICY AND LEGISLATIVE INTENT, TO PROVIDE AUTHORITY AND DUTIES OF THE DIRECTOR CONCERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS, TO PROVIDE DEFINITIONS, TO PROVIDE FOR DESIGN AND CONSTRUCTION OF NEW AND MODIFIED BEEF CATTLE ANIMAL FEEDING OPERATIONS, TO REQUIRE NUTRIENT MANAGEMENT PLANS, TO AUTHORIZE INSPECTIONS, TO PROHIBIT UNAUTHORIZED DIS-

CHARGES, TO PROVIDE ENFORCEMENT, TO PROVIDE THAT ALL BEEF CATTLE ANIMAL FEEDING OPERATIONS OPERATING IN COMPLIANCE SHALL BE DEEMED TO BE IN COMPLIANCE WITH ALL STATE LAWS PROTECTING NATURAL RESOURCES OF THE STATE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 49, Title 22, Idaho Code, and to read as follows:

CHAPTER 49
BEEF CATTLE ENVIRONMENTAL CONTROL ACT

22-4901. SHORT TITLE. This chapter shall be known and cited as the "Beef Cattle Environmental Control Act."

22-4902. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. (1) The legislature recognizes the importance of protecting state natural resources including, surface water and ground water. It is the intent of the legislature to protect the quality of these natural resources while maintaining an economically viable beef cattle industry in the state. The beef cattle industry produces manure and process wastewater which, when properly used, supplies valuable nutrients and organic matter to soils and is protective of the environment, but may, when improperly stored and managed, create adverse impacts on natural resources, including waters of the state. This act is intended to ensure that manure and process wastewater associated with beef cattle operations are handled in a manner which protects the natural resources of the state.

(2) Further, the legislature recognizes that the beef cattle industry is potentially subject to various state and federal laws designed to protect state natural resources and that the Idaho department of agriculture is in the best position to administer and implement these various laws. It is therefore the intent of the legislature that the administration of this law by the department of agriculture fully meets the goals and requirements of the federal clean water act and state laws designed to further protect state waters and that administration of this act by the department of agriculture shall not be more stringent than or broader in scope than the requirements of the clean water act and applicable state and federal laws. The department shall have authority to administer all laws to protect the quality of water within the confines of a beef cattle animal feeding operation. In carrying out this act the department shall prioritize its resources on operations which have the greatest potential to significantly impact the environment and ensure that any requirements imposed under this act upon operators of beef cattle animal feeding operations are cost-effective and economically, environmentally and technologically feasible.

(3) Successful implementation of this act is dependent upon the department receiving adequate funding from the legislature and is dependent upon the department executing a memorandum of agreement with the United States environmental protection agency, the division of

environmental quality and the Idaho cattle association which sets forth a working arrangement between the agencies to ensure compliance with this act and applicable state and federal laws, including the federal clean water act. Moreover, the legislature recognizes that it is important for the state to obtain a delegated national pollutant discharge elimination system (NPDES) permit program from the EPA under the clean water act.

22-4903. AUTHORITY AND DUTIES OF DIRECTOR CONCERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS. The director of the department of agriculture through the division of animal industries is authorized to regulate beef cattle animal feeding operations to protect state natural resources, including surface water and ground water. In order to carry out its duties under this act, the department shall be the responsible state department to prevent any ground water contamination from beef cattle animal feeding operations as provided under section 39-120, Idaho Code. The director shall have the authority to exercise any other authorities delegated by the administrator of the division of environmental quality regarding the protection of ground water, surface water and other natural resources associated with confined animal feeding operations, and this shall be the authority for the administrator of the division of environmental quality to so delegate. The administrator of the division of environmental quality shall consult with the director of the department of agriculture before certifying discharges from beef cattle animal feeding operations as provided under 33 U.S.C. section 1341.

22-4904. DEFINITIONS. When used in this act:

(1) "Beef cattle" means slaughter and feeder cattle that are kept on or contiguous to the animal feeding operation and are owned or controlled by the animal feeding operation.

(2) "Beef cattle animal feeding operation" means an animal feeding operation which confines slaughter and feeder cattle as defined in 40 CFR 122.23 and 40 CFR part 122, appendix B.

(3) "Best management practices" means practices, techniques or measures which are determined to be cost-effective and practicable means of preventing or reducing pollutants from point sources or nonpoint sources to a level compatible with environmental goals, including water quality goals and standards for waters of the state. Best management practices shall be adopted pursuant to the state water quality management plan, the Idaho ground water quality plan or this act.

(4) "Department" means the Idaho department of agriculture.

(5) "Director" means the director of the Idaho department of agriculture.

(6) "Manure" means animal excrement that may also contain bedding, spilled feed, water or soil.

(7) "Modification" or "modified" means structural changes and alterations to the wastewater storage containment facility which would require increased storage or containment capacity or such changes which would alter the function of the wastewater storage containment facility.

(8) "Noncompliance" means a practice or condition that causes an

unauthorized discharge, or a practice or condition, that if left uncorrected, will cause an unauthorized discharge.

(9) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(10) "Nutrient management plan" means a plan prepared in conformance with the nutrient management standard or other equally protective standard for managing the amount, placement, form and timing of the land application of nutrients and soil amendments.

(11) "Nutrient management standard" means the 1999 publication by the United States department of agriculture, natural resources conservation service, conservation practice standard, nutrient management code 590 or other equally protective standard approved by the director.

(12) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(13) "Process wastewater" means liquid containing beef cattle manure, process generated wastewater and any precipitation which comes into direct contact with livestock manure and facility products or byproducts.

(14) "Unauthorized discharge" means a discharge of process wastewater or livestock manure to state surface waters that is not authorized by an NPDES permit or the release of process wastewater or livestock manure to waters of the state that does not meet the requirements of this act or water quality standards.

(15) "Wastewater storage and containment facilities" means the portion of an animal feeding operation where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds.

(16) "Waters of the state" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.

22-4905. DESIGN AND CONSTRUCTION. Each new beef cattle animal feeding operation and each modified beef cattle animal feeding operation shall design and construct all new and modified wastewater storage and containment facilities in accordance with the engineering standards and specifications provided by the natural resource conservation service or the American society of agricultural engineers (ASAE) or other equally protective standard approved by the director. The department's review and approval of plans under this section shall supersede the Idaho department of health and welfare, division of environmental quality's implementation of plan and specification review and approval provided under section 39-118, Idaho Code. Such design and construction shall be considered a best management practice.

22-4906. NUTRIENT MANAGEMENT PLAN. Each beef cattle animal feed-

ing operation shall submit a nutrient management plan to the director for approval. Beef cattle animal feeding operations that are operating on or before July 1, 2000, shall submit a nutrient management plan to the director for approval no later than January 1, 2005. Any new operation commencing operations after July 1, 2000, shall not operate prior to the director's approval of a nutrient management plan. An approved nutrient management plan shall be implemented and considered a best management practice.

22-4907. INSPECTIONS. (1) The director or his designee in the division of animal industries is authorized to enter and inspect any beef cattle animal feeding operation and have access to or copy any facility records deemed necessary to ensure compliance with this act and the federal clean water act. The director shall comply with the biosecurity protocol of the operation so long as the protocol does not inhibit reasonable access to:

(a) Enter at reasonable times upon the premises of a permitted facility or where records are kept;

(b) Have access to and copy at reasonable times any records that must be kept under conditions of the permit;

(c) Inspect at reasonable times any facility or land application site; and

(d) Sample or monitor at reasonable times, substances or parameters directly related to compliance with the NPDES permit or this act.

(2) All inspections and investigations conducted under the authority of this act shall be performed in conformity with section 17, article I of the constitution of the state of Idaho. The state shall not, under the authority granted by this act, conduct warrantless searches of private property in the absence of either consent from the property owner or other authorized person.

22-4908. DISCHARGES. No animal feeding operation shall cause an unauthorized discharge. Noncompliance with the provisions of this act or unauthorized discharges may subject a facility to enforcement as provided in this act.

22-4909. ENFORCEMENT. (1) Informal administrative resolution of noncompliance. When the director identifies items of noncompliance at a beef cattle animal feeding operation, the deficiencies will be noted and appropriate corrective actions will be identified and scheduled informally. When corrective actions cannot be commenced within thirty (30) days and completed within a reasonable time, the director may negotiate a compliance order as specified in subsection (2)(b) of this section.

(2) (a) Administrative enforcement. Any beef cattle animal feeding operation not complying with the provisions of this act may be assessed a civil penalty by the director or his duly authorized agent in an administrative enforcement action by the issuance of a notice of noncompliance. The notice of noncompliance shall identify the alleged violation with specificity, shall specify each provision of the act or permit which has been violated, and shall state the amount of any civil penalty claimed for each violation

and identify appropriate corrective action.

(b) The notice of noncompliance 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 compliance schedule must be requested within fifteen (15) days of receipt of the notice of noncompliance. The compliance conference shall provide an opportunity for the recipient of a notice of noncompliance to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance. If the recipient and the director agree on a plan to remedy damage caused by the alleged noncompliance and to assure future compliance, they may enter into a compliance order formalizing their agreement. The compliance order may include a schedule to correct deficiencies and a provision providing for payment of any agreed civil penalty.

(c) A compliance order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged noncompliance. If a party does not comply with the terms of the compliance order, the director may seek and obtain, in any appropriate district court, specific performance of the compliance order and such other relief as authorized in this act.

(d) If the parties cannot reach agreement on a compliance order within sixty (60) days after the receipt of the notice of noncompliance, or if the recipient does not timely request a compliance conference under this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection (3) of this section.

(3) Civil enforcement. The director may initiate a civil enforcement action through the attorney general. 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 violated any provision of this act or any permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any permit or order promulgated hereunder and for any relief or remedies authorized in this act. No civil or administrative proceeding may be brought to recover for a violation of any provision of this act or a violation of any permit or order issued pursuant to this act, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

(4) Civil penalty. Any person determined in a civil enforcement action to have violated any provision of this act or any permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) per violation or one thousand dollars ($1,000) for each day of a continuing violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. Moneys collected for violations of this section or rules promulgated thereunder shall be deposited in the state treasury and credited to the state school building fund. The imposition or computation of monetary penalties shall take into account the seriousness of

the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator, the economic benefit, if any, of the violation and such other matters as justice requires.

22-4910. SAFE HARBOR. All beef cattle animal feeding operations operating in compliance with this act and approved best management practices shall not be subject to state enforcement action due to violations of state water quality standards or state ground water quality standards except in the event of imminent and substantial danger as provided in chapter 1, title 39, Idaho Code. However, the department shall evaluate and modify such best management practices as necessary.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000, but shall be null, void and of no force and effect after March 31, 2001, unless the Idaho department of agriculture negotiates an acceptable memorandum of understanding with the EPA, the division of environmental quality and the Idaho cattle association to carry out this act.

Approved March 29, 2000.

CHAPTER 64
(H.B. No. 396)

AN ACT

RELATING TO THE DEPARTMENT OF INSURANCE; AMENDING SECTION 41-406, IDAHO CODE, TO ALLOW FOR DEPOSITS TO THE INSURANCE REFUND ACCOUNT OF UP TO TWENTY PERCENT OF TAXES, FINES AND PENALTIES AS NEEDED TO MEET CURRENT REFUND OBLIGATIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 41-406, Idaho Code, be, and the same is hereby amended to read as follows:

41-406. DEPOSIT AND REPORT OF FEES, LICENSES AND TAXES. (1) The director shall transmit all taxes, fines and penalties collected by him to the state treasurer as provided under section 59-1014, Idaho Code. The director shall file with the state controller a statement of each deposit thus made. All such funds received shall be deposited into the department of insurance suspense account.

Such funds shall be distributed as follows:

(a) ~~Ten percent (10%) shall be deposited~~ The director may deposit up to twenty percent (20%) of the funds received in the insurance refund account which is hereby created for the purpose of repaying overpayments of any taxes, fines, and penalties or other erroneous receipts. There is hereby appropriated out of the insurance refund account so much thereof as shall be necessary for the payment of refunds. Any unencumbered balance remaining in the insurance refund account on June 30 of each and every year in excess of

forty thousand dollars ($40,000) 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.

(b) That portion of the premium tax, payable to the public employee retirement account as provided in section 59-1394, Idaho Code, shall be distributed to that account.

(c) That portion of the premium tax necessary to cover administrative costs incurred by the department in placing insurance companies or any other insurance entities into receivership or under administrative supervision, and such costs cannot be satisfied from the assets of these companies or entities, shall be distributed to the insurance insolvency administrative account which is hereby created. There is hereby appropriated out of the insurance insolvency administrative account so much thereof as shall be necessary, but not to exceed two hundred thousand dollars ($200,000) in any one (1) fiscal year, for the payment of the department's administrative expenses incurred in carrying out such receiverships or supervisions. A balance of one hundred thousand dollars ($100,000) shall be maintained in this account on June 30 of each year.

(d) The balance of the premium tax, fines and penalties shall be distributed to the general account of the state of Idaho.

(e) All moneys received for fees, licenses and miscellaneous charges collected shall be distributed to the insurance administrative account.

(2) The director shall make and file with the state controller an itemized statement of the fees, licenses, taxes, fines and penalties collected by him during the preceding month, and shall deliver a certified copy of the statement to the state treasurer.

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 29, 2000.

CHAPTER 65
(H.B. No. 436)

AN ACT

RELATING TO THE ENDOWMENT FUND INVESTMENT BOARD; AMENDING SECTION 57-719, IDAHO CODE, TO PROVIDE THAT MEETINGS SHALL BE HELD AT LEAST QUARTERLY AND TO DELETE THE REQUIREMENT THAT MEETINGS MUST BE HELD IN THE STATE CAPITOL; AMENDING SECTION 57-721, IDAHO CODE, AS AMENDED BY SECTION 37, CHAPTER 256, LAWS OF 1998, TO PROVIDE THAT THE ENDOWMENT FUND INVESTMENT BOARD SHALL CONTRACT WITH OR EMPLOY A MANAGER OF INVESTMENTS AND TO PROVIDE DUTIES OF THE MANAGER OF INVESTMENTS; AMENDING SECTION 57-727, IDAHO CODE, TO PROVIDE POWERS AND DUTIES OF THE MANAGER OF INVESTMENTS AND PORTFOLIO MANAGERS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 57-719, Idaho Code, be, and the same is hereby amended to read as follows:

57-719. BOARD ~~--~~ APPOINTMENT OF MEMBERS -- TERM -- REMOVAL -- VACANCIES -- ORGANIZATION -- QUORUM -- MEETINGS -- COMPENSATION. The members of the board appointed by the governor shall serve for terms of four (4) years, provided that for the first term the governor shall appoint three (3) members who shall serve for a term of two (2) years, two (2) members who shall serve for a term of three (3) years, and two (2) members who shall serve for a term of four (4) years. Members of the board shall serve until their successors have been selected and qualified.

A member of the board appointed by the governor shall not hold an office, position, or employment in a political party, with the exception of those members from the house of representatives and the senate. An appointed member may be removed from the board for cause by a two-thirds (2/3) vote of the full board.

A vacancy in the appointive membership of the board during a term thereof shall be filled by appointment by the governor for the unexpired term.

There shall be a chairman of the board elected by a majority of the members of the board. A majority of the members of the board shall constitute a quorum for the transaction of business.

The meetings of the board shall be held <u>at least</u> quarterly ~~at the state capitol in Boise~~ and at other times upon the call of the chairman or a majority of the board. The board members appointed hereunder shall be compensated as provided by section 59-509(h), Idaho Code, for attending meetings of the board.

SECTION 2. That Section 57-721, Idaho Code, as amended by Section 37, Chapter 256, Laws of 1998, be, and the same is hereby amended to read as follows:

57-721. MANAGEMENT OF PERMANENT ENDOWMENT FUNDS BY ~~INVESTMENT MANAGER(S)~~ <u>MANAGER OF INVESTMENTS</u> -- APPOINTMENT OF CUSTODIAN OF PERMANENT ENDOWMENT FUNDS. The investment board shall ~~select and~~ contract with <u>or employ</u> a ~~minimum of one (1) investment manager(s)~~ <u>manager of investments</u> to manage the permanent endowment funds and the earnings reserve funds. ~~Such investment manager(s) so selected~~ <u>The manager of investments who is employed or contracted with</u> shall, subject to the direction of the investment board, exert control over the funds as though the ~~investment manager(s)~~ <u>manager of investments</u> were the owner thereof.

The investment board may select and contract with a minimum of one (1) bank or trust company to act as custodian of endowment fund assets and provide safekeeping thereof.

SECTION 3. That Section 57-727, Idaho Code, be, and the same is hereby amended to read as follows:

57-727. ~~STAFF INVESTMENT~~ MANAGER <u>OF INVESTMENTS</u> -- STAFF --

LEGAL ADVISORS. (1) With the approval of two-thirds (2/3) of the members of the board, a ~~staff--investment~~ manager of investments and ~~assistant-staff-investment-manager(s)~~ other portfolio managers may be employed or contracted with who shall perform such managerial activities and functions as the board may direct. The ~~staff-investment~~ manager of investments and ~~assistant-staff-investment-manager(s)~~ portfolio managers shall serve at the pleasure of the board in nonclassified positions, if such persons are employees. The ~~staff-investment~~ manager of investments and ~~assistant-staff-investment-manager(s)-shall~~ portfolio managers may either be employed by the board or serve pursuant to contract. The salary or compensation of the ~~staff-investment~~ manager of investments and ~~assistant--staff--investment--manager(s)~~ portfolio managers shall be set by the board, subject to approval of the governor, and be paid from appropriations made therefor. The ~~staff--investment~~ manager of investments and ~~assistant-staff-investment-manager(s)~~ portfolio managers shall be bonded in an amount established by the board if these persons are employees. If these functions are performed pursuant to contract, the contract shall contain a clause to provide for bonding of the contractor's personnel.

(2) The board may authorize the employment of whatever staff it deems necessary for the administration of the board's business. The ~~staff-investment~~ manager ~~shall~~ of investments may hire ~~such-authorized additional~~ portfolio managers and other necessary staff who shall hold their respective positions subject to the rules of the administrator of the division of human resources promulgated pursuant to chapter 52, title 67, Idaho Code. The salaries of all staff members shall be paid from appropriations made therefor.

(3) The director of the department of finance shall have access to any and all books and records maintained by the ~~staff-investment~~ manager of investments and his staff as the board may deem necessary.

(4) The board shall be furnished adequate and qualified legal advisors by the attorney general's office.

(5) All current expenses, capital outlay, and travel expenses shall be paid from appropriations made therefor.

(6) The board shall, upon request of the agency involved, furnish advice to the treasurer, the manager of the state insurance fund, and the public employees retirement board, and the board may, upon request of the agency, invest funds of the requesting agency.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 66
(S.B. No. 1372)

AN ACT

RELATING TO ANNUAL CONTRACTS FOR CERTIFICATED SCHOOL DISTRICT EMPLOYEES; AMENDING SECTION 33-514, IDAHO CODE, TO REQUIRE SCHOOL DISTRICTS TO PROVIDE SUPPORT PROGRAMS FOR TEACHERS EXPERIENCING THEIR

FIRST THREE YEARS WITH THE DISTRICT, TO PROVIDE THAT DISTRICT SUPPORT PROGRAMS SHALL BE APPROVED BY THE STATE DEPARTMENT OF EDUCATION, TO PROVIDE AUTHORIZATION AND DIRECTION TO THE STATE DEPARTMENT OF EDUCATION REGARDING APPROVAL OF DISTRICT SUPPORT PROGRAMS, TO PROVIDE THREE CATEGORIES OF ANNUAL CONTRACTS UNDER WHICH CERTIFICATED EMPLOYEES MAY BE EMPLOYED, TO DEFINE THE PROBATIONARY PERIOD UNDER A CATEGORY THREE CONTRACT, TO MOVE THE DATE BY WHICH A SCHOOL BOARD IS REQUIRED TO GIVE NOTICE TO CERTIFICATED EMPLOYEES ON A CATEGORY THREE CONTRACT REGARDING EMPLOYMENT FOR THE ENSUING YEAR, TO PROVIDE THAT THE PARAMETERS OF AN INFORMAL REVIEW SHALL BE DETERMINED BY EACH LOCAL SCHOOL BOARD, TO EXPAND HIRING OPTIONS FOR SCHOOL DISTRICTS WHEN EMPLOYING TEACHERS WHO HAVE ATTAINED RENEWABLE CONTRACT STATUS WITH ANOTHER SCHOOL DISTRICT EITHER IN-OR OUT-OF-STATE AND TO REQUIRE A MINIMUM OF TWO EVALUATIONS PER YEAR FOR TEACHERS ON ANNUAL CONTRACT, WITH AN EXCEPTION; AMENDING SECTION 33-514A, IDAHO CODE, TO CLARIFY THAT A LIMITED CONTRACT MAY BE REFERRED TO AS A CATEGORY ONE CONTRACT; PROVIDING LEGISLATIVE INTENT FOR ADDITIONAL FUNDS TO BE APPROPRIATED FOR FISCAL YEAR 2001 TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR DISTRIBUTION TO THE VARIOUS SCHOOL DISTRICTS TO BE USED IN DEVELOPING DISTRICT SUPPORT PROGRAMS; AND PROVIDING AN EFFECTIVE DATE CONTINGENT UPON AN APPROPRIATION OF AT LEAST TWO MILLION DOLLARS BY THE 2000 LEGISLATURE FOR FISCAL YEAR 2001.

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

SECTION 1. That Section 33-514, Idaho Code, be, and the same is hereby amended to read as follows:

33-514. ISSUANCE OF ANNUAL CONTRACTS -- SUPPORT PROGRAMS -- CATEGORIES OF CONTRACTS -- OPTIONAL PLACEMENT. (1) The board of trustees shall establish criteria and procedures for the supervision and evaluation of certificated employees who are not employed on a renewable contract, as provided for in section 33-515, Idaho Code. ~~Such~~

(2) Each school district shall have a support program for certificated employees who are experiencing their first three (3) years with the district, under a category 1, 2 or 3 contract, providing support in the areas of: administrative and supervisory support, mentoring, peer assistance and professional development. In developing support programs, nothing shall prevent districts from joining together to formulate a joint program applicable to each member district. Programs shall be submitted for approval to the state department of education in accordance with procedures established by the department. The state department of education is hereby authorized and directed to:

(a) Formulate basic guidelines which districts shall use as a model for developing district programs;

(b) Approve school district support programs; and

(c) Establish procedures for districts to submit programs for approval, to provide for periodic review of previously approved programs, and to allow districts to amend previously approved programs.

(3) There shall be three (3) categories of annual contracts available to local school districts under which to employ certificated

personnel:

(a) A category 1 contract is a limited one-year contract as provided in section 33-514A, Idaho Code.

(b) A category 2 contract is for certificated personnel in the first and second years of continuous employment with the same school district. While employed under a category 2 contract, the employee shall be provided the services of the district support program referenced in subsection (2) of this section. Upon the decision by a local school board not to reemploy the person for the following year, the certificated employee shall be provided a written statement of reasons for non-reemployment by no later than May 25. No property rights shall attach to a category 2 contract and therefore the employee shall not be entitled to a review by the local board of the reasons or decision not to reemploy.

(c) A category 3 contract is for certificated personnel during the third year of continuous employment by the same school district. District procedures shall require at least one (1) evaluation prior to the beginning of the second semester of the school year and the results of any such evaluation shall be made a matter of record in the employee's personnel file. When any such employee's work is found to be unsatisfactory a ~~reasonable~~ defined period of probation shall be established by the board, ~~after which~~ but in no case shall a probationary period be less than eight (8) weeks. After the probationary period, action shall be taken by the board as to whether the employee is to be retained, immediately discharged, discharged upon termination of the current contract or reemployed at the end of the contract term under a continued probationary status. Notwithstanding the provisions of sections 67-2344 and 67-2345, Idaho Code, a decision to place certificated personnel on probationary status may be made in executive session and the employee shall not be named in the minutes of the meeting. A record of the decision shall be placed in the employee's personnel file. This procedure shall not preclude recognition of unsatisfactory work at a subsequent evaluation and the establishment of a reasonable period of probation. In all instances, the employee shall be duly notified in writing of the areas of work which are deficient, including the conditions of probation. ~~Through the third year of continuous employment by the same school district, including any specially chartered district, e~~Each such certificated employee on a category 3 contract shall be given notice, in writing, whether he or she will be reemployed for the next ensuing year. Such notice shall be given by the board of trustees no later than the ~~fifteenth~~ twenty-fifth day of ~~June~~ May of each such year. If the board of trustees has decided not to reemploy the certificated employee, then the notice must contain a statement of reasons for such decision and the employee shall, upon request, be given the opportunity for an informal review of such decision by the board of trustees. The parameters of an informal review shall be determined by the local board.

(4) School districts hiring an employee who has been on renewable contract status with another Idaho district or has out-of-state experience which would otherwise qualify the certificated employee for renewable contract status in Idaho, shall have the option to immedi-

ately grant renewable contract status, or to place the employee on a category 3 annual contract. Such employment on a category 3 contract under the provisions of this subsection may be for one (1), two (2) or three (3) years.

(5) There shall be a minimum of two (2) written evaluations in each of the annual contract years of employment, and at least one (1) evaluation shall be completed before January 1 of each year. The provisions of this subsection (5) shall not apply to employees on a category 1 contract.

SECTION 2. That Section 33-514A, Idaho Code, be, and the same is hereby amended to read as follows:

33-514A. ISSUANCE OF LIMITED CONTRACT -- CATEGORY 1 CONTRACT. After August 1, the board of trustees may exercise the option of employing certified personnel on a one (1) year limited contract, which may also be referred to as a category 1 contract consistent with the provisions of section 33-514, Idaho Code. Such a contract is specifically offered for the limited duration of the ensuing school year, and no further notice is required by the district to terminate the contract at the conclusion of the contract year.

SECTION 3. LEGISLATIVE INTENT. It is legislative intent that the fiscal year 2001 public school support bill contain additional funds for distribution by the Superintendent of Public Instruction to the various school districts. The purpose of the funds is to provide for administrative and supervisory support, mentoring, peer assistance, and professional development support programs as required in Section 33-514, Idaho Code, as amended in Section 1 of this act. It is recommended that $2,000,000 be appropriated in fiscal year 2001 for development and operation of such support programs and that these funds be distributed to school districts pro rata based upon the number of certificated employees who are experiencing their first three (3) years with the district under a category 1, 2 or 3 contract.

SECTION 4. (1) If an appropriation of at least two million dollars ($2,000,000) is not made by the 2000 Legislature for fiscal year 2001 for support programs in Section 33-514, Idaho Code, as amended in Section 1 of this act, this act shall be null, void, and of no force or effect.

(2) If an appropriation in the amount of at least two million dollars ($2,000,000) is made by the 2000 Legislature for fiscal year 2001, this act shall have full force and effect on and after April 1, 2001.

Approved March 30, 2000.

CHAPTER 67
(S.B. No. 1386)

AN ACT

RELATING TO THE EDUCATIONAL SUPPORT PROGRAM; AMENDING SECTION 33-1004A, IDAHO CODE, TO PROVIDE THE APPLICATION OF THE EXPERIENCE AND EDUCATION MULTIPLIER TO AN OCCUPATIONAL SPECIALIST CERTIFICATE.

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

SECTION 1. That Section 33-1004A, Idaho Code, be, and the same is hereby amended to read as follows:

33-1004A. EXPERIENCE AND EDUCATION MULTIPLIER. Each instructional and administrative staff position shall be assigned an appropriate multiplier based upon the following table:

EXPERIENCE AND EDUCATION

Years	BA	BA+12	BA+24	MA BA+36	MA+12 BA+48	MA+24 BA+60	MA+36 ES/DR
0	1.00000	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730
1	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410
2	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260
3	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290
4	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510
5	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930
6	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550
7	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380
8	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430
9	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430	1.73710
10	1.39290	1.49930	1.55550	1.61380	1.67430	1.73710	1.80220
11	1.39290	1.49930	1.55550	1.61380	1.73710	1.80220	1.86980
12	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	1.93990
13 or more	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	2.01260

In determining the experience factor, the actual years of teaching or administrative service in an accredited public school or in an accredited private or parochial school shall be credited.

In determining the education factor, only credits earned after initial certification, based upon a transcript on file with the teacher certification office of the state department of education, earned at an institution of higher education accredited by the state board of education or a regional accrediting association, shall be allowed. Instructional staff whose initial certificate is an occupational specialist certificate shall be treated as BA degree prepared instructional staff. Credits earned by such occupational specialist instructional staff after initial certification shall be credited toward the education factor.

Approved March 30, 2000.

CHAPTER 68
(S.B. No. 1404)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1352, IDAHO CODE, TO PROVIDE THAT AN ACTIVE MEMBER IS ELIGIBLE FOR DISABILITY RETIREMENT IF DISABLED AFTER FIVE YEARS OF MEMBERSHIP SERVICE AND TO PROVIDE THAT A GENERAL MEMBER NOT ELIGIBLE FOR SERVICE RETIREMENT IS ELIGIBLE FOR DISABILITY RETIREMENT IF THE MEMBER IS DISABLED ON OR AFTER THE FIRST DAY OF EMPLOYMENT AS A RESULT OF BODILY INJURY OR OCCUPATIONAL DISEASE.

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

SECTION 1. That Section 59-1352, Idaho Code, be, and the same is hereby amended to read as follows:

59-1352. ELIGIBILITY FOR DISABILITY RETIREMENT. (1) An active member is eligible for disability retirement if the member becomes disabled after at least ~~ten~~ five (~~10~~5) years of ~~credited service including six (6) months of~~ membership service.

(2) A police officer member, general member or a paid firefighter hired on or after July 1, 1993, who is not eligible for service retirement is eligible for disability retirement if the member becomes disabled, as provided in section 59-1302(12), Idaho Code, on or after the first day of employment as a result of bodily injury or disease from an occupational cause.

Approved March 30, 2000.

CHAPTER 69
(S.B. No. 1289)

AN ACT

RELATING TO TRIAL BY JURY IN CRIMINAL CASES; AMENDING SECTION 19-1902, IDAHO CODE, TO PROVIDE THAT A JURY TRIAL MAY BE WAIVED IN ALL CRIMINAL CASES WITH THE CONSENT OF BOTH PARTIES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 19-1902, Idaho Code, be, and the same is hereby amended to read as follows:

19-1902. TRIAL BY JURY. Issues of fact must be tried by jury, unless a trial by jury be waived~~,~~ in criminal cases ~~not amounting to felony,~~ by the consent of both parties expressed in open court and entered in the minutes. In case of misdemeanor the jury may consist of six (6) or any number less than six (6) upon which the parties may agree in open court. There shall be no right to trial by jury for an

infraction punishable only by a penalty not to exceed one hundred dollars ($100) and no imprisonment.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 70
(S.B. No. 1290)

AN ACT

RELATING TO JURIES; AMENDING SECTION 2-101, IDAHO CODE, TO PROVIDE THAT A JURY IS SELECTED FROM CITIZENS OF A PARTICULAR COUNTY; AMENDING SECTION 2-104, IDAHO CODE, TO PROVIDE THAT A TRIAL JURY IS SELECTED FROM CITIZENS OF A PARTICULAR COUNTY; AMENDING SECTION 2-106, IDAHO CODE, TO PROVIDE THAT A JURY OF INQUEST IS SUMMONED FROM CITIZENS OF A PARTICULAR COUNTY AND TO CORRECT NOMENCLATURE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 2-101, Idaho Code, be, and the same is hereby amended to read as follows:

2-101. JURY DEFINED. A jury is a body of men or women, or both, temporarily selected from the citizens of a particular ~~district~~ county and invested with power to present or indict a person for a public offense or to try a question of fact.

SECTION 2. That Section 2-104, Idaho Code, be, and the same is hereby amended to read as follows:

2-104. TRIAL JURY DEFINED -- VERDICT IN CIVIL ACTIONS. A trial jury is a body of men or women, or both, returned from the citizens of a particular ~~district~~ county before a court or officer of competent jurisdiction and sworn to try and determine by a verdict a question of fact. Three-fourths (3/4) of the jury may render a verdict in a civil action, and such verdict shall have the same effect as a unanimous verdict.

SECTION 3. That Section 2-106, Idaho Code, be, and the same is hereby amended to read as follows:

2-106. JURY OF INQUEST DEFINED. A jury of inquest is a body of men or women, or both, summoned from the citizens of a particular ~~district~~ county, before the sheriff, coroner, or other ministerial officer to inquire of particular facts.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 71
(S.B. No. 1291)

AN ACT
RELATING TO THE ISSUANCE OF MARRIAGE LICENSES; REPEALING SECTION 32-414, IDAHO CODE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 32-414, Idaho Code, be, and the same is hereby repealed.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 72
(S.B. No. 1292)

AN ACT
RELATING TO DOMESTIC VIOLENCE CRIME PREVENTION; AMENDING SECTION 39-6310, IDAHO CODE, TO PROVIDE THAT DOMESTIC VIOLENCE ORDERS MAY BE SERVED BY CERTIFIED MAIL IF THE PARTY HAS APPEARED IN PERSON BEFORE THE COURT AND HAS WAIVED PERSONAL SERVICE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 39-6310, Idaho Code, be, and the same is hereby amended to read as follows:

39-6310. ORDER AND SERVICE. (1) An order issued under this chapter along with a copy of the petition for a protection order, if the respondent has not previously received the petition, shall be personally served upon the respondent, except as provided in subsections (6), (7) and (8) of this section.

(2) A peace officer of the jurisdiction in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party at the petitioner's own expense.

(3) If service by a peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter and a copy of the petition for a protection order, if the respondent has not

previously received the petition, forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the peace officer cannot complete service upon the respondent within ten (10) days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

(5) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(6) If an order entered by the court recites that the respondent appeared in person before the court and receives a copy of the order, the necessity for further service is waived and proof of service of that order is not necessary.

(7) If a party has appeared in person before the court and has waived personal service, the clerk of the court shall complete service of any notice of hearing ~~for~~ <u>or</u> orders or modifications by certified mail to the party's address as shown on the court petition which resulted in the issuance of the order or modification. Parties shall at all times keep the court informed of their current mailing address.

(8) If an out-of-state protection order is registered with the court under section 39-6306A, Idaho Code, the necessity for further service is waived and proof of service of that order is not necessary.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 73
(S.B. No. 1293)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-509, IDAHO CODE, TO CLARIFY THAT A JUVENILE WHO HAS BEEN TRANSFERRED FOR ADULT CRIMINAL PROCEEDINGS UNDER SECTION 20-508, IDAHO CODE, OR SECTION 20-509, IDAHO CODE, SHALL THEREAFTER BE HANDLED IN EVERY RESPECT AS AN ADULT AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 20-509, Idaho Code, be, and the same is hereby amended to read as follows:

20-509. VIOLENT OFFENSES, CONTROLLED SUBSTANCES VIOLATIONS NEAR SCHOOLS AND OFFENDERS. (1) Any juvenile, age fourteen (14) years to age eighteen (18) years, who is alleged to have committed any of the following crimes or any person under age fourteen (14) <u>years</u> who is alleged to have committed any of the following crimes and, pursuant to

section 20-508, Idaho Code, has been ordered by the court to be held for adult criminal proceedings:

(a) Murder of any degree or attempted murder;

(b) Robbery;

(c) Rape, but excluding statutory rape;

(d) Forcible sexual penetration by the use of a foreign object;

(e) Infamous crimes against nature, committed by force or violence;

(f) Mayhem;

(g) Assault or battery with the intent to commit any of the above serious felonies;

(h) A violation of the provisions of section 37-2732(a)(1)(A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school;

(i) Arson in the first degree and aggravated arson;

shall be charged, arrested and proceeded against by complaint, indictment or information as an adult. All other felonies or misdemeanors charged in the complaint, indictment or information, which are based on the same act or transaction or on one (1) or more acts or transactions as the violent or controlled substances offense shall similarly be charged, arrested and proceeded against as an adult. Any juvenile proceeded against pursuant to this section shall be accorded all constitutional rights, including bail and trial by jury, and procedural safeguards as if that juvenile were an adult defendant.

(2) Once a juvenile has been formally charged or indicted pursuant to this section or has been transferred for criminal prosecution as an adult pursuant to the waiver provisions of section 20-508, Idaho Code, or this section, the juvenile shall be held in a county jail or other adult prison facility unless the court, after finding good cause, orders otherwise.

(3) Once a juvenile has been found to have committed the offense for which the juvenile was charged, indicted or transferred pursuant to this section or section 20-508, Idaho Code, or has been found guilty or pled guilty to a lesser offense or amended charge growing out of or included within the original charge, whether or not such lesser offense or amended charge is included within the acts enumerated in subsection (1) of this section, the juvenile shall thereafter be handled in every respect as an adult. For any subsequent violation of Idaho law, the juvenile shall be handled in every respect as an adult.

(4) The sentencing judge of any juvenile convicted pursuant to this section may choose to sentence the convicted person in accordance with the juvenile sentencing options set forth in this act, if a finding is made that adult sentencing measures would be inappropriate.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 74
(S.B. No. 1294)

AN ACT

RELATING TO CURFEW VIOLATIONS; AMENDING SECTION 20-510, IDAHO CODE, TO CLARIFY THAT A PEACE OFFICER MAY ISSUE A CITATION FOR A CURFEW VIOLATION; AMENDING SECTION 20-549, IDAHO CODE, TO CLARIFY THAT WHEN A CITATION IS ISSUED FOR A CURFEW VIOLATION THE CASE SHALL PROCEED AS THOUGH THE VIOLATION HAD BEEN CHARGED BY A PETITION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 20-510, Idaho Code, be, and the same is hereby amended to read as follows:

20-510. INFORMATION -- INVESTIGATION -- PETITION. Any peace officer, any prosecuting attorney, or any authorized representative of the board of trustees of a school district of this state, having knowledge of a juvenile who is within the purview of this act may file a petition with the court in such form as may be required by the court, <u>except a peace officer may also issue a citation for a curfew violation pursuant to section 20-549, Idaho Code.</u> Said individual or agency shall be responsible for providing the evidence to support the allegations made in the petition, provided this in no way shall relieve peace officers from enforcement of the law as set forth in section 31-2227, Idaho Code. The court shall make a preliminary inquiry to determine whether the interests of the public or of the juvenile require that further action be taken. Such inquiry may be made through the county probation officer or such other agent or investigation officer designated by the court. Thereupon, the court may make such informal adjustment as is practicable, or dismiss the petition, or set the matter for hearing. If an informal adjustment is made, it shall provide for full or partial restitution in the manner and form prescribed by the court when the offense involves loss or damage of property of another. A probation officer shall not file a petition unless the juvenile has previously been under the jurisdiction of the court. The petition and all subsequent court documents shall be entitled "In the interest of ..., a juvenile under eighteen (18) years of age." The petition may be made upon information and belief but it shall be made under oath. It shall set forth plainly: (1) the facts which bring the juvenile within the purview of this act; (2) the name, age, and residence of the juvenile; (3) the names and residences of his parents and spouse, if any; (4) the name and residence of his legal guardian, if there be one, or the person or persons having custody or control of the juvenile, or of the nearest known relative if no parent or guardian can be found. If any of the facts herein required are not known by the petitioner the petition shall so state.

Service of a petition upon the parents, legal guardian or person or persons having custody or control of the juvenile shall subject the parents, legal guardian or person or persons having custody or control of the juvenile to the provisions of this chapter. The petition shall

inform the parents, legal guardian or other person legally obligated to care for and support the juvenile that service of the petition upon them shall make them subject to the provisions of this chapter.

SECTION 2. That Section 20-549, Idaho Code, be, and the same is hereby amended to read as follows:

20-549. CURFEW VIOLATIONS -- CITATION -- NOTIFICATION. Violation by a juvenile of a curfew established by a municipal or county ordinance shall be punishable by a fine not to exceed three hundred dollars ($300), detention, or both. Fines shall be deposited in the county juvenile justice fund of the county where the violation occurred, or if such a fund has not been established, then in the current county expense account for juvenile corrections purposes in the county where the violation occurred. The imposition of detention shall be subject to the provisions of sections 20-520(1)(b) and 20-521, Idaho Code. Detention of a juvenile in a county jail for violation of a curfew is prohibited.

Any peace officer may issue a citation for violation of a curfew that shall thereafter ~~be processed~~ proceed under the juvenile corrections act in the same manner as though the violation was charged by a petition. Citations shall be issued on the Idaho uniform citation form. The peace officer issuing a curfew citation may detain the violator and at the time the citation is issued shall make a reasonable effort to obtain the endorsement of the juvenile's parent or legal guardian on the citation. If the endorsement of a parent or legal guardian cannot be obtained with the exercise of reasonable diligence, a copy of the citation shall be hand delivered or mailed to the juvenile's parent or legal guardian by a peace officer at least seven (7) days prior to the date set for the juvenile's appearance. The citation shall provide a date certain for the appearance before a magistrate of the juvenile and parent or legal guardian.

When sentencing a juvenile for violating a curfew, the court may also enter any order authorized in section 20-520, Idaho Code. The court shall have jurisdiction over the parent or legal guardian of the violator pursuant to section 20-522, Idaho Code.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 75
(S.B. No. 1305)

AN ACT

RELATING TO THE STATE LOTTERY COMMISSION; AMENDING SECTION 67-7406, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION AND TO INCREASE THE COMPENSATION FOR MEMBERS OF THE STATE LOTTERY COMMISSION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-7406, Idaho Code, be, and the same is hereby amended to read as follows:

67-7406. QUORUM -- MEETINGS -- MINUTES -- COMPENSATION. A majority of the qualified membership of the commission is a quorum. The commission may not act unless at least three (3) members concur. The commission shall not meet less than four (4) times per year. Written notice of the time and place of each commission meeting shall be given to each member of the commission. The secretary of the commission shall promptly send the governor a certified copy of the minutes of each meeting of the commission. The minutes shall include a copy of each ~~regulation~~ rule of the lottery that is adopted. Members of the commission shall receive compensation as provided in section 59-509(~~g~~h), Idaho Code. Members are entitled to reimbursement for reasonable travel expenses incurred in the performance of their duties as a member, as provided by law.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 76
(S.B. No. 1311)

AN ACT

RELATING TO THE IDAHO SECURITIES ACT; AMENDING SECTION 30-1437, IDAHO CODE, TO PROVIDE THAT A NOTICE FILING REQUIRED TO BE FILED BY A UNIT INVESTMENT TRUST WILL EXPIRE EIGHTEEN MONTHS FROM THE DATE RECEIVED BY THE DEPARTMENT OF FINANCE UNLESS ADDITIONAL TIME IS GRANTED BY THE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 30-1437, Idaho Code, be, and the same is hereby amended to read as follows:

30-1437. FEES. Fees shall be fixed by the director and shall be paid in advance under the provisions of this chapter, but shall not exceed the following:

(1) (a) Except as otherwise provided herein, for the initial registration of securities by notification or coordination or qualification or for a notice filing pursuant to section 30-1433A(1), Idaho Code, there shall be paid to the director or to an organization designated by the director, a registration fee of five hundred dollars ($500) notwithstanding the number of shares registered. The notice filing fee for shares of a unit investment trust shall be two hundred dollars ($200) notwithstanding the number of shares to be offered or sold.

(b) Each series or portfolio of an investment company offering shall be required to make a separate notice filing under section 30-1433A(1), Idaho Code. Separate notice filings for classes of an investment company are not required so long as classes are used solely as a method of distinguishing payment plans within a series or portfolio.

(c) Unless renewed as provided in subparagraph (d) of this subsection or additional time is granted by the director, the notice filing of a unit investment trust shall expire ~~one (1) year~~ eighteen (18) months from the date ~~effective registration is granted to the offering by the securities and exchange commission~~ received by the department. The notice filing of all other investment companies shall expire two (2) months after the last day of the issuer's next fiscal year end. The registration of all other offerings shall expire one (1) year from the date registration is granted by the director. If the issuer is an investment company, other than a unit investment trust, with a fiscal year end which falls within thirty (30) days after the effectiveness of a notice filing, such shares may be lawfully offered or sold until two (2) months after the last day of the following fiscal year of the issuer. No registration or notice filing may be renewed at any time after the registration or notice filing has expired.

(d) For the renewal of a registration or notice filing made pursuant to section 30-1433A, Idaho Code, a renewal fee shall be paid to the director in an amount fixed by the director not to exceed the amount specified in subparagraph (a) of this subsection for the securities of the issuer.

(e) When an application for registration of securities is denied or withdrawn the director shall retain all fees paid by the applicant.

(2) For filing an annual statement the fee shall not exceed ten dollars ($10.00).

(3) For registration of a broker-dealer or investment adviser or for a notice filing made pursuant to section 30-1406(4), Idaho Code, the fee shall not exceed one hundred dollars ($100) for original registration or for an initial notice filing and one hundred dollars ($100) for each annual renewal thereof. When an application is denied or withdrawn the director shall retain the fee.

(4) For registration of a salesman or investment adviser representative the fee shall not exceed twenty dollars ($20.00) for the original registration with each employer and twenty dollars ($20.00) for each annual renewal. When an application is denied or an application or notice filing is withdrawn the director shall retain the fee.

(5) For certified copies of any documents filed with the director the fee shall be the cost to the department as determined by the director.

(6) For each examination, exemption, opinion letter or notice filing under section 30-1433A(2) and (3), Idaho Code, the fee shall not exceed fifty dollars ($50.00), which fee shall not be refundable.

All fees, fines, examination and miscellaneous charges collected by the director pursuant to the Idaho securities act shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 77
(S.B. No. 1317, As Amended)

AN ACT
RELATING TO CONDITIONS GOVERNING TERMINATION OF PARENTAL RIGHTS; AMENDING SECTION 16-2005, IDAHO CODE, TO PROVIDE GROUNDS FOR TERMINATION OF PARENTAL RIGHTS RELATED TO MURDER, VOLUNTARY MANSLAUGHTER, FELONY ASSAULT OR BATTERY WHICH RESULTED IN SERIOUS BODILY INJURY OF ANOTHER SIBLING OF THE CHILD AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 16-2005, Idaho Code, be, and the same is hereby amended to read as follows:

16-2005. CONDITIONS UNDER WHICH TERMINATION MAY BE GRANTED. The court may grant an order terminating the relationship where it finds one (1) or more of the following conditions exist:

a. The parent has abandoned the child by having willfully failed to maintain a normal parental relationship including, but not limited to, reasonable support or regular personal contact; failure of the parent to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment under this section. Provided further, that where termination is sought by a grandparent seeking to adopt the child, willful failure of the parent to maintain a normal parental relationship as provided herein, without just cause, for six (6) months shall constitute prima facie evidence of abandonment.

b. The parent has neglected or abused the child. Neglect as used herein shall mean a situation in which the child lacks parental care necessary for his health, morals and well-being.

c. The presumptive parent is not the natural parent of the child.

d. The parent is unable to discharge parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period and will be injurious to the health, morals or well-being of the child.

e. If termination is found to be in the best interest of the parent and child, where the petition has been filed by a parent or through an authorized agency, or interested party.

f. Where a consent to termination in the manner and form prescribed by this act has been filed by the parent(s) of the child in conjunction with a petition for adoption initiated by the person or persons proposing to adopt the child, or where the consent to termination has been filed by a licensed adoption agency, no subsequent hear-

ing on the merits of the petition shall be held. Consents required by this act must be witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person consenting resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ....

In the Matter of the termination)
of the parental rights of)
.....)
.....)

I (we), the undersigned, being the .... of ...., do hereby give my (our) full and free consent to the complete and absolute termination of my (our) parental right(s), to the said ...., who was born ...., 19.., unto ...., hereby relinquishing completely and forever, all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said ...., and I (we) do hereby expressly waive my (our) right(s) to hearing on the petition to terminate my (our) parental relationship with the said ...., and respectfully request the petition be granted.

DATED: ...., 19...

.....

STATE OF IDAHO)
) ss.
COUNTY OF ....)

On this .... day of ...., 19.., before me, the undersigned ...., ... (Judge or Magistrate) of the District Court of the .... Judicial District of the state of Idaho, in and for the county of ...., personally appeared ...., known to me (or proved to me on the oath of ....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

..... (District Judge or Magistrate)

The court shall accept a consent or a surrender and release executed in another state if:

(1) It is witnessed by a magistrate or district judge of the state where signed; or

(2) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or the surrender and release was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed; or

(3) The court shall accept a termination or relinquishment from a sister state that has been ordered by a court of competent jurisdiction under like proceedings; or in any other manner authorized by the laws of a sister state. In a state where the father has failed to file notice of claim to paternity and willingness to assume responsibility as provided for pursuant to the laws of such state, and where such failure constitutes an abandonment of such

child and constitutes a termination or relinquishment of the rights of the putative father, the court shall accept such failure as a termination in this state without further hearing on the merits, if the court is satisfied that such failure constitutes a termination or relinquishment of parental rights pursuant to the laws of that state.

g. Where consent to termination of parental rights is implied by reason of the failure of a putative father to establish paternity in the manner prescribed in section 16-1513, Idaho Code.

h. Unless a consent to termination signed by the parent(s) of the child has been filed by an adoption agency licensed in the state of Idaho, or unless the consent to termination was filed in conjunction with a petition for adoption of the child, the court shall hold a hearing.

i. In the case of a father's parental relationship, where the father has failed to file notice of claim to paternity and willingness to assume responsibility as provided in section 16-1513(3), Idaho Code.

j. The court may grant termination as to a parent:

(1) Who caused the child to be conceived as a result of rape, incest, lewd conduct with a minor child under sixteen (16) years, or sexual abuse of a child under the age of sixteen (16) years, as defined in section 16-2002 n., Idaho Code; or

(2) Who murdered or intentionally killed the other parent of the child; or if the court determines the parent has been convicted of murder or voluntary manslaughter of another sibling of the child or has aided, abetted, conspired or solicited to commit such murder or voluntary manslaughter and/or if the court determines the parent has been convicted of a felony assault or battery which resulted in serious bodily injury to the child or a sibling; or

(3) Who has been incarcerated and has no possibility of parole; or

(4) If a court determines the child to be an abandoned infant.

There is a rebuttable presumption that termination of the parent-child relationship in any of the circumstances provided in subsection j. of this section is in the best interest of the child.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 78
(S.B. No. 1338)

AN ACT

RELATING TO WASTE TREATMENT IMPOUNDMENT STRUCTURES; AMENDING SECTION 42-1710, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF WATER RESOURCES MAY ENTER INTO AGREEMENTS WITH OTHER STATE AGENCIES TO AVOID DUPLICATE REGULATION OF IMPOUNDMENT STRUCTURES; AMENDING SECTION 42-1711, IDAHO CODE, TO PROVIDE THAT STRUCTURES LESS THAN

TWENTY FEET IN HEIGHT UNDER THE JURISDICTION OF THE DIVISION OF ENVIRONMENTAL QUALITY OF THE DEPARTMENT OF HEALTH AND WELFARE OR THE DEPARTMENT OF AGRICULTURE, WHICH ARE DESIGNED PRIMARILY FOR RETENTION AND TREATMENT OF MUNICIPAL, LIVESTOCK OR DOMESTIC WASTES, OR SEDIMENT AND WASTES FROM PRODUCE WASHING OR FOOD PROCESSING PLANTS, AS DETERMINED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL NOT BE DEFINED AS DAMS AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 42-1710, Idaho Code, be, and the same is hereby amended to read as follows:

42-1710. INTENT OF LEGISLATURE -- CONSTRUCTION, MAINTENANCE AND OPERATION OF DAMS AND MINE TAILINGS IMPOUNDMENT STRUCTURES. It is the intent of the legislature by this act to provide for the regulation of construction, maintenance and operation of all dams, reservoirs and mine tailings impoundment structures exclusively by the state to the extent required for the protection of public safety. All dams, reservoirs and mine tailings impoundment structures in the state are under jurisdiction of the department of water resources. The department of water resources, under the police power of the state, shall supervise the construction, enlargement, alteration, repair, maintenance, operation and removal of dams, reservoirs and mine tailings impoundment structures for the protection of life and property. The department of water resources may enter into agreements with other state agencies having jurisdiction over water storage structures to limit duplication of inspection, review and regulation of such structures.

SECTION 2. That Section 42-1711, Idaho Code, be, and the same is hereby amended to read as follows:

42-1711. DEFINITIONS. Unless the context otherwise requires, the following definitions govern the construction of this act.

(a) "Department" means the department of water resources.

(b) "Dam" means any artificial barrier, together with appurtenant works, constructed for the purpose of storing water or that stores water, which is ten (10) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the department, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation, or has or will have an impounding capacity at maximum storage elevation of fifty (50) acre feet or more. The following are not included as regulated dams or are not considered dams for the purposes of sections 42-1710 through 42-1721, Idaho Code:

(1) Barriers constructed in low risk areas as determined by the director, which are six (6) feet or less in height, regardless of storage capacity.

(2) Barriers constructed in low risk areas as determined by the director, which impound ten (10) acre-feet or less at maximum water storage elevation, regardless of height.

(3) Barriers in a canal used to raise or lower water therein or divert water therefrom.

(4) Fills or structures determined by the director to be designed primarily for highway or railroad traffic.

(5) Fills, retaining dikes or structures less than twenty (20) feet in height, which are under jurisdiction of the division of environmental quality, department of health and welfare, or the department of agriculture, determined by the director of the department of water resources to be designed primarily for retention ~~and~~ or treatment of municipal, livestock, or domestic wastes, or sediment and wastes from produce washing or food processing plants.

(6) Levees that store water regardless of storage capacity.

(c) "Levee" means a retaining structure alongside a natural lake which has a length that is two hundred (200) times or more greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure.

(d) "Reservoir" means any basin which contains or will contain the water impounded by a dam.

(e) "Owner" includes any of the following who own, control, operate, maintain, manage, or propose to construct a dam, reservoir or mine tailings impoundment structure:

(1) The state of Idaho and its departments, agencies, institutions and political subdivisions;

(2) The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America shall not be required to pay any of the fees required by section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by section 42-1712, Idaho Code, for information purposes only;

(3) Every municipal or quasi-municipal corporation;

(4) Every public utility;

(5) Every person, firm, association, organization, partnership, business trust, corporation or company;

(6) The duly authorized agents, lessees, or trustees of any of the foregoing; or

(7) Receivers or trustees appointed by any court for any of the foregoing.

(f) "Alterations," "repairs," or either of them, mean only such alterations or repairs as may directly affect the safety of the dam, reservoir or mine tailings impoundment structure, as determined by the department.

(g) "Enlargement" means any change in or addition to an existing dam, reservoir or mine tailings impoundment structure, which raises or may raise the water storage elevation of the water impounded by the dam or mine tailings slurry impounded by the mine tailings impoundment structure.

(h) "Water storage elevation" means the maximum elevation of water surface which can be obtained by the dam or reservoir.

(i) "Storage capacity" means the total storage at the maximum storage elevation.

(j) "Days" used in establishing deadlines means calendar days including Sundays and holidays.

(k) "Certificate of approval" means a certificate issued by the director for all dams or mine tailings impoundment structures listing restrictions imposed by the director, and without which no new dams shall be allowed to impound water or mine tailings impoundment structures shall be allowed to impound mine tailings slurry.

(l) "Mine tailings impoundment structure" means any artificial embankment which is or will be more than thirty (30) feet in height measured from the lowest elevation of the toe to the maximum crest elevation constructed for the purpose of storing mine tailings slurry.

(m) "Lift construction" means mine tailings impoundment structure enlargement by raising the elevation of the structure on a continuous or recurring basis. Such practice will be considered under construction until the structure reaches its final crest elevation.

(n) "Mine tailings impoundment elevation" means the maximum elevation of stored mine tailings which can be obtained by the impounding structure.

(o) "Mine tailings slurry" means all slurry wastes from a mineral processing or mining operation.

(p) "Mine tailings storage capacity" means the total storage volume of the impounding area when filled with tailings to the maximum designed storage elevation.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 29, 2000.

CHAPTER 79
(S.B. No. 1346)

AN ACT

RELATING TO RECORDING BRANDS; AMENDING SECTION 25-1144, IDAHO CODE, TO AUTHORIZE THE STATE BRAND BOARD TO PRORATE FEES TO IMPLEMENT A STAGGERED BRAND RENEWAL SYSTEM; AMENDING SECTION 25-1146, IDAHO CODE, TO REDUCE THE FEE FOR SALES AND TRANSFERS OF BRANDS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 25-1144, Idaho Code, be, and the same is hereby amended to read as follows:

25-1144. MANNER OF RECORDING BRANDS. Every stock grower whose brands are not recorded, desiring to use any brand on any livestock shall make and file an application setting forth a facsimile and description of the brand which he desires to use which application shall state the post-office address and county of his residence and he shall file such application with the state brand inspector and the same shall be recorded in a book kept for that purpose, by the state brand inspector and from and after the filing of such application, the stock grower filing the same, shall have the exclusive right to use

such brand, within the state of Idaho. Such recording shall be valid for a period of not more than five (5) years, as determined by rules of the state brand board, subject to the renewal provisions of section 25-1145, Idaho Code. Such person upon the filing of the brand shall pay to the state brand inspector for recording the brand the sum of ~~not more than~~ fifty dollars ($50.00) and the board may prorate the fee to facilitate implementation of a staggered brand renewal system. It shall be the duty of the state brand inspector to furnish without further or other charge, one (1) certified copy of the application to the owner thereof upon his request and for each additional copy he shall be paid a reasonable fee as determined by the state brand board not to exceed one dollar and fifty cents ($1.50) for the additional certified copies: provided, further, that the state brand inspector shall not file or record any such brand if the same has already been filed or recorded by him in favor of some other stock grower. The certified copy of the application shall contain the registration number of such brand, description or facsimile copy of the recorded brand, location of brand on the animal, expiration of the recorded brand and the name and address of the owner of the recorded brand.

SECTION 2. That Section 25-1146, Idaho Code, be, and the same is hereby amended to read as follows:

25-1146. SALES AND TRANSFERS OF BRANDS. Any brand recorded in accordance with the requirements of this chapter shall be the property of the stock grower in whose name the same shall be recorded, and shall be subject to sale, assignment, transfer, devise and descent, the same as personal property. Instruments of writing evidencing any such sale, assignment or transfer shall be acknowledged as deeds to real estate are now required to be, and shall be recorded in the office of the state brand inspector in a book to be by said officer kept for that purpose, which shall be properly indexed. The recording of such instruments in said office shall have the same force and effect as to third parties, as the recording of instruments affecting real estate, and the acknowledgment of the same shall have the same force and effect as the acknowledgment of deeds to real estate, and certified copies of the record of any such instrument, duly acknowledged, may be introduced in evidence the same as is now provided for certified copies of instruments affecting real estate. The fee of the state brand inspector for recording the writings evidencing each such sale, assignment or transfer shall be ~~fifty~~ twenty-five dollars ($25~~0~~.00).

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 29, 2000.

CHAPTER 80
(S.B. No. 1347)

AN ACT

RELATING TO BRAND INSPECTION FEES; AMENDING SECTION 25-1160, IDAHO CODE, TO INCREASE THE MINIMUM FEE FOR TRAVELING TO A BRAND INSPECTION SITE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 25-1160, Idaho Code, be, and the same is hereby amended to read as follows:

25-1160. BRAND INSPECTION FEES. (1) The maximum fee which shall be charged by the state brand inspector and his deputies for brand inspection shall be:

(a) One dollar ($1.00) for each head of cattle;

(b) One dollar and fifty cents ($1.50) for each head of horses, mules and asses.

(2) A minimum fee of ~~three~~ ten dollars ($~~3~~10.00) shall be charged by the state brand inspector and his deputies for each brand inspection certificate issued, whether for cattle, horses, mules or asses, or a combination thereof. The minimum brand inspection fee shall apply only in those cases when a brand inspector must travel ~~over--one--(1) mile~~ from his assigned duty post.

(3) The minimum fee for brand inspection services at any normally scheduled livestock auction sale is fifty dollars ($50.00) per day, and shall be paid by the livestock auction sale, whether or not the inspection fees received from the owners of livestock inspected equals the minimum fee. If the fees paid by the owners of livestock inspected at the sale exceed the minimum fee, the actual amount of fees collected shall be paid, rather than the minimum amount.

(4) The fee for brand inspection services at any livestock auction sale which is not a normally scheduled livestock auction sale shall be:

(a) Eighteen dollars ($18.00) per hour for each hour that each brand inspector spends engaged in the performance of brand inspection services at the livestock auction sale;

(b) A mileage rate as established by the state board of examiners per mile per vehicle for each mile that said brand inspector(s) must travel to and from the sale from his assigned duty post.

The minimum fee, not including mileage, shall be the actual hours worked, or thirty-six dollars ($36.00) per day, or the inspection fees as set forth in subsection (1) of this section, whichever is greater.

(5) The state brand board may adopt a schedule or schedules of fees which are below the maximum fees and may adjust such schedule or schedules from time to time whenever such board finds that the cost of administering and enforcing the laws of the state of Idaho for brand inspection of livestock can be maintained with such below-maximum fees. All such fees shall be paid by the owner of the cattle, horses, mules and asses and credited to the state brand account.

(6) All brand inspection fees, and all other fees required by law

to be collected by the brand inspector, are due and payable at the time of inspection, but the brand board may, by rules, ~~and regulations,~~ allow all of such fees to be paid on a schedule that requires payment at least monthly, after receiving a request for such delayed payment schedule and after such request is approved by the state brand inspector. The brand board may require a security deposit to insure the prompt payment of all fees owed to the state. Failure to pay as required shall be cause for the brand inspector to file an action in the district court of the county wherein the inspection was made for the amount of all fees owed, plus all costs and reasonable attorney's fees associated with the action plus interest at the rate specified in section 28-22-104, Idaho Code, on the amount owed from the due date.

(7) Any brand inspector who must travel beyond the border of the state of Idaho to investigate a possible violation of this chapter is entitled to a mileage rate, as established by the state board of examiners, per mile per vehicle for each mile that the brand inspector must travel to and from his assigned duty post, and eighteen dollars ($18.00) per hour for each hour that each brand inspector spends engaged in the investigation. The minimum fee for each brand inspector, not including mileage, shall be the actual hours worked, or thirty-six dollars ($36.00) per day, or the hourly inspection fees, whichever is greater.

Approved March 29, 2000.

CHAPTER 81
(S.B. No. 1351)

AN ACT

RELATING TO THE COMPREHENSIVE STATE WATER PLAN PART A; RATIFYING AND APPROVING POLICY 4A OF THE COMPREHENSIVE STATE WATER PLAN PART A, RELATING TO AGENCY RESPONSIBILITIES, AS ADOPTED BY THE IDAHO WATER RESOURCE BOARD ON JANUARY 4, 2000; AND DECLARING AN EMERGENCY.

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

SECTION 1. That pursuant to Section 42-1734B(6), Idaho Code, Policy 4A of the Comprehensive State Water Plan Part A, adopted by resolution of the Idaho Water Resource Board on January 4, 2000, is ratified and approved. The Comprehensive State Water Plan Part A, Policy 4A, shall read as follows:

> 4A. AGENCY RESPONSIBILITIES. It is the policy of Idaho that the responsibilities for administration and regulation of water quantity allocations be discharged by the Department of Water Resources separate from the state agency primarily responsible for the administration and regulation of water quality. However, planning for water use and water quality should be integrated among state agencies by the Idaho Water Resource Board to the extent such integrated planning does not compromise the responsibilities of the individual state

agencies, or state sovereignty over water allocation and use.

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 29, 2000.

CHAPTER 82
(S.B. No. 1364)

AN ACT

RELATING TO THE BOARD OF ACUPUNCTURE; AMENDING SECTION 54-4704, IDAHO CODE, TO CHANGE THE MEASURE OF COMPENSATION FOR MEMBERS OF THE BOARD OF ACUPUNCTURE; AMENDING SECTION 67-2601, IDAHO CODE, TO PUT THE BOARD OF ACUPUNCTURE IN THE DEPARTMENT OF SELF-GOVERNING AGENCIES; AND AMENDING SECTION 67-2602, IDAHO CODE, TO PROVIDE THAT THE BUREAU OF OCCUPATIONAL LICENSES IS EMPOWERED TO PROVIDE SERVICES TO THE BOARD OF ACUPUNCTURE.

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

SECTION 1. That Section 54-4704, Idaho Code, be, and the same is hereby amended to read as follows:

54-4704. BOARD OF ACUPUNCTURE CREATED -- APPOINTMENT -- TERMS. (1) There is hereby established in the department of self-governing agencies a state board of acupuncture and the members thereof shall be appointed by the governor within sixty (60) days following the effective date of this chapter.

(2) The board shall consist of five (5) members, three (3) of whom shall be licensed pursuant to this chapter, one (1) of whom shall be certified pursuant to this chapter, and one (1) of whom shall be a member of the public with an interest in the rights of the consumers of acupuncture services.

(3) In making appointments to the board of acupuncture, consideration shall be given to recommendations made by the Idaho acupuncture association, other similar professional organizations and individual acupuncturists and physicians.

(4) All members of the board shall be current residents of the state of Idaho and have been residents of the state of Idaho for a minimum of three (3) years immediately preceding appointment.

(5) The initial three (3) licensed acupuncturist members of the board shall be persons who are eligible to become licensed pursuant to this chapter, and who shall, within thirty (30) days of their appointment, become licensed pursuant to this chapter. The certified acupuncturist member shall be a person with sufficient qualification to be eligible for certification pursuant to this chapter and shall, within thirty (30) days of appointment, become certified.

(6) The initial board shall be appointed for staggered terms, the longer of which shall not exceed four (4) years. After the initial

appointments, all terms shall be four (4) years, and a member may be reappointed. In the event of death, resignation, or removal of any member before the expiration of the term to which appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(7) The governor may remove any member of the board for cause, prior to the expiration of the member's term.

(8) The board shall, within thirty (30) days after its appointment, and at least annually thereafter, hold a meeting and elect a chairman. The board may hold additional meetings on the call of the chairman or at the written request of any two (2) members of the board. The board may appoint such committees as it considers necessary to carry out its duties. A majority of the members of the board shall constitute a quorum.

(9) Each member of the board shall be compensated as provided in section 59-509(~~h~~n), Idaho Code.

SECTION 2. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department 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.

(2) The department shall consist of the following:

(a) agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; Idaho prune commission, as provided by chapter 30, title 22, Idaho Code; and the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; and,

(b) professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of acupuncture, as provided by chapter 47, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of denturitry, as provided by chapter 33, title 54, Idaho Code; state board of engi-

neering examiners, as provided by chapter 12, title 54, Idaho Code; board of environmental health specialists examiners, as provided by chapter 24, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; board of hearing aid dealers and fitters, as provided by chapter 29, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code, and its associated physical therapist advisory board, as provided by chapter 22, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; public works contractors licensing board, as provided by chapter 19, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; and the board of examiners of residential care facility administrators, as provided by chapter 42, title 54, Idaho Code.

(c) the board of examiners, pursuant to section 67-2001, Idaho Code.

(d) the division of building safety, to be headed by a division administrator and comprised of four (4) bureaus: plumbing, electrical, buildings, and logging and industrial safety. The division administrator and bureau chiefs shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 40, title 39, Idaho Code, relating to manufactured homes and recreational vehicles; chapter 41, title 39, Idaho Code, relating to modular buildings; chapter 21, title 44, Idaho Code, relating to manufactured home dealer and broker licensing; chapter 10, title 54, Idaho Code, relating to electrical contractors and journeymen; chapter 26, title 54, Idaho Code, relating to plumbing and plumbers; and shall perform such additional duties as are imposed upon him by law. The division administrator shall cooperate with the industrial commission and aid and assist the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, and at the request of the commission shall make inspection of appliances, tools, equipment, machinery, practices or conditions, and make a written report to the commission. The administrator shall make recommendations to the commission to aid the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, provided however, that nothing herein shall be construed as transferring to the administrator any of the

authority or powers now vested in the industrial commission.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

SECTION 3. That Section 67-2602, Idaho Code, be, and the same is hereby amended to read as follows:

67-2602. BUREAU OF OCCUPATIONAL LICENSES. (1) The bureau of occupational licenses created in the department of self-governing agencies by section 67-2601, Idaho Code, shall be empowered, by written agreement between the bureau and each agency for which it provides administrative or other services as provided by law, to provide such services for the board of acupuncture, board of architectural examiners, board of barber examiners, board of chiropractic physicians, board of cosmetology, counselor licensing board, board of environmental health specialist examiners, state board of denturitry, board of hearing aid dealers and fitters, board of landscape architects, board of morticians, board of examiners of nursing home administrators, board of optometry, board of podiatrists, board of psychologist examiners, real estate appraiser board, board of examiners of residential care facility administrators, board of social work examiners and such other professional and occupational licensing boards or commodity commissions as may request such services. The bureau may charge a reasonable fee for such services provided any agency not otherwise provided for by law and shall maintain proper accounting methods for all funds under its jurisdiction.

(2) Notwithstanding the statutes governing specific boards, for any board that contracts with the bureau of occupational licenses, each board member shall hold office until a successor has been duly appointed and qualified.

Approved March 29, 2000.

CHAPTER 83
(S.B. No. 1418)

AN ACT

RELATING TO FINANCES OF WATER DISTRICTS; AMENDING SECTION 42-612, IDAHO CODE, TO PROVIDE FOR AN ANNUAL MINIMUM CHARGE NOT TO EXCEED FIFTY DOLLARS PER WATER USER FOR WATERMASTER SERVICES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-613, IDAHO CODE, TO PROVIDE FOR ASSESSMENTS TO BE DUE AND PAYABLE ON THE DATE SO FIXED BY RESOLUTION, AND TO PROVIDE A PENALTY NOT TO EXCEED TEN PERCENT AND INTEREST OF ONE PERCENT PER MONTH WHICH BOTH SHALL BE FIXED BY RESOLUTION; AND AMENDING SECTION 42-617, IDAHO CODE, TO PROVIDE A PENALTY FROM THE DATE DUE OF NOT MORE THAN TEN PERCENT AND INTEREST OF ONE PERCENT PER MONTH WHICH SHALL BOTH BE FIXED BY RESOLUTION.

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 the district for the ensuing year, and by resolution determine that the budget shall be collected. The compensation of the watermaster and the watermaster's assistants and any other expenses of delivering the water of 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) The budget shall show the aggregate amount to be collected from all the water users in the district, and the amount to be paid by each ditch, canal company, irrigation district or other water user. For the purpose of computing 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 the budget the amount payable by each ditch, canal company, irrigation district or other water user, as shown by 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~~ fifty dollars ($~~2~~50.00) per water user for watermaster services. 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.

SECTION 2. That Section 42-613, Idaho Code, be, and the same is hereby amended to read as follows:

42-613. BUDGET -- COLLECTION -- PAYMENT OF DISTRICT EXPENSES. Said budget when approved shall be filed with the secretary of said meeting and thereupon the watermaster shall immediately prepare and file a certified copy thereof with the director of the department of water resources and a certified copy with the county auditor of such county or counties designated at said water users' meeting. If more than one (1) county is designated then said budget shall show the

amount to be collected in each county and the water users from which each county shall make collection. Each auditor of the county or counties so designated, shall immediately make up a roll showing the amount of said budget to be collected by the county and the ditch, canal company, irrigation district or other water user from whom the same shall be collected and the respective amounts from each. When said roll is completed, the county auditor shall deliver the same to the county treasurer for collection. Said county treasurer shall thereupon mail a notice to each ditch, canal company, irrigation district or other water user of the amount payable by each such water user, for the distribution of water and other expenses of said district for the ensuing year, which amount shall be due and payable on the ~~first day of June~~ date so fixed by resolution of said year and if not so paid, shall bear ~~interest at the rate of eight per cent (8%) per annum~~ a penalty not to exceed ten percent (10%) of the amount owed and interest of one percent (1%) per month, which both shall be fixed by resolution, from said date until paid. It is hereby declared the duty of the respective county auditors and treasurers to perform the services herein required.

The county treasurer, upon receipt of said roll, shall open a special account to be known as "Water District .... Funds" and shall credit to said account all moneys received from the water users of said district. The compensation of the watermaster and his assistants and any other charges against said water district shall be paid from the funds of said account in the same manner as bills against the county are paid.

SECTION 3. That Section 42-617, Idaho Code, be, and the same is hereby amended to read as follows:

42-617. TIME FOR COLLECTION OF BUDGET -- WATER NOT DELIVERED UNTIL CHARGES PAID -- FILING OF RESOLUTIONS AND COPIES -- COLLECTION AT TIME FIXED. At any annual meeting of the water users at which a budget has been adopted, covering the estimated expenses of said district for the ensuing year, as provided in section 42-612, Idaho Code, said water users may by resolution fix a date different than that fixed by said section 42-613, Idaho Code, upon which the amount payable by each ditch, canal company, irrigation district or other water user shall become due and payable, and said amount shall become due and payable from each such user on the date so fixed by said resolution, and if not paid when due shall bear ~~interest from said date until paid at the rate of eight per cent (8%) per annum~~ a penalty from said date until paid not to exceed ten percent (10%) of the amount owed and interest of one percent (1%) per month, which both shall be fixed by resolution. Said water users at said meeting may also by resolution provide that no ditch, canal company, irrigation district or other water user shall have the right to demand and receive or to continue to receive any water and the watermaster shall not deliver water to any such user until the amount due and payable from such user, as shown by the budget adopted at said meeting, has been paid.

All resolutions adopted under the provisions of this section shall be filed with the secretary of said meeting and thereupon he shall immediately prepare and file a certified copy thereof with the direc-

tor of the department of water resources and a certified copy with the county auditor of such county or counties as designated at said water users' meeting.

At the same time the county auditor delivers the roll to the county treasurer for collection, as provided in said section 42-613, Idaho Code, he shall also deliver to said treasurer a copy of any resolutions filed in his office, under the provisions of this section. The county treasurer shall collect said roll in the manner provided in said section 42-613, Idaho Code, or the watermaster may collect the assessment as provided in section 42-618, Idaho Code: provided, that if said water users at their annual meeting have by resolution provided for a time of payment of the amount due from each user, as shown in said budget, other than the time fixed in said section 42-613, Idaho Code, the said county treasurer or said watermaster shall collect the same at the time fixed in said resolution: and, provided further, that if said water users have by resolution provided that no water shall be delivered to any water user until the amount due from such user has been paid, the notice, to be mailed by said county treasurer or watermaster, shall also state the substance of said resolution.

Approved March 29, 2000.

CHAPTER 84
(S.B. No. 1446)

AN ACT

RELATING TO STATE LAND LEASES; AMENDING SECTION 58-304, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD OF LAND COMMISSIONERS MAY LEASE ANY PORTION OF THE STATE LAND AT A RENTAL AMOUNT FIXED AND DETERMINED BY THE BOARD, TO PROVIDE TERMS AND TO PROVIDE THAT GRAZING LEASES SHALL PROVIDE FOR ANNUAL PAYMENTS UPON CERTAIN DATES; AMENDING SECTION 58-305, IDAHO CODE, TO PROVIDE THAT ALL LEASES OF STATE LAND EXCEPT MINERAL LEASES SHALL BE CONDITIONAL UPON THE PAYMENT OF THE RENTAL; AND AMENDING SECTION 58-307, IDAHO CODE, TO DELETE LANGUAGE REGARDING ANNUAL RENTALS BEING DUE AND PAYABLE IN ADVANCE OF YEAR ONE OF THE LEASE AND BY JANUARY 1 OF EACH SUCCEEDING YEAR.

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

SECTION 1. That Section 58-304, Idaho Code, be, and the same is hereby amended to read as follows:

58-304. LEASES. The state board of land commissioners may lease any portion of the state land ~~of the state,~~ at ~~an annual~~ a rental ~~the~~ amount ~~of which shall be~~ fixed and determined by the ~~state~~ board. The rental amount shall be due and payable by the date and upon the terms set by the board in the lease. Provided however, all grazing leases shall provide for annual payments which shall be due and payable by the date set by the board in the lease, but in no case shall the rental for grazing leases be due and payable earlier than January 1 or

later than May 1 of each succeeding year.

(2) The state board of land commissioners shall notify the lessee of any increase in the applicable rental rate six (6) months in advance of the date the rent is due and payable.

(3) The lessee shall pay the ~~annual~~ rental to the director of the department of lands, who shall receipt for the same in the name of the board~~,~~. Upon receiving such ~~annual~~ rental, the director shall immediately transmit the same to the state treasurer.

SECTION 2. That Section 58-305, Idaho Code, be, and the same is hereby amended to read as follows:

58-305. PAYMENT OF RENTAL IN ADVANCE -- EXTENSION OF TIME -- ADJUSTMENT OF COMPETITIVE BID RENTAL RATES. All leases of state land, except mineral leases, shall be conditional upon the payment of rental, ~~annually,~~ in advance, and a violation of this condition shall work a forfeiture of the lease, at the option of the state board of land commissioners, after thirty (30) days' notice to the lessee, such notice being sent to the post office of the lessee, as given by himself to the director of the department of lands when the lease is issued: provided however, that upon the application of any person, firm, corporation or association from whom such rent is or will be owing, the state board of land commissioners is hereby given authority and power to, in its discretion, extend the time of payment of such moneys for said leases for not to exceed two (2) successive years: provided, that the applicant enters into an agreement with the said state board of land commissioners to pay the interest on said amount of rent money from January ~~first~~ 1 of the year which the same is otherwise due, to the date of payment, at the rate per annum set by the state board of land commissioners; that this authority shall extend to amounts due on outstanding leases, leases renewed and new applications for leases. Lease rental rates established by competitive bidding may not be adjusted during the term of a lease, except that the state board of land commissioners upon a finding of a material change of circumstances from those existing at the time of auction, may, after a majority vote of those present, reduce the rental to no less than fair market value.

SECTION 3. That Section 58-307, Idaho Code, be, and the same is hereby amended to read as follows:

58-307. TERM OF LEASE -- APPLICATION FOR RENEWAL -- ALLOWANCE FOR IMPROVEMENTS. (1) No lease of state public school endowment lands, other than those valuable for stone, coal, oil, gas or other minerals, shall be for a longer term than ten (10) years.

(2) Notwithstanding any other provisions of law, all state lands may be leased for a period of up to twenty-five (25) years to the federal government, to federal agencies, state agencies, counties, or cities, school districts or political subdivisions when leased for public purposes. Such leases for public purposes may be entered into by negotiation and shall secure a rental amount based on the fair market value of the state land.

(3) Notwithstanding any other provisions of law, only the state

endowment lands, other than public school endowment lands, described below may be leased for a period of up to forty-nine (49) years for commercial purposes, under such terms and conditions as may be set by the board, provided that the board consults with the county commissioners of the county in which the lands are located before leasing the lands described below, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. The department shall hold a hearing, on each of the parcels described below, in the community in which the parcel is located.

(a) One (1) parcel - E1/2, Section 5, T2N, R2E, Boise Meridian, containing three hundred twenty (320) acres, more or less, and located south of the Boise Airport on Pleasant Valley Road.

(b) One (1) parcel - SWSWNW, Section 27, T3N, R2E, Boise Meridian, containing eight (8) acres, more or less, located northeasterly of the Boise Airport and north of the Boise Interagency Fire Center.

(c) Four (4) parcels - E1/2SW, W1/2SE, NESE, Section 31; SW1/4, Section 32, T3N, R2E, Boise Meridian, all containing three hundred sixty (360) acres, more or less, located south of the Boise Airport and west of Pleasant Valley Road.

(d) Three (3) parcels - SWSW, Section 28; Pt. SESE, Section 29 (east of the Railroad R/W, now a bikepath); W1/2NW, Section 33, all in T3N, R18E, Boise Meridian, all containing one hundred twenty-five (125) acres, more or less, located two (2) miles northerly of Hailey, Idaho, excepting therefrom, a parcel of land, containing twenty (20) acres, more or less, at a location to be determined with access to the sheep driveway located on the county road.

(e) One (1) parcel - SWNE, Section 32, T3N, R2E, Boise Meridian, containing forty (40) acres, more or less, located southerly and westerly of the Boise Airport off Gowen Road; Public Building Endowment.

(f) Two (2) parcels - Part NESWNE, Section 35, T3N, R2E, Boise Meridian, containing three and fifteen hundredths (3.15) acres, more or less; Part NENESE, Section 35, T3N, R2E, Boise Meridian, containing one and eight-tenths (1.8) acres, more or less; both located northerly and easterly of I-84 between the Broadway Interchange and the Gowen Road/State Highway 21 Interchange; Normal School Endowment.

(g) One (1) parcel - Part Lot 1, Section 1, T2N, R2E, Boise Meridian, containing five (5) acres, more or less, located near the Gowen Road/State Highway 21 Exit from I-84; Penitentiary Endowment.

(h) One (1) parcel - N1/2NW1/4SW1/4, SW1/4NW1/4SW1/4, Section 4, T2N, R2E, Boise Meridian, excepting that portion deeded to Ada County for a public road, containing twenty-eight and seventy-nine hundredths (28.79) acres, more or less, located south of the Boise Airport and east of Pleasant Valley Road; Normal School Endowment.

(4) Notwithstanding any other provisions of law, only the state public school endowment lands described below may be leased for commercial purposes, for a term not to exceed ten (10) years, and the board may grant, upon payment of good and valuable consideration, a

preferential right to renew said lease not more than four (4) times, provided that the board shall consult with the county commissioners of the county in which the lands are located before leasing the lands described below, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. The department shall hold a hearing, on each of the parcels described below, in the community in which the parcel is located.

(a) One (1) parcel - All, Section 16, T3N, R18E, Boise Meridian, containing six hundred forty (640) acres, more or less, and located in Ohio Gulch some five (5) miles northerly of Hailey, Idaho.

(b) One (1) parcel - E1/2NE, Section 16, T18N, R3E, Boise Meridian, containing eighty (80) acres, more or less, and located northwesterly of the intersection of Deinhard Lane and Sampson Trail in McCall, Idaho.

(c) One (1) parcel - S1/2NW, NESW, Part NWSW, Part SWSW, Part SESW, Section 36, T3N, R2E, Boise Meridian, containing one hundred seventy-eight and seventy-one hundredths (178.71) acres, more or less, located northerly and easterly of I-84 between the Broadway Interchange and the Gowen Road/State Highway 21 Interchange; Public School Endowment.

(d) One (1) parcel - NE1/4SW1/4, SE1/4NW1/4SW1/4, Section 4, T2N, R2E, Boise Meridian, containing fifty (50) acres, more or less, located south of the Boise Airport and east of Pleasant Valley Road; Public School Endowment.

(e) Two (2) parcels - Lot 14 (Pt. NESE), Lot 16 (Pt. N2SE), SWSE, Lot 17 (SESE), Section 22, Township 6 North, Range 36 East, Boise Meridian, containing one hundred twenty-seven and seventeen hundredths (127.17) acres more or less; NWSW, Pt. SWSW, Section 23, Township 6 North, Range 36 East, Boise Meridian, containing forty-eight (48) acres, more or less, located fifty (50) miles north of Idaho Falls at the junction of State Highway 28 and Interstate Highway 15.

(f) One (1) parcel - Lot 9 (Pt. NWNE, Pt. NENW), Lot 10 (Pt. SWNE, Pt. SENW), Section 12, Township 2 North, Range 37 East, Boise Meridian, containing nineteen and twenty-seven hundredths (19.27) acres, more or less, located adjacent to the U of I/ISU Center in Idaho Falls.

(g) One (1) parcel - Lots 1 and 2, Section 8, Township 2 North, Range 38 East, Boise Meridian, containing seven and seventy-seven hundredths (7.77) acres, more or less, located on Lincoln Street in Idaho Falls.

(h) One (1) parcel - W1/2, Section 16; Lot 1 and 2 (E2NE), W2NE, Section 17, Township 3 South, Range 18 East, Boise Meridian, containing four hundred eighty and fifty-seven hundredths (480.57) acres more or less, located on State Highway 93 north of Shoshone at Shoshone Ice Caves.

(5) The term "commercial purposes" means industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, multifamily residential developments and other similar businesses. For purposes of this section, agricultural leases, grazing leases, oil and gas leases,

mineral leases, geothermal leases and single family, recreational cottage site and homesite leases are not considered leases for commercial purposes.

(6) The board may require that all fixed improvements constructed upon land leased for commercial purposes be removed or become the property of the state upon termination of the lease, and that any heirs, encumbrances or claims of third parties with respect to any improvements shall be expressly subordinate and subject to the rights of the state under this section.

(7) Except for geothermal, oil and gas, and mineral leases, the lease year shall run from January 1 through December 31, and all leases shall expire on December 31 of the year of expiration.

(8) ~~The annual rental shall be due and payable in advance of year one--of the lease and by January 1 of each succeeding year, except for grazing leases which shall be due and payable by the date set--by--the state--board--of land commissioners in the lease, but in no case shall the rental for grazing leases be due and payable earlier than--January 1 or later than May 1 of each succeeding year.~~

~~(9)~~ All applications to lease or to renew an existing lease which expires December ~~thirty-first~~ 31 of any year, shall be filed in the office of the director of the department of lands by the thirtieth day of April preceding the date of such expiration. Such applications will be considered by the state land board and be disposed of in the manner provided by law; except that the board may reject conflicting applications for a lease for commercial purposes if the lessee exercises the preference right to renew clause.

(~~10~~9) Where conflicts appear upon leases which do not contain a preferential right to renew clause, such applications shall be considered as having been filed simultaneously. However, nothing herein shall be construed to prevent the state board of land commissioners from accepting and considering applications for new leases at any time.

(1~~1~~0) In case improvements have been made on land while under lease which is expiring, and the former lessee is not the successful bidder, but the land is leased to another, the amount of such improvements shall be paid to the former lessee. The following shall be considered improvements: plowing done within one (1) year, provided no crop has been raised on the plowed land after such plowing, fencing, buildings, cisterns, wells, growing crops and any other asset which shall be considered an improvement by the director.

(1~~2~~1) Commercial leases of the state lands described in this section shall not be subject to the conflict auction provisions of section 58-310, Idaho Code. The board may, at its discretion, call for proposals and sealed bids by public advertisement, and may evaluate said proposals and award the lease to the bidder whose proposal achieves the highest return over the term of the lease and who is capable of meeting such terms and conditions as may be set by the board; in the alternative, the board may call for lease applications by public advertisement and if more than one (1) person files an application to hold an auction in the same manner as provided in section 58-310, Idaho Code. In either case, the board must obtain a reasonable rental, based upon fair market value of the state land, throughout the duration of the lease. The board may reject any or all

proposals and any or all bids, and may reoffer the lease at a later date if the board determines that the proposals or bids do not achieve the highest and best use of the land at market rental.

Approved March 29, 2000.

CHAPTER 85
(S.B. No. 1447)

AN ACT

RELATING TO WATER MANAGEMENT; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE FOR SPECIFIC EXCEPTIONS TO FORFEITURE OF WATER RIGHTS; REPEALING SECTION 42-223, IDAHO CODE; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-223, IDAHO CODE, TO PROVIDE EXCEPTIONS OR DEFENSES TO FORFEITURE OF WATER RIGHTS; REPEALING SECTION 42-224, IDAHO CODE; AMENDING SECTION 42-233a, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES MAY APPROVE A GROUND WATER MANAGEMENT PLAN IN AREAS DESIGNATED AS CRITICAL GROUND WATER AREAS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 42-233b, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES MAY APPROVE A GROUND WATER MANAGEMENT PLAN FOR AREAS DESIGNATED AS GROUND WATER MANAGEMENT AREAS AND TO PROVIDE FOR MANAGING THE EFFECTS OF GROUND WATER WITHDRAWALS.

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

SECTION 1. That Section 42-222, Idaho Code, be, and the same is hereby amended to read as follows:

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in the same manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon

the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the

department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that ~~all water rights appurtenant to land contracted in a federal cropland set aside program, shall not be lost and forfeited for nonuse during the contracted period. The five (5) year period of nonuse for forfeiture of a water right shall begin to accrue upon termination of the contract if a period of nonuse did not occur prior to the effective date of the contract or shall continue to accrue if a period of nonuse occurred prior to the effective date of the contract. A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute a beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs. A water right shall not be forfeited by a failure to divert and apply the water to beneficial use if the water is not needed to maintain full beneficial use under the right because of land application of waste for disposal purposes including, but not limited to discharge from dairy lagoons, used in combination with or substituted for water diverted under the water right~~ any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

(3) Upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years.

(4) Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee; provided that water rights ~~appurtenant to land contracted in a federal cropland set aside program, or covered by the waste provision of this~~ protected from forfeiture under the provisions of section 42-223, Idaho Code, are exempt from this requirement.

(a) Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension which is

requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, to the director of the department of water resources within ten (10) days of the last date of publication.

(b) Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct a hearing thereon as in this chapter provided.

(c) The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use.

(d) In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section.

(e) In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section, he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(~~3~~5) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code.

SECTION 2. That Section 42-223, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 2, 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 42-223, Idaho Code, and to read as follows:

42-223. EXCEPTIONS OR DEFENSES TO FORFEITURE. A right to the use of water shall not be lost by forfeiture pursuant to the provisions of section 42-222, Idaho Code, for a failure to apply the water to beneficial use under the conditions specified in any subsection of this section. The legislature does not intend through enactment of this section to preclude judicial or administrative recognition of other exceptions or defenses to forfeiture recognized in Idaho case law or other provisions of the Idaho Code.

(1) A water right appurtenant to land contracted in a federal cropland set-aside program shall not be lost or forfeited for nonuse during the contracted period. The running of any five (5) year period of nonuse for forfeiture of a water right shall be tolled during the time that the land remains in the cropland set-aside program.

(2) A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs.

(3) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the water is not needed to maintain full beneficial use under the right because of land application of waste for disposal purposes including, but not limited to, discharge from dairy lagoons used in combination with or substituted for water diverted under the water right.

(4) A water right shall not be lost or forfeited by a failure to divert and apply the water to beneficial use if the reason for the nonuse of the water is to comply with the provisions of a ground water management plan approved by the director of the department of water resources pursuant to section 42-233a or 42-233b, Idaho Code.

SECTION 4. That Section 42-224, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Section 42-233a, Idaho Code, be, and the same is hereby amended to read as follows:

42-233a. "CRITICAL GROUND WATER AREA" DEFINED -- PUBLIC HEARINGS -- PUBLICATION OF NOTICE -- GRANTING OR DENIAL OF APPLICATION -- APPEAL. "Critical ground water area" is defined as any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time, by the director of the department of water resources.

Upon the designation of a "critical ground water area" it shall be the duty of the director of the department of water resources to con-

duct a public hearing in the area concerned to apprise the public of such designation and the reasons therefor. Notice of the hearing shall be published in two (2) consecutive weekly issues of a newspaper of general circulation in the area immediately prior to the date set for hearing.

In the event an area has been designated as a "critical ground water area" 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.

When a "critical ground water area" is designated by the director of the department of water resources, or at any time thereafter during the existence of the designation, the director may approve a ground water management plan for the area. The ground water management plan shall provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water.

In the event ~~the~~ an application for permit is made with respect to an area that has not been designated as a critical ground water area the director of the department of water resources shall forthwith issue a permit in accordance with the provisions of section 42-203A and section 42-204, Idaho Code, provided said application otherwise meets the requirements of such sections; and further provided that if the applicant proposes to appropriate water from a ground water basin or basins in an amount which exceeds ten thousand (10,000) acre-feet per year either from a single or a combination of diversion points, and the director determines that the withdrawal of such amount will substantially and adversely affect existing pumping levels of appropriators pumping from such basin or basins, or will substantially and adversely affect the amount of water available for withdrawal from such basin or basins under existing water rights, the director may require that the applicant undertake such recharge of the ground water basin or basins as will offset that withdrawal adversely affecting existing pumping levels or water rights.

In the event ~~the~~ an application for permit is made in an area which has been designated as a critical ground water area, if the director of the department of water resources from the investigation made by him on said application as herein provided, or from the investigation made by him in determining the area to be critical, or from other information that has come officially to his attention, has reason to believe that there is insufficient water available subject to appropriation at the location of the proposed well described in the application, the director of the department of water resources may forthwith deny said application; provided, however, that if ground water at such location is available in a lesser amount than that applied for the director of the department of water resources may issue a permit for the use of such water to the extent that such water is available for such appropriation.

The director may require all water right holders within a critical ground water area to report withdrawals of ground water and other necessary information for the purpose of assisting him in determining available ground water supplies and their usage.

The director, upon determination that the ground water supply is

insufficient to meet the demands of water rights within all or portions of a critical ground water area, shall order those water right holders on a time priority basis, within the area determined by the director, to cease or reduce withdrawal of water until such time as the director determines there is sufficient ground water. Such order shall be given only before September 1 and shall be effective for the growing season during the year following the date the order is given.

Any applicant dissatisfied with the decision of the director of the department of water resources may appeal to the district court in the manner provided for in section 42-237e, Idaho Code.

SECTION 6. That Section 42-233b, Idaho Code, be, and the same is hereby amended to read as follows:

42-233b. GROUND WATER MANAGEMENT AREA. "Ground water management area" is defined as any ground water basin or designated part thereof which the director of the department of water resources has determined may be approaching the conditions of a critical ground water area. Upon designation of a ground water management area the director shall publish notice in two (2) consecutive weekly issues of a newspaper of general circulation in the area.

When a ground water management area is designated by the director of the department of water resources, or at any time thereafter during the existence of the designation, the director may approve a ground water management plan for the area. The ground water management plan shall provide for managing the effects of ground water withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water.

Applications for permits made within a ground water management area shall be approved by the director only after he has determined on an individual basis that sufficient water is available and that other prior water rights will not be injured.

The director may require all water right holders within a designated water management area to report withdrawals of ground water and other necessary information for the purpose of assisting him in determining available ground water supplies and their usage.

The director, upon determination that the ground water supply is insufficient to meet the demands of water rights within all or portions of a water management area, shall order those water right holders on a time priority basis, within the area determined by the director, to cease or reduce withdrawal of water until such time as the director determines there is sufficient ground water. Such order shall be given only before September 1 and shall be effective for the growing season during the year following the date the order is given.

Approved March 29, 2000.

CHAPTER 86
(S.B. No. 1450)

AN ACT

RELATING TO THE MILITARY DIVISION; AMENDING CHAPTER 4, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-408, IDAHO CODE, TO PROVIDE AUTHORITY OF SECURITY PERSONNEL AT THE ORCHARD TRAINING AREA AND TO REQUIRE THEM TO COMPLETE LEVEL 1 POST ACADEMY TRAINING; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 4, 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 46-408, Idaho Code, and to read as follows:

46-408. SECURITY OF THE ORCHARD TRAINING AREA. Employees of the military division of the state of Idaho who are performing security duties at the Orchard training area located in Ada and Elmore counties may, in addition to their power to protect and secure military property and persons, arrest and detain for civil law enforcement authorities, any person who commits a violation of the criminal laws of this state in their presence. Persons so detained shall be released to the custody of civil law enforcement authorities as soon as practicable. The employees hired to perform security duties at the Orchard training area shall complete level 1 POST academy training. Employees performing duties under this section are "employees" under sections 6-902, 6-903 and 6-917, Idaho Code, and are not excluded by the exceptions to governmental liability under section 6-904 4. or 5., Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2000.

Approved March 29, 2000.

CHAPTER 87
(S.B. No. 1459)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-120, IDAHO CODE, TO REVISE THE DEFINITION OF "SPECIAL LICENSE PLATE" TO CLARIFY THAT NO SPECIAL PROGRAM FEE SHALL BE CHARGED FOR ISSUANCE OF CERTAIN SPECIAL LICENSE PLATES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-402C, IDAHO CODE, TO PROVIDE THAT NO SPECIAL LICENSE PLATES SHALL BE ISSUED TO ANY MOTOR VEHICLE WITH A REGISTERED GROSS MAXIMUM WEIGHT IN EXCESS OF TWENTY-SIX THOUSAND POUNDS NOR TO ANY VEHICLE REGISTERED UNDER SECTION

49-434(5) OR SECTION 49-435, IDAHO CODE, AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 49-403 AND 49-403A, IDAHO CODE, TO CLARIFY THAT NO SPECIAL LICENSE PLATES SHALL BE ISSUED TO ANY MOTOR VEHICLE WITH A REGISTERED GROSS MAXIMUM WEIGHT OVER TWENTY-SIX THOUSAND POUNDS NOR TO ANY VEHICLE REGISTERED UNDER SECTION 49-434(5), IDAHO CODE; 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, 49-417B, 49-418 AND 49-418A, IDAHO CODE, TO EXTEND USE OF THE SPECIAL PLATES TO VEHICLES WITH A REGISTERED MAXIMUM GROSS WEIGHT OF UP TO TWENTY-SIX THOUSAND POUNDS; AMENDING SECTIONS 49-418B AND 49-419, IDAHO CODE, TO CLARIFY THAT NO SPECIAL LICENSE PLATES SHALL BE ISSUED TO ANY MOTOR VEHICLE WITH A REGISTERED GROSS MAXIMUM WEIGHT OVER TWENTY-SIX THOUSAND POUNDS; AMENDING SECTION 49-419A, IDAHO CODE, TO EXTEND USE OF THE SPECIAL PLATES TO VEHICLES WITH A REGISTERED MAXIMUM GROSS WEIGHT OF UP TO TWENTY-SIX THOUSAND POUNDS; AND AMENDING SECTION 49-420, IDAHO CODE, TO CLARIFY THAT NO SPECIAL LICENSE PLATES SHALL BE ISSUED TO ANY MOTOR VEHICLE WITH A REGISTERED GROSS MAXIMUM WEIGHT OVER TWENTY-SIX THOUSAND POUNDS.

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

SECTION 1. That Section 49-120, Idaho Code, be, and the same is hereby amended to read as follows:

49-120. DEFINITIONS -- S.

(1) "Saddlemount combination" means a combination of vehicles in which a truck or truck tractor tows one (1), two (2) or three (3) trucks or truck tractors, each connected by a saddle to the frame or fifth wheel of the vehicle in front of it. The saddle is a mechanism that connects the front axle of the towed vehicle to the frame or fifth wheel of the vehicle in front and functions like a fifth wheel kingpin connection. A smaller vehicle mounted completely on the frame of either the first or last vehicle may be used in a saddlemount combination.

(2) "Safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) "Safety zone" means the area or space officially set apart within a highway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(4) "Salvage pool" means a licensed vehicle dealer engaged primarily in the business of disposing of salvage vehicles, recovered stolen vehicles, or both.

(5) "School bus" means every motor vehicle that complies with the color and identification requirements set forth in the most recent edition of "Minimum Standards for School Buses" and is used to transport children to or from school or in connection with school approved activities and includes buses operated by contract carriers.

(6) "Secretary" means the secretary of transportation of the United States.

(7) "Security agreement." (See section 28-9-105, Idaho Code)

(8) "Security interest." (See section 28-1-201, Idaho Code)

(9) "Sell," "sold," "buy," and "purchase," mean and include, as used in sections 49-2401 through 49-2406, Idaho Code, exchange, barter, gift, and offer or contract to sell or buy.

(10) "Semitrailer." (See "Trailer," section 49-121, Idaho Code)

(11) "Serious traffic violation" means conviction of an offense specified in 49 CFR part 383 while operating a commercial motor vehicle.

(12) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for use by pedestrians.

(13) "Signal." (See "Railroad sign," section 49-119, Idaho Code)

(14) "Skills test" means an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

(15) "Slow moving vehicle" means any vehicle not normally operated upon the highways.

(16) "Snow tire." (See "Tires," section 49-121, Idaho Code)

(17) "Sold." (See "Sell," "buy," and "purchase," this section)

(18) "Solid rubber tire." (See "Tires," section 49-121, Idaho Code)

(19) "Special license plate" means a license plate that is made available to the public as a personal alternative to the standard issue license plate. ~~This definition shall not include~~ No special program fee shall be charged for the registration or plates issued under sections 49-403, 49-403A, 49-404, 49-405, 49-410, 49-415, 49-415A and 49-415B, Idaho Code.

(20) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including: ditch-digging apparatus, well-boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carry-alls and scrapers, power shovels and drag lines, and self-propelled cranes, and earth moving equipment. The term does not include travel trailers, dump trucks, truck mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(21) "Specially constructed vehicle." (See "Vehicle," section 49-123, Idaho Code)

(22) "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

(23) "State" means a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province of Canada.

(24) "Stop" means the act of or complete cessation from movement.

(25) "Stopping" means the act of any halting even momentarily of a vehicle.

(26) "Street." (See "Highways," section 49-109, Idaho Code)

(27) "Street rod" means any pre-1949 vehicle which has had a significant drive train update from a more modern vehicle. Changes may include engine, transmission, rear axle, and other suspension components. The body will be, or resemble the same as the manufacturer's original issue after its first sale after manufacture.

(28) "Studded tire." (See "Tires," section 49-121, Idaho Code)

(29) "Substandard width lane" means a lane that is too narrow for a bicycle and a motor vehicle to travel safely side by side within the lane.

(30) "Supplemental lot" means a physically separate location owned and maintained by a licensed dealer or manufacturer within the same or adjacent county as the principal place of business which meets all the requirements for a principal place of business.

(31) "Suspension of driver's license" means the temporary withdrawal by formal action of the department or as otherwise provided in this title of a person's driver's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated by the department.

(32) "Suspension of vehicle registration" means the temporary withdrawal by formal action of the department or as otherwise provided in this title of a person's vehicle registration or, in the case of fleets of vehicles, all vehicle registrations in each fleet operated by a company. Upon suspension, the privileges of operating the vehicle or vehicles on Idaho highways is terminated until the difficulty that caused the suspension is corrected and notification is provided that the suspension has been lifted.

SECTION 2. That Section 49-402C, Idaho Code, be, and the same is hereby amended to read as follows:

49-402C. SPECIAL LICENSE PLATE PROGRAMS -- STANDARDIZED PLATE COLOR AND DESIGN. (1) It is the intent of the legislature that special license plates issued by the department be readily recognizable as plates from the state of Idaho without losing the uniqueness for which the special plate was designed and purchased. In addition, the legislature finds that the department can operate in a more efficient, cost-effective manner by conforming special plates to a basic color and design.

(2) No special license plates and no special license plate programs in existence on or before June 30, 1998, shall be affected by the provisions of this section. On and after July 1, 1998, any new special license plate program authorized or any redesign of an existing special license plate, shall use the same red, white and blue background as the standard issue of license plates described in section 49-443, Idaho Code, except that:

(a) The identification of county shall be omitted;

(b) The word "Idaho" shall appear on every plate;

(c) The inscription "Scenic Idaho" may be omitted without legislative consideration and approval; and

(d) No slogan shall be used that infringes upon, dilutes or compromises, or could be perceived to infringe upon, dilute or compromise, the trademarks of the state of Idaho, including, but not

limited to, "Idaho Potatoes ® ," "Grown in Idaho ® ," "Famous Idaho Potatoes ™ " or "Famous Potatoes ™ ."

The provisions of this section shall not apply to the second plate design issued pursuant to the provisions of section 49-417, Idaho Code.

(3) Any redesign required for a special plate to conform with legislative intent and the provisions of this section may be done in a manner similar to that used to produce the original design.

(4) The special plates shall conform in all other respects with the provisions of section 49-443, Idaho Code, relating to visibility requirements, display of registration number, time period for validity of plates, and reservation of plate numbers.

(5) No special license plates shall be issued to motor vehicles with a registered maximum gross weight in excess of twenty-six thousand (26,000) pounds, or any motor vehicle registered under section 49-434(5), Idaho Code, or section 49-435, Idaho Code.

(6) Following an introductory period of two (2) years during which the provisions of this subsection shall not apply, if, for two (2) consecutive years, fewer than one thousand (1,000) plates are issued per year for a special license plate program, the department shall so advise the legislature and assist the legislature in adopting appropriate action to discontinue that special license plate program. The provisions of this subsection shall apply only to special license plate programs created on and after July 1, 1998.

SECTION 3. That Section 49-403, Idaho Code, be, and the same is hereby amended to read as follows:

49-403. DISABLED VETERAN -- LICENSE PLATES. No fee shall be charged for the registration or reregistration of a motor vehicle owned by a veteran who has established his rights to benefits under the provisions of Public Law 662, 79th Congress, as amended, and Public Law 187, 82nd Congress, as amended. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds, nor to any vehicle registered under section 49-434(5). Idaho Code. No fee shall be charged for the registration or reregistration of a motor vehicle owned by a veteran, who is at the time of the registration or reregistration receiving compensation from the veterans administration or in lieu thereof, from any of the armed forces of the United States, for one hundred percent (100%) service-connected disability or for any of the following specific disabilities: Loss or permanent loss of use of one (1) or both feet; loss or permanent loss of use of one (1) or both hands; loss of sight in both eyes or permanent impairment of vision in both eyes to the degree as to constitute virtual blindness. These provisions shall be considered applicable not only as to the vehicle originally purchased under this authorization, but also as to any vehicle subsequently purchased and owned by the same veteran, so long as the privilege shall not extend to more than one (1) vehicle at a time. Special license plates shall be issued for such a vehicle, identified by the inscription "D.V.", and a separate number series shall be used to further identify the license plates so issued. These license plates shall not be issued by the counties but shall be issued by the depart-

ment. The plates shall be displayed in accordance with the procedure applicable to license plates set forth in section 49-428, Idaho Code. A vehicle displaying plates issued in accordance with the provisions of this section shall be afforded the same privileges specified in section 49-410(7), Idaho Code.

SECTION 4. That Section 49-403A, Idaho Code, be, and the same is hereby amended to read as follows:

49-403A. PURPLE HEART RECIPIENT -- LICENSE PLATES. (1) Purple heart recipient license plates are available to any applicant who is a veteran or an active or retired member of any of the armed forces of the United States, reserve forces or Idaho national guard, and who furnishes proof of entitlement by providing one (1) of the following documents:

(a) A copy of form DD214 or equivalent document showing an award of the purple heart medal;

(b) A copy of the certificate presented with the medal; or

(c) A copy of the military order describing the award of the medal to the applicant.

(2) In addition to the regular registration fee, the applicant shall be charged the plate fee required in section 49-450, Idaho Code. Whenever title or interest in a vehicle registered under the provisions of this section is transferred or assigned, the registration shall expire, but the purple heart recipient may transfer his 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. A purple heart recipient shall not register more than two (2) vehicles under the provisions of this section. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds, nor to any vehicle registered under section 49-434(5), Idaho Code.

(3) Purple heart recipient license plates may be retained and displayed on vehicles owned by the surviving spouse of a deceased purple heart recipient.

(4) The purple heart recipient license plates shall be of a color and design acceptable to the military order of the purple heart association and approved by the department, utilizing a numbering system as determined by the department.

SECTION 5. 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) 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~~ twenty-six thousand (~~16~~26,000) 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 6. 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 registered under section 49-402(1) or section 49-434(1), Idaho Code, may, upon application to the department, register not more than two (2) 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~~ twenty-six thousand (~~1~~26,000) 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, 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 7. 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~~ twenty-six thousand (~~1~~26,000) 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 8. 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), 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~~ twenty-six thousand (~~16~~26,000) pounds.

In addition to the regular registration fees required in sections 49-402(1), and 49-434(1), Idaho Code, the applicant shall pay the initial program fee and the annual program fee specified in section 49-402, Idaho Code.

SECTION 9. 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~~ twenty-six thousand (~~16~~26,000) 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 equipment 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, 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 10. 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 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 that this provision shall not apply to a vehicle registered under section 49-434(1), Idaho Code, with a maximum gross weight over ~~sixteen~~ twenty-six thousand (~~1~~26,000) pounds or any vehicle registered under section 49-435, Idaho Code. In addition to the regular registration fees required in section 49-402(1) and (2), 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, 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 who, at 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 11. 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, but excluding any commercial vehicle with a registered maximum gross weight over ~~sixteen~~ twenty-six thousand (~~1~~26,000) pounds.

(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. 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 agencies and taxicabs.

(5) 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 (7) of this section.

(6) 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.

(7) 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 subsections (4) and (8) 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.

(8) 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.

(9) 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 collected shall be retained by the city or county whose law enforcement official issued the citation.

SECTION 12. 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 to register and receive special license plates for one (1) vehicle whose registered maximum gross weight does not exceed ~~sixteen~~ twenty-six thousand (~~1~~26,000) 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, Idaho Code.

SECTION 13. 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~~ twenty-six thousand (~~1~~26,000) 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 14. 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~~ twenty-six thousand (~~16~~26,000) 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 15. 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~~ twenty-six thousand

(~~1~~26,000) 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 16. 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 49-434(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~~ twenty-six thousand (~~1~~26,000) pounds. Availability of statehood centennial plates for other classes of vehicle registrations shall be as authorized by rule 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, 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 17. That Section 49-417, Idaho Code, be, and the same is hereby amended to read as follows:

49-417. IDAHO WILDLIFE SPECIAL PLATES. (1) 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 any one (1) of two (2) Idaho wildlife special license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over ~~sixteen~~ twenty-six thousand (~~1~~26,000) 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 suc-

ceeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) 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 wildlife program. This fee shall be treated as a contribution to the nongame wildlife program, and shall not be considered a motor vehicle registration fee as described in section 17, article VII, of the constitution of the state of Idaho.

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) Each 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. The Idaho fish and wildlife foundation is authorized to design more than one (1) wildlife plate, but the department may not allow more than two (2) different designs to be in use at any one (1) time. Initial costs of the plate program including costs of plate design shall be paid by the Idaho fish and wildlife foundation.

(4) Sample Idaho wildlife plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account to be used to fund the cost of administration of this special license plate program. Twenty dollars ($20.00) of the purchase fee shall be deposited in the fish and game set-aside account pursuant to section 36-111, Idaho Code, for use in the nongame wildlife program.

SECTION 18. That Section 49-417A, Idaho Code, be, and the same is hereby amended to read as follows:

49-417A. IDAHO TIMBER SPECIAL PLATES. (1) 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 timber special license plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over ~~sixteen~~ twenty-six thousand (~~1~~26,000) 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. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) 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), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) 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) Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee of each timber special license plate, and twenty dollars ($20.00) 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 19. That Section 49-417B, Idaho Code, be, and the same is hereby amended to read as follows:

49-417B. IDAHO AGRICULTURE PLATES. (1) On and after January 1, 2000, 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 agriculture plates. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over ~~sixteen~~ twenty-six thousand (~~1~~26,000) pounds. Availability of Idaho agriculture 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 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 the 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 transferred by the state treasurer to the ag in the classroom account created by the provisions of section 57-815, Idaho Code.

(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) The Idaho agriculture license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. That portion of the design which features Idaho agriculture shall be acceptable to the Food Producers of Idaho, Inc. and 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 from the ag in the classroom account.

(5) Sample Idaho agriculture plates may be purchased from the department 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 transferred to the ag in the classroom account.

SECTION 20. That Section 49-418, Idaho Code, be, and the same is hereby amended to read as follows:

49-418. VETERANS PLATES. (1) 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~~ twenty-six thousand (~~1~~26,000) 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, 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 21. 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) 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~~ twenty-six thousand (~~1~~26,000) 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 thirty-five dollars ($35.00) for the initial issuance of the plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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 fifteen dollars ($15.00) 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 dollars ($30.00), ten dollars ($10.00) of which shall be retained by the department for deposit to the state highway account and twenty dollars ($20.00) 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 22. That Section 49-418B, Idaho Code, be, and the same is hereby amended to read as follows:

49-418B. IDAHO YOUTH PLATES. (1) On or after January 1, 2000, 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 youth 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 twenty-six thousand (26,000) pounds. Availability of Idaho youth 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 the 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 transferred by the county assessor's motor vehicle registration division of each county into the youth programs fund of the sheriff of that county, for use in implementation of prevention and early intervention programs for Idaho's at-risk youth including, but not limited to: (a) providing mentoring programs, (b) creating safe places and structured activities in nonschool hours, (c) fostering good health, (d) developing effective education opportunities for marketable career skills, and (e) providing an opportunity for youth to give back to

their community.

(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 youth 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 association of counties, 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 association of counties.

(5) Sample Idaho youth 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 sheriff's youth program fund of the county where the plate was purchased for the implementation of youth programs for at-risk youth. No additional fee shall be charged for personalizing sample plates.

SECTION 23. That Section 49-419, Idaho Code, be, and the same is hereby amended 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. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (26,000) pounds. 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. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) 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), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) 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 24. That Section 49-419A, Idaho Code, be, and the same is hereby amended to read as follows:

49-419A. IDAHO SAWTOOTH NATIONAL RECREATION AREA PLATES. (1) On and after January 1, 2000, 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 Idaho sawtooth national recreation area 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~~ twenty-six thousand (~~1~~26,000) pounds. Availability of Idaho sawtooth national recreation area plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fees 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 park and recreation fund established in section 67-4225, Idaho Code, for use in the maintenance of parks and facilities. This fee shall be treated as a contribution to the outdoor recreation program and shall not be considered a motor vehicle registration fee as described in section 17, article VII, of the constitution of the state of Idaho.

(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 sawtooth national recreation area license plate design shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. That portion of the design which features the Idaho sawtooth national recreation area shall be acceptable to the sawtooth society and 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 the plate design, shall be paid by the sawtooth society.

(5) Sample Idaho sawtooth national recreation area plates may be purchased from the department 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 by the state treasurer in the park and recreation fund for use in the maintenance of parks and facilities. No additional fee shall be charged for personalizing sample plates.

SECTION 25. That Section 49-420, Idaho Code, be, and the same is hereby amended to read as follows:

49-420. IDAHO SNOWMOBILE 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 snowmobile 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 twenty-six thousand (26,000) pounds. Availability of Idaho snowmobile 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 plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be deposited by the state treasurer in the Idaho department of parks and recreation state snowmobile account established pursuant to section 67-7106, Idaho Code.

(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 snowmobile 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 state snowmobile 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 state snowmobile association.

(5) Sample Idaho snowmobile license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be deposited in the state snowmobile account within the department of parks and recreation. No additional fee shall be charged for personalizing sample plates.

Approved March 29, 2000.

CHAPTER 88
(S.B. No. 1555)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE STATE APPELLATE PUBLIC DEFENDER FOR FISCAL YEAR 2001; 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 Office of the State Appellate Public Defender the following amounts, to be expended for the designated program according to the designated expense classes from the listed fund for the period July 1, 2000, through June 30, 2001:

FOR:	
Personnel Costs	$ 766,300
Operating Expenditures	343,900
Capital Outlay	3,000
TOTAL	$1,113,200
FROM:	
General Fund	$1,113,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Office of the State Appellate Public Defender is authorized no more than twelve (12) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 29, 2000.

CHAPTER 89
(S.B. No. 1557)

AN ACT

APPROPRIATING MONEYS FOR THE DIVISION OF VOCATIONAL REHABILITATION FOR FISCAL YEAR 2001; 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 Board of Education for the Division of Vocational Rehabilitation the following amounts, to be expended for the designated programs according to the designated expense classes from the listed funds for the period July 1, 2000, through June 30, 2001:

A. RENAL DISEASE:	
FROM:	
General Fund	$ 566,200
FOR:	
Trustee and Benefit Payments	$ 566,200
B. VOCATIONAL REHABILITATION:	
FROM:	
General Fund	$ 3,135,300
Federal Grants Fund	11,749,400
Rehabilitation Revenue and Refunds Fund	600,000
Miscellaneous Revenue Fund	323,300
Business and Industry Services Fund	8,200
TOTAL	$15,816,200
FOR:	
Personnel Costs	$ 6,452,400
Operating Expenditures	1,414,800
Capital Outlay	277,200
Trustee and Benefit Payments	7,671,800
TOTAL	$15,816,200
C. EPILEPSY SERVICES:	
FROM:	
General Fund	$ 60,000
FOR:	
Trustee and Benefit Payments	$ 60,000
D. INDEPENDENT LIVING COUNCIL:	
FROM:	
General Fund	$ 74,100
Federal Grants Fund	199,900
Miscellaneous Revenue Fund	15,800
TOTAL	$ 289,800
FOR:	
Lump Sum	$ 289,800
GRAND TOTAL	$16,732,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Vocational Rehabilitation is authorized no more than one

hundred forty-two (142) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 29, 2000.

CHAPTER 90
(S.B. No. 1558)

AN ACT
APPROPRIATING MONEYS FOR THE COMMISSION ON AGING FOR FISCAL YEAR 2001; 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 Commission on Aging the following amounts, to be expended according to the designated expense classes from the listed funds, for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
COMMISSION ON AGING:				
FROM:				
General Fund	$424,200	$108,600	$3,419,900	$3,952,700
Federal Grant Fund	397,100	211,800	5,120,900	5,729,800
Miscellaneous Revenue Fund		18,700		18,700
TOTAL	$821,300	$339,100	$8,540,800	$9,701,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission on Aging is authorized no more than fourteen (14) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 29, 2000.

CHAPTER 91
(S.B. No. 1559)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED FOR FISCAL YEAR 2001; 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 Commission for the Blind and Visually Impaired the following amounts, to be expended according to the designated expense classes from the listed funds, for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$ 667,000	$ 99,500	$ 32,800	$ 565,700	$1,365,000
Randolph Sheppard Fund		7,200		117,900	125,100
Rehabilitation Revenue and Refunds Fund	41,800	33,300		12,700	87,800
Adaptive Aids and Appliances Fund		46,000			46,000
Federal Grant Fund	1,262,000	524,600	94,800	388,500	2,269,900
Miscellaneous Revenue Fund		17,100		9,000	26,100
TOTAL	$1,970,800	$727,700	$127,600	$1,093,800	$3,919,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Commission for the Blind and Visually Impaired is authorized no more than forty-two and fifty-hundredths (42.50) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 29, 2000.

CHAPTER 92
(S.B. No. 1560)

AN ACT

APPROPRIATING MONEYS TO THE GENERAL FUND FOR FISCAL YEAR 2000; APPROPRIATING MONEYS TO THE CATASTROPHIC HEALTH CARE COST FUND FOR FISCAL YEAR 2001; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby appropriated $4,250,000 from the Catastrophic Health Care Cost Fund to be deposited in the General Fund for the period July 1, 1999, through June 30, 2000.

SECTION 2. There is hereby appropriated $10,000,000 from the General Fund to be deposited in the Catastrophic Health Care Cost Fund for the period July 1, 2000, through June 30, 2001.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after its passage and approval.

Approved March 29, 2000.

CHAPTER 93
(S.B. No. 1561)

AN ACT

APPROPRIATING MONEYS TO THE PUBLIC HEALTH TRUST FUND FOR THE PUBLIC HEALTH DISTRICTS FOR FISCAL YEAR 2001; AND APPROPRIATING ADDITIONAL MONEYS TO THE PUBLIC HEALTH TRUST FUND FOR THE PANHANDLE HEALTH DISTRICT FOR FISCAL YEAR 2001.

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

SECTION 1. There is hereby appropriated $9,261,000 from the General Fund to be deposited in the Public Health Trust Fund for the period July 1, 2000, through June 30, 2001.

SECTION 2. In addition to the appropriation made in Section 1 of this act, there is hereby appropriated $98,000 from the General Fund to be deposited in the Public Health Trust Fund for the Panhandle Health District for the period July 1, 2000, through June 30, 2001.

Approved March 29, 2000.

CHAPTER 94
(S.B. No. 1562)

AN ACT

APPROPRIATING MONEYS FOR THE STATE LIQUOR DISPENSARY FOR FISCAL YEAR 2001; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; DIRECTING THE STATE CONTROLLER TO TRANSFER CERTAIN FUNDS TO THE PERMANENT BUILDING FUND; AND DECLARING AN EMERGENCY.

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 the designated expense classes from the listed fund for the period July 1, 2000, through June 30, 2001:

FOR:	
Personnel Costs	$ 6,291,600
Operating Expenses	3,729,400
Capital Outlay	337,400
TOTAL	$10,358,400
FROM:	
Liquor Control Fund	$10,358,400

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Liquor Dispensary is authorized no more than one hundred forty-five (145) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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. The State Controller shall transfer $1,000,000 from the Liquor Control Fund to the Permanent Building Fund.

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 29, 2000.

CHAPTER 95
(S.B. No. 1563)

AN ACT

APPROPRIATING MONEYS TO THE SOIL CONSERVATION COMMISSION FOR FISCAL YEAR 2001; 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 Soil Conservation Commission in the Department of Agriculture, the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
FROM:					
General Fund	$1,313,100	$521,700	$42,000	$2,413,900	$4,290,700
Resource Conservation and Rangeland Development Fund		40,000			40,000
Federal Grant Fund	117,000	148,300			265,300
TOTAL	$1,430,100	$710,000	$42,000	$2,413,900	$4,596,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Soil Conservation Commission is authorized no more than twenty-four (24) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 29, 2000.

CHAPTER 96
(S.B. No. 1564)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO FOR FISCAL YEAR 2000; 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 233, Laws of 1999, there is hereby appropriated to the Office of the Governor for the Public Employee Retirement System of Idaho the following amount, to be expended according to the designated expense class from the listed fund for the period July 1, 1999, through June 30, 2000:

FOR:	
Operating Expenditures	$50,000
FROM:	
Public Employee Retirement System 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 March 29, 2000.

CHAPTER 97
(S.B. No. 1565)

AN ACT

APPROPRIATING MONEYS TO THE LIEUTENANT GOVERNOR FOR FISCAL YEAR 2001; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; 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 Lieutenant Governor the following amounts, to be expended according to designated expense classes from the listed fund for the period July 1, 2000, through June 30, 2001:

FOR:	
Personnel Costs	$ 97,700
Operating Expenditures	9,400
TOTAL	$107,100
FROM:	
General Fund	$107,100

SECTION 2. It is legislative intent that an amount, not to exceed $1,000 of the amounts appropriated in Section 1 of this act, may be used at the discretion of the Lieutenant Governor to assist in defraying expenses relating to or resulting from the discharge of the Lieutenant Governor's official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Office of the Lieutenant Governor is authorized no more than two (2) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 29, 2000.

CHAPTER 98
(S.B. No. 1568)

AN ACT

APPROPRIATING MONEYS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION FOR FISCAL YEAR 2001; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; EXPRESSING LEGISLATIVE INTENT WITH RESPECT TO CERTAIN EXPENDITURES; REAPPROPRIATING A CERTAIN UNEXPENDED AND UNENCUMBERED BALANCE OF GENERAL FUNDS; AND SETTING FORTH CONDITIONS FOR THE REAPPROPRIATION.

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

SECTION 1. There is hereby appropriated to the Superintendent of Public Instruction/State Department of Education the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
STATE DEPARTMENT OF EDUCATION:					
FROM:					
General Fund	$2,692,200	$2,408,600	$ 45,000	$ 987,500	$ 6,133,300
Driver's Education Fund	132,400	146,300		2,043,300	2,322,000
Public Instruction Fund	323,500	940,500		11,100	1,275,100
Miscellaneous Revenue Fund	86,000	3,500,000	11,000,000		14,586,000
Student Tuition Recovery Fund		5,300		48,900	54,200
Federal Grant Fund	2,586,900	1,763,100		94,690,600	99,040,600
Indirect Cost Recovery Fund	240,900	166,200			407,100
Data Processing Services Fund	106,100	41,800			147,900
TOTAL	$6,168,000	$8,971,800	$11,045,000	$97,781,400	$123,966,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the State Department of Education is authorized no more than one hundred thirteen (113) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 an amount, not to exceed $1,000 of the General Fund moneys appropriated in Section 1 of this act, may be used at the discretion of the Superintendent of Public Instruction to assist in defraying expenses relating to or resulting from the discharge of his official duties. Such moneys shall be accounted for according to the provisions of Chapter 36, Title 67, Idaho Code, and Section 67-3516, Idaho Code.

SECTION 4. There is hereby reappropriated to the Superintendent of Public Instruction/State Department of Education, subject to the provisions of Section 5 of this act, the unexpended and unencumbered balance of the General Fund appropriation made by Section 1, Chapter 353, Laws of 1999, to be used for nonrecurring expenditures for the

period July 1, 2000, through June 30, 2001.

SECTION 5. The reappropriation granted in Section 4 of this act shall be subject to the following provisions:

(1) If the unexpended and unencumbered balance in the General Fund on June 30, 2000, is zero, the reappropriation in Section 4 of this act is hereby declared to be null and void.

(2) If the unexpended and unencumbered balance in the General Fund on June 30, 2000, is greater than zero but less than the total General Fund reappropriation authority granted to all state agencies, the amount reappropriated in Section 4 of this act shall be in the proportion that the reappropriation for the Superintendent of Public Instruction/State Department of Education bears to the total General Fund reappropriation authority granted to all state agencies.

Approved March 29, 2000.

CHAPTER 99
(H.B. No. 382)

AN ACT

RELATING TO THE IDAHO WHEAT COMMISSION; AMENDING SECTION 22-3307, IDAHO CODE, TO CHANGE THE DESIGNATION OF THE ADMINISTRATOR TO THE EXECUTIVE DIRECTOR; AMENDING SECTIONS 22-3311, 22-3312 AND 22-3313, IDAHO CODE, TO CHANGE THE DESIGNATION OF THE ADMINISTRATOR TO THE EXECUTIVE DIRECTOR AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 22-3307, Idaho Code, be, and the same is hereby amended to read as follows:

22-3307. CHAIRMAN AND ~~ADMINISTRATOR~~ EXECUTIVE DIRECTOR OF COMMISSION. The commission shall elect a chairman and shall employ an ~~administrator~~ executive director who is not a member of the commission.

SECTION 2. That Section 22-3311, Idaho Code, be, and the same is hereby amended to read as follows:

22-3311. BONDS OF AGENTS AND EMPLOYEES. The ~~administrator~~ executive director, 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~~ chapter.

SECTION 3. That Section 22-3312, Idaho Code, be, and the same is hereby amended to read as follows:

22-3312. APPOINTMENT OF ~~ADMINISTRATOR~~ EXECUTIVE DIRECTOR -- DUTIES -- SALARY. The commission shall appoint an ~~administrator~~ execu-

tive director who shall devote full time to the administration of this ~~act~~ chapter. He shall proceed immediately to prepare the plans and general program necessary and adequate to carry out the policies that are adopted by the commission. The ~~administrator~~ executive director shall be paid a reasonable salary fixed by the commission, commensurate with his duties, and all necessary expenses.

SECTION 4. That Section 22-3313, Idaho Code, be, and the same is hereby amended to read as follows:

22-3313. ESTABLISHMENT OF ~~ADMINISTRATOR'S~~ EXECUTIVE DIRECTOR'S OFFICE. For the convenience of the majority of those most likely to be affected in the administration of this ~~act~~ chapter, the ~~administrator~~ executive director, upon recommendation of the commission, shall establish and maintain an office for the ~~administrator~~ executive director within the state of Idaho.

SECTION 5. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 100
(H.B. No. 383)

AN ACT

RELATING TO GASOLINE TAXES; AMENDING SECTION 63-2412, IDAHO CODE, TO BROADEN THE USES OF GASOLINE TAX REVENUES DISTRIBUTED TO THE PARK AND RECREATION CAPITAL IMPROVEMENT ACCOUNT TO INCLUDE DEVELOPING, CONSTRUCTING AND MAINTAINING ROADS, BRIDGES AND PARKING AREAS WITHIN AND LEADING TO PARK AND RECREATION AREAS AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-2412, Idaho Code, be, and the same is hereby amended to read as follows:

63-2412. DISTRIBUTION OF TAX REVENUES. (1) The revenues received from the taxes imposed by sections 63-2402 and 63-2405, Idaho Code, and any penalties, interest, or deficiency additions, or from the fees imposed by the commission under the provisions of section 63-2409, Idaho Code, shall be distributed periodically as follows:

(a) An amount of money equal to the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission at the end of each fiscal year shall be

distributed as listed in paragraph (e) of this subsection.

(b) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

(c) As soon as possible after the beginning of each fiscal year, the sum of two hundred fifty thousand dollars ($250,000) shall be distributed to the railroad grade crossing protection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 62-304C, Idaho Code.

(d) As soon as possible after the beginning of each fiscal year, the sum of one hundred thousand dollars ($100,000) shall be distributed to the local bridge inspection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 40-703, Idaho Code.

(e) From the balance remaining with the commission after distributing the amounts in paragraphs (a) through (d) of subsection (1) of this section:

1. One and twenty-eight hundredths ~~per-cent~~ percent (1.28%) shall be distributed as follows: sixty-six ~~per-cent~~ percent (66%) of the one and twenty-eight hundredths ~~per-cent~~ percent (1.28%) shall be distributed to the waterways improvement account, as created in chapter 15, title 57, Idaho Code. Up to twenty ~~per-cent~~ percent (20%) of the moneys distributed to the waterways improvement account under the provisions of this paragraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the waterways improvement account. Thirty-three ~~per-cent~~ percent (33%) of the one and twenty-eight hundredths ~~per-cent~~ percent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One ~~per-cent~~ percent (1%) of the one and twenty-eight hundredths ~~per--cent~~ percent (1.28%) shall be distributed to the search and rescue account created in section 67-2903, Idaho Code;

2. One and twenty-eight hundredths ~~per-cent~~ percent (1.28%) shall be distributed as follows: sixty-six ~~per--cent~~ percent (66%) of the one and twenty-eight hundredths ~~per-cent~~ percent (1.28%) shall be distributed to the off-road motor vehicle account, as created in section 57-1901, Idaho Code. Up to twenty ~~per--cent~~ percent (20%) of the moneys distributed to the off-road motor vehicle account by this ~~subpart~~ subparagraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the off-road motor vehicle account. Thirty-three ~~per-cent~~ percent (33%) of the one and twenty-eight hundredths ~~per-cent~~ percent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801,

Idaho Code. One ~~per-cent~~ percent (1%) of the one and twenty-eight hundredths ~~per-cent~~ percent (1.28%) shall be distributed to the search and rescue account created in section 67-2903, Idaho Code; and

3. Forty-four hundredths ~~per-cent~~ percent (.44%) shall be distributed to the park and recreation capital improvement account as created in section 57-1801, Idaho Code, to be used solely to ~~improve~~ develop, construct, maintain and repair roads, ~~and~~ bridges and parking areas within and leading to parks and recreation areas of the state.

4. The balance remaining shall be distributed to the highway distribution account created in section 40-701, Idaho Code.

(2) The revenues received from the taxes imposed by section 63-2408, Idaho Code, and any penalties, interest, and deficiency amounts, shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account, and those moneys are hereby continuously appropriated.

(b) The balance remaining of all the taxes collected shall be distributed to the state aeronautics account, as provided in section 21-211, Idaho Code.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 101
(H.B. No. 385, As Amended)

AN ACT

RELATING TO MOTOR VEHICLE EQUIPMENT; AMENDING SECTION 49-913, IDAHO CODE, TO REVISE SPECIFICATIONS FOR FLAGS WHEN REQUIRED TO BE DISPLAYED ON PROJECTING LOADS; AMENDING SECTION 49-1010, IDAHO CODE, TO REVISE SPECIFICATIONS FOR FLAGS WHEN REQUIRED TO BE DISPLAYED ON FARM TRACTORS AND IMPLEMENTS OF HUSBANDRY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-1013, IDAHO CODE, TO CLARIFY TERMINOLOGY RELATING TO PENALTIES FOR WEIGHT VIOLATIONS AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-913, Idaho Code, be, and the same is hereby amended to read as follows:

49-913. LAMP OR FLAG ON PROJECTING LOAD. Whenever the load upon any vehicle extends to the rear four (4) feet or more beyond the bed or body of the vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in section 49-903, Idaho Code,

a red light or lantern plainly visible from a distance of at least five hundred (500) feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of the load a red or fluorescent orange flag ~~or cloth not less than sixteen~~ a minimum of twelve (16~~2~~) inches ~~square~~ by twelve (12) inches and hung so that the ~~entire area~~ flag is visible to the driver of a vehicle approaching from the rear.

SECTION 2. That Section 49-1010, Idaho Code, be, and the same is hereby amended to read as follows:

49-1010. SIZE OF VEHICLES AND LOADS. No vehicle shall exceed the dimensions specified below, except that certain devices determined by the board as necessary for the safe and efficient operation of motor vehicles, including energy conservation devices, shall be excluded from the calculation of width or length.

(1) The width of a vehicle, including any load thereon, except as noted below, shall not exceed ..... 8 1/2 feet.

(a) The limitations as to size of vehicles stated in this section shall not apply to farm tractors or to implements of husbandry, including any load thereon, and including all equipment used in land leveling operations, when being incidentally operated upon the highway from one (1) farm operation to another during daylight hours.

(b) Notwithstanding the exemption from width limitation for farm tractors included in paragraph (a) of this subsection, the total outside width of any farm tractor being transported on the interstate system in this state, except as permitted by section 49-1004, Idaho Code, shall not exceed ..... 9 feet.

(c) A farm tractor or implement of husbandry, when being incidentally transported upon the highway with a width in excess of the limits of paragraphs (a) and (b) of this subsection, must not proceed at a speed in excess of twenty-five (25) miles per hour, must display one (1) ~~eighteen~~ red or fluorescent orange flag a minimum of twelve (18~~2~~) by ~~eighteen~~ twelve (18~~2~~) inches ~~red--flag~~ on the outermost left projection of the tractor or implement being transported, except that the speed restriction of twenty-five (25) miles per hour shall not apply when such tractor or implement of husbandry is being hauled on legal width highway vehicles equipped as required by law.

(2) The height of a vehicle, including the load thereon, shall not exceed ..... 14 feet.

(3) The length of a vehicle, or vehicle combination, except as noted below shall not exceed:

(a) When a single motor vehicle ..... 45 feet.

(b) When a trailer or semitrailer, except as noted below ..... 48 feet.

1. Semitrailers operating on routes determined by the board to have severe curvature, deficient width and/or heavy traffic conditions shall be limited to an overall combination length not to exceed ..... 65 feet.

2. The length of a trailer tongue, or the length of the

tongue of a converter gear used to convert a semitrailer to a trailer, shall be excluded from the calculation of a trailer length.

3. Semitrailers operating on routes which are a part of the national network as set forth in the Code of Federal Regulations, Title 23, Part 658, and on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network shall not exceed a length of ..... 53 feet.

(c) When a motor vehicle and one (1) or more trailers, except as noted in subsections (3)(b), (3)(d) and (3)(e) of this section ..... 75 feet.

(d) When a combination of semitrailer and trailer, or of two (2) semitrailers the length in such combination, including the connecting tongue and excluding the truck tractor except as noted below ..... 61 feet.

When the combination of semitrailer and trailer or of two (2) semitrailers including the connecting tongues exceeds sixty-one (61) feet, the length of such combination including the truck tractor ..... 75 feet.

(e) When a combination of a semitrailer and trailer, or of two (2) semitrailers operating on routes on the national network as set forth in the Code of Federal Regulations, Title 23, Part 658, and on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network, the length, including the connecting tongue and excluding the truck tractor, shall not exceed ..... 68 feet.

(f) When a dromedary tractor with semitrailer, stinger-steered by having the kingpin located five (5) feet to the rear of the centroid of the rear axle(s) ..... 75 feet.

(g) When a dromedary tractor with semitrailer, not meeting the stinger-steer requirement as defined in subsection (3)(f) ~~above~~ of this section ..... 65 feet.

(h) When an auto transporter or boat transporter, stinger-steered as defined in subsection (3)(f) ~~above~~ of this section, excluding front and rear overhang of load ..... 75 feet.

(i) When an auto transporter or boat transporter, not meeting the stinger-steer requirement as defined in subsection (3)(f) ~~above~~ of this section, excluding front and rear overhang of load ..... 65 feet.

(j) When a truck tractor with stinger-steered pole trailer or log dolly, connected by a reach or pole, or a combination used for transporting long loads such as poles, pipes, logs or structural members generally capable of sustaining themselves as beams between supporting bunks or connections ..... 75 feet.

(4) The overhang or extension of a load shall not extend:

(a) Beyond the front of a vehicle, more than ..... 4 feet.

(b) Beyond the last axle, more than ..... 15 feet.

(c) Beyond the left fender of a passenger vehicle, more than ..... 0 feet.

(d) Beyond the right fender of a passenger vehicle, more than ..... 6 inches.

(e) To the front and rear combined of an auto transporter or boat transporter, more than ..... 7 feet.

(5) Noncargo-carrying devices necessary for the safe and efficient operation of the vehicle, as determined by the board, shall not be included in measurement for length.

(6) No combination shall include more than three (3) units except when a saddlemount combination ..... 75 feet.

(7) Vehicle combinations consisting of not more than four (4) vehicle units with an overall length in excess of the limits of subsection (3) of this section and with an overall combination length not to exceed one hundred and five (105) feet, may be operated by permit on routes designated for such operations by the public highway agency having jurisdiction over that highway system.

SECTION 3. That Section 49-1013, Idaho Code, be, and the same is hereby amended to read as follows:

49-1013. PENALTIES FOR VIOLATIONS. (1) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this chapter, except that violations of law as specified in paragraphs (a), (b) and (c) of subsection (3) of this section shall constitute an infraction.

(2) Persons convicted of violations of the provisions of sections 49-1003 and 49-1006 through 49-1012, Idaho Code, shall be subject to punishment by a fine of not to exceed three hundred dollars ($300) or by imprisonment in the county jail for not more than thirty (30) days or by a combination of such fine and imprisonment.

(3) Persons convicted of violations of the provisions of sections 49-1001, 49-1002, 49-1004~~,~~ and 49-1005, Idaho Code, shall be subject to a penalty as prescribed herein:

(a) One (1) pound through one thousand (1,000) pounds overweight shall be five dollars ($5.00) and shall constitute an infraction.

(b) One thousand one (1,001) pounds through two thousand (2,000) pounds overweight shall be fifteen dollars ($15.00) and shall constitute an infraction.

(c) Two thousand one (2,001) pounds through four thousand (4,000) pounds overweight shall be twenty-five dollars ($25.00) and shall constitute an infraction.

(d) Four thousand one (4,001) pounds through fifteen thousand (15,000) pounds overweight shall be twenty-five dollars ($25.00) plus $.1341 per pound for each additional pound over four thousand (4,000) pounds overweight.

(e) Fifteen thousand one (15,001) pounds through twenty thousand (20,000) pounds overweight shall be one thousand five hundred dollars ($1,500) plus twenty cents ($.20) per pound for each additional pound over fifteen thousand (15,000) pounds overweight.

(f) Twenty thousand one (20,001) pounds and greater shall be two thousand five hundred dollars ($2,500) plus thirty cents ($.30) per pound for each additional pound over twenty thousand (20,000) pounds overweight.

(g) In addition to the penalties specified in this subsection,

one hundred fifty dollars ($150) for failure to deploy a variable load suspension axle which results in adjacent axles exceeding allowable weight by two thousand one (2,001) pounds or more.

(4) Persons convicted of ~~or receiving~~ an infraction ~~judgment~~ or misdemeanor for violating two (2) or more of the provisions of section 49-1001, 49-1002 or 49-1004, Idaho Code, at any one (1) time shall be assessed the full amount of the penalty for the primary violation. In addition to the assessment of the penalty for the primary violation, the person convicted of ~~or receiving~~ an infraction ~~judgment~~ or misdemeanor shall be assessed a penalty of ten dollars ($10.00) for each additional misdemeanor conviction or five dollars ($5.00) for each additional infraction ~~judgment~~ for violations of section 49-1001, 49-1002 or 49-1004, Idaho Code, committed at the same time.

(5) All moneys collected as a result of the penalties prescribed in subsections (3) and (4) of this section, shall be deposited into the highway distribution account.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 102
(H.B. No. 398)

AN ACT

RELATING TO THE OUTFITTERS AND GUIDES LICENSING BOARD; AMENDING SECTION 36-2113, IDAHO CODE, TO PROVIDE THAT PROBATION IS PERMITTED AS A FORM OF RESTRICTION TO AN OUTFITTER'S OR GUIDE'S LICENSE AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 36-2113, Idaho Code, be, and the same is hereby amended to read as follows:

36-2113. REVOCATION OR SUSPENSION OF LICENSE -- GROUNDS. (a) Every license shall, by virtue of this chapter, be subject to suspension, revocation, probation or other restriction by the board for the commission of any of the following acts:

1. For supplying false information or for failure to provide information required to be furnished by the license application form for a license currently valid or for other fraud or deception in procuring a license under the provisions of this chapter.
2. For fraudulent, untruthful or misleading advertising.
3. For conviction ~~for~~ of a felony.
4. For two (2) or more forfeitures of any deposits of money or collateral with a court or administrative agency or for a conviction for violation of regulations of the United States forest service or the bureau of land management.
5. For unethical or unprofessional conduct as defined by rules of the board.

6. For conviction of any violation of any state or federal fish and game or outfitting and guiding laws.
7. For a substantial breach of any contract with any person utilizing his services.
8. For willfully (i) operating in any area for which the licensee is not licensed, or (ii) engaging in any activity for which the licensee is not licensed.
9. For the employment of an unlicensed guide by an outfitter.
10. For inhumane treatment of any animal used by the licensed outfitter or guide in the conduct of his business which endangers the health or safety of any guest or patron or which interferes with the conduct of his business.
11. For failure by any firm, partnership, corporation or other organization or any combination thereof licensed as an outfitter to have at least one (1) licensed outfitter as designated agent conducting its outfitting business who meets all of the qualifications and requirements of a licensed outfitter.
12. For the failure to provide any animal used by the licensed outfitter or guide in the conduct of his business with proper food, drink and shelter, or for the subjection of any such animal to needless abuse or cruel and inhumane treatment.
13. For failure of an outfitter to serve the public in any of the following ways: (i) by nonuse of license privileges as defined by rules of the board, (ii) by limiting services to any individual, group, corporation or club that limits its services to a membership, or (iii) by not offering services to the general public.
14. For violation of or noncompliance with any applicable provision of this act, or for violation of any lawful rule or order of the outfitter~~'s~~ and guide~~'s~~ board.

(b) For the purposes of this section, the term "conviction" shall mean a finding of guilt, an entry of a guilty plea by a defendant and its acceptance by the court, or a forfeiture of bail bond or collateral deposited to secure a defendant's appearance, suspended sentence, probation or withheld judgment.

(c) In addition to the penalties imposed in this section, the board may impose an administrative fine not to exceed five thousand dollars ($5,000), or the administrative costs of bringing the action before the board including, but not limited to, attorney's fees and costs of hearing transcripts, for each violation of the provisions of this chapter.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 103
(H.B. No. 406)

AN ACT

RELATING TO THE BOARD OF PHARMACY; AMENDING SECTION 54-1705, IDAHO CODE, TO PROVIDE THAT A PRESCRIPTION DRUG OR LEGEND DRUG IS

LABELED IN COMPLIANCE WITH FEDERAL REQUIREMENTS AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 54-1705, Idaho Code, be, and the same is hereby amended to read as follows:

54-1705. DEFINITIONS. (1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.

(2) "Counseling or counsel" means the effective communication by the pharmacist of information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription medications and devices. Specific areas of counseling shall include, but are not limited to:

(a) Name and strength and description of the medication;

(b) Route of administration, dosage, dosage form, continuity of therapy and refill information;

(c) Special directions and precautions for preparation, administration, storage and use by the patient as deemed necessary by the pharmacist;

(d) Side effects or adverse effects and interactions and therapeutic contraindications that may be encountered, including their avoidance, which may interfere with the proper use of the medication or device as was intended by the prescriber, and the action required if they occur;

(e) Techniques for self-monitoring drug therapy; and

(f) Action to be taken in the event of a missed dose.

(3) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one (1) person to another, whether or not for a consideration.

(4) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, invitro reagent or other similar related article including any component part or accessory which is:

(a) Recognized in the official United States Pharmacopoeia or official National Formulary, other drug compendia or any supplement to them;

(b) Intended for use in the diagnosis of disease or other conditions, or the cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Intended to effect the structure or any function of the body of man or other animal, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animal, and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(5) "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(6) "Distribute" means the delivery of a drug other than by administering or dispensing.

(7) "Drug" means:

(a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

(8) "Drug order" means a written order, in a hospital or other health care institution, for an ultimate user of any drug or device issued and signed by a practitioner, or an order transmitted by other means of communication from a practitioner, which is immediately reduced to writing by a pharmacist, registered nurse or other licensed health care practitioner authorized by the hospital or institution. The order shall contain the name and bed number of the patient, the name and strength or size of the drug or device, unless specified by individual institution policy or guideline, the amount to be dispensed, either in quantity or days, adequate directions for the proper use of the drug or device when it is administered to the patient, and the name of the prescriber.

(9) "Drug outlet" means all pharmacies, nursing homes, residential care homes, convalescent homes, extended care facilities, drug abuse treatment centers, penal institutions, hospitals, family planning clinics, retail stores, wholesalers, manufacturers and mail order vendors with facilities located in this state which are engaged in dispensing, delivery or distribution of drugs and drug manufacturers and wholesalers with facilities located outside the state, but doing business within this state.

(10) "Prospective drug review" includes, but is not limited to, the following activities:

(a) Evaluation of the prescription or medication order for:

1. Known allergies;
2. Rational therapy contraindications;
3. Reasonable dose and route of administration; and
4. Reasonable directions for use.

(b) Evaluation of the prescription or medication order for duplication of therapy.

(c) Evaluation of the prescription or medication order for interactions:

1. Drug-drug;
2. Drug-food; and
3. Drug-disease.

(d) Evaluation of the prescription or medication order for proper utilization:

1. Over or under utilization; and
2. Abuse/misuse.

(11) "Extern" means a bona fide student enrolled in an approved college of pharmacy who has not received his first professional degree in pharmacy.

(12) "Externship" means a structured practical experience program

in pharmacy, approved by the board and administered by a college of pharmacy.

(13) "Intern" means any person who has completed a course of study at an approved college of pharmacy, received the first professional degree in pharmacy and is registered with the board as an intern. Interns must register with the board prior to commencement of an internship program.

(14) "Internship" means a postgraduate practical experience program under the supervision of a licensed pharmacist registered as a preceptor.

(15) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

(16) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation.

(17) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

(a) By a pharmacist or practitioner as an incident to his administering or dispensing of a drug in the course of his professional practice; or

(b) By a practitioner or by his authorization under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

(18) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process, produces or prepares legend drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, or who packages or repackages such drugs, but does not include pharmacists or practitioners in the practice of their profession.

(19) "Precursor" means a substance, other than a legend drug which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

(20) "Person" means an individual, corporation, partnership, association or any other legal entity.

(21) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the ~~regulations~~ rules of the board.

(22) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy.

(23) "Pharmacy" means any facility, department or other place where prescriptions are filled or compounded and are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

(24) "Practitioner" shall mean a physician, dentist, veterinarian, scientific investigator or other person (other than a pharmacist) licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

(25) "Preceptor" means a pharmacist licensed in the state and in good standing, who supervises the internship training of a registered intern. The preceptor must be registered as a preceptor and shall be actively engaged on a full-time employment basis in the approved training area.

(26) "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with ~~either~~ one of the following statements:

(a) "Caution: Federal law prohibits dispensing without a prescription~~,~~"; or

(b) "Rx Only"; or

(c) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian~~,~~";

or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(27) "Prescription drug order" means a lawful written or verbal order of a practitioner for a drug.

(28) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

(29) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects which are used in any way in connection with the purchase, sale or handling of any drug or device.

(30) "Sale" means every sale and includes:

(a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;

(b) Exposure, offer, or any other proffer;

(c) Holding, storing or any other possession;

(d) Dispensing, giving, delivering or any other supplying; and

(e) Applying, administering or any other usage.

(31) "Warehouseman" means a person who stores legend drugs for others and who has no control over the disposition of such drugs except for the purpose of such storage.

(32) "Wholesaler" means a person engaged in the business of distributing legend drugs that he himself has not produced or prepared, to persons included in any of the classes named in subsection (2)(a) through (f) of section 54-1734, Idaho Code.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 104
(H.B. No. 407)

AN ACT

RELATING TO ADULT PROTECTION SERVICES; AMENDING CHAPTER 53, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-5303A, IDAHO CODE, TO PROVIDE A LIMITED EXEMPTION FOR THE REPORTING OF RESIDENT-TO-RESIDENT CONTACT ARISING IN PUBLIC OR PRIVATE HEALTH FACILITIES OR STATE LICENSED OR CERTIFIED FACILITIES; AMENDING SECTION 39-5304, IDAHO CODE, TO PROVIDE AGENCY DISCRETION IN DECISIONS RELATED TO INTERVIEWING VULNERABLE ADULTS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 53, 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 39-5303A, Idaho Code, and to read as follows:

39-5303A. EXEMPTION FROM DUTY TO REPORT -- LIMITED APPLICATION OF EXEMPTION. (1) The requirements set forth in section 39-5303, Idaho Code, pertaining to the reporting of instances of abuse, neglect or exploitation of a vulnerable adult to the commission or the department shall not apply to situations involving resident-to-resident contact within public or private health facilities or state licensed or certified facilities which serve vulnerable adults, except in those cases involving sex abuse, death or serious physical injury that jeopardizes the life, health or safety of a vulnerable adult or repeated resident-to-resident physical or verbal altercations, not resulting in observable physical or mental injury, but constituting an ongoing pattern of resident behavior that a facility's staff are unable to remedy through reasonable efforts.

(2) This exemption applies only to reports involving resident-to-resident abuse that are to be directed to the commission or the department pursuant to section 39-5303, Idaho Code. This exemption shall not limit any other reporting obligation or requirement whether statutory or otherwise.

SECTION 2. That Section 39-5304, Idaho Code, be, and the same is hereby amended to read as follows:

39-5304. REPORTING REQUIREMENTS, INVESTIGATION, EMERGENCY ACCESS. (1) When a report is required pursuant to this chapter, such report shall be made immediately to the commission or appropriate contractor. Provided however, that skilled nursing facilities defined in section 39-1301(b), Idaho Code, and employees of such facilities shall make

reports required under this chapter to the department. If known, the report shall contain the name and address of the vulnerable adult; the caretaker; the alleged perpetrator; the nature and extent of suspected abuse, neglect or exploitation; and any other information that will be of assistance in the investigation.

(2) If the allegations in the report indicate that an emergency exists, the commission or contractor must initiate an investigation immediately, and initiate contact with the alleged vulnerable adult within twenty-four (24) hours from the time the report is received. All other investigations must be initiated within seventy-two (72) hours from the time the report is received.

(3) The investigation shall include a determination of the nature, extent and cause of the abuse, neglect, or exploitation, examination of evidence and consultation with persons thought to have knowledge of the circumstances and identification, if possible, of the person alleged to be responsible for the abuse, neglect or exploitation of the vulnerable adult.

(4) ~~The investigation shall include an interview with the vulnerable adult, if possible. The commission or contractor shall conduct the interview, preferably,~~ Where no emergency exists, the commission or contractor may determine, based on the review of the report and any initial inquiries, that an interview with the vulnerable adult is not necessary to the investigation. If the commission or contractor determines that an interview is necessary, the preferred method of interviewing is by means of a personal visit with the vulnerable adult in the adult's dwelling. ~~If that is not possible~~ Alternatively, the interview may occur in the local office of the commission or contractor, or by telephone conversation, or by any other means available to the commission or contractor. Decisions regarding the method of conducting any interview will be within the discretion of the commission or contractor.

(5) Upon completion of an investigation, the commission or contractor shall prepare a written report of the investigation. The name of the person making the original report or any person mentioned in the report shall not be disclosed unless those persons specifically request such disclosure or unless the disclosure is made pursuant to a request to law enforcement for emergency access, a court order or hearing.

If the abuse, neglect, or exploitation is substantiated to have occurred in a state certified or licensed facility, a copy of the findings shall be sent to the licensing and certification office of the department.

If the commission or contractor determines that a report is unsubstantiated and that no other law has been violated, all records related to the report shall be expunged no later than three (3) years following the completion of the investigation.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 105
(H.B. No. 414, As Amended)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-532A, IDAHO CODE, TO ALLOW THE DIRECTOR OF THE DEPARTMENT OF JUVENILE CORRECTIONS TO ISSUE AN ADMINISTRATIVE ORDER FOR THE APPREHENSION AND DETENTION OF JUVENILES WHO HAVE ESCAPED FROM CUSTODY OF THE DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 5, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-532A, Idaho Code, and to read as follows:

20-532A. ORDER FOR APPREHENSION AND DETENTION OF ESCAPEES FROM CUSTODY. Upon a finding by the Idaho department of juvenile corrections that a juvenile in the custody of the department has escaped from custody, a written order signed by the director or his designee shall be a sufficient order for detention for any law enforcement officer to apprehend and take into custody such person. It is hereby made the duty of all sheriffs, police, constables, parole officers, prison officials and other peace officers, to execute such order. From and after the issuance of the detention order and until taken into custody, the escapee shall be considered a fugitive from justice. Upon apprehension, the juvenile shall be detained in the closest available detention center and shall thereafter be transported by the department as soon as possible or, at the discretion of the detaining authority, the juvenile may be transported directly by that authority to the department's juvenile management center.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 106
(H.B. No. 415, As Amended)

AN ACT

RELATING TO ESCAPES FROM CUSTODY BY JUVENILES; AMENDING SECTION 18-2505, IDAHO CODE, TO AMEND THE CATCHLINE, TO INCLUDE JUVENILES ADJUDICATED OF A FELONY WITHIN THE PURVIEW OF THE SECTION, TO DELETE THE AGE RESTRICTION WITH RESPECT TO PERSONS AGAINST WHOM ESCAPE CHARGES CAN BE FILED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-2506, IDAHO CODE, TO AMEND THE CATCHLINE, TO INCLUDE JUVENILES ADJUDICATED OF A MISDEMEANOR WITHIN THE PURVIEW

OF THE SECTION AND TO DELETE THE AGE RESTRICTION WITH RESPECT TO PERSONS AGAINST WHOM ESCAPE CHARGES CAN BE FILED; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-2505, Idaho Code, be, and the same is hereby amended to read as follows:

18-2505. ESCAPE BY ONE CHARGED WITH, CONVICTED OF, OR ON PROBATION FOR A FELONY -- ESCAPE BY A JUVENILE FROM CUSTODY. (1) Every prisoner charged with, convicted of, or on probation for a felony who is confined in any jail or prison including the state penitentiary or any private prison, or who while outside the walls of such jail or prison in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such jail or prison, who escapes or attempts to escape from such officer or person, or from such jail or prison, or from such factory, farm or other place without the walls of such jail or prison, shall be guilty of a felony, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged.

(2) Any person ~~under--the--age--of-eighteen-(18)~~ who is charged with, found to have committed, adjudicated for or is on probation for an offense which would be a felony if committed by an adult, and who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of any officer or person shall be subject to proceedings under chapter 5, title 20, Idaho Code, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to section~~s~~ 20-508 or 20-509, Idaho Code, the ~~juvenile~~ person shall be guilty of a felony for a violation of this section and shall be subject to adult criminal proceedings.

SECTION 2. That Section 18-2506, Idaho Code, be, and the same is hereby amended to read as follows:

18-2506. ESCAPE BY ONE CHARGED WITH OR CONVICTED OF A MISDEMEANOR -- ESCAPE BY A JUVENILE FROM CUSTODY.

(1) (a) Every prisoner charged with or convicted of a misdemeanor who is confined in any county jail or other place or who is engaged in any county work outside of such jail or other place, or who is in the lawful custody of any officer or person, who escapes or attempts to escape therefrom, is guilty of a misdemeanor.

(b) In cases involving escape or attempted escape by use of threat, intimidation, force, violence, injury to person or property other than that of the prisoner, or wherein the escape or attempted escape was perpetrated by use or possession of any weapon, tool, instrument or other substance, the prisoner shall be guilty of a felony.

(2) Any person ~~under--the--age--of-eighteen-(18)~~ who is charged with, found to have committed, adjudicated for or is on probation for an offense which would be a misdemeanor if committed by an adult, and

who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of an officer or person, shall be subject to proceedings under the provisions of chapter 5, title 20, Idaho Code, for an act which would be a misdemeanor if committed by an adult, or, if the escape or attempted escape was undertaken as provided in subsection (1)(b) of this section, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to section 20-508 or 20-509, Idaho Code, the ~~juvenile~~ person shall be guilty of a misdemeanor, or if subsection (1)(b) of this section applies, of a felony and, in either case, shall be subject to adult criminal proceedings.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 107
(H.B. No. 418)

AN ACT

RELATING TO CHILD SUPPORT; AMENDING SECTION 32-706, IDAHO CODE, TO CLARIFY AUTHORITY OF THE SUPREME COURT TO ESTABLISH AND MODIFY CHILD SUPPORT GUIDELINES; REPEALING SECTION 32-706A, IDAHO CODE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 32-706, Idaho Code, be, and the same is hereby amended to read as follows:

32-706. CHILD SUPPORT. (1) In a proceeding for divorce or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his or her support and education until the child is eighteen (18) years of age, without regard to marital misconduct, after considering all relevant factors which may include:

(a) The financial resources of the child;

(b) The financial resources, needs, and obligations of both the custodial and noncustodial parents which ordinarily shall not include a parent's community property interest in the financial resources or obligations of a spouse who is not a parent of the child, unless compelling reasons exist;

(c) The standard of living the child enjoyed during the marriage;

(d) The physical and emotional condition and needs of the child and his or her educational needs;

(e) The availability of medical coverage for the child at reasonable cost;

(f) The actual tax benefit recognized by the party claiming the federal child dependency exemption.

(2) If the child continues his high school education subsequent to reaching the age of eighteen (18) years, the court may, in its discretion, and after considering all relevant factors which include those set forth in subsection (1) of this section, order the continuation of support payments until the child discontinues his high school education or reaches the age of nineteen (19) years, whichever is sooner.

(3) All child support orders shall notify the obligor that the order will be enforced by income withholding pursuant to chapter 12, title 32, Idaho Code. Failure to include this provision does not affect the validity of the support order. The court shall require that the social security numbers of both the obligor and obligee be included in the order or decree.

(4) In a proceeding for the support of a child or a minor parent the court may order the parent(s) of each minor parent to pay an amount reasonable or necessary for the support and education of the child born to the minor parent(s) until the minor parent is eighteen (18) years of age, after considering all relevant factors which may include:

(a) The financial resources of the child;

(b) The financial resources of the minor parent;

(c) The financial resources, needs and obligations of the parent of the minor parent;

(d) The physical and emotional condition and needs of the child and his or her educational needs; and

(e) The availability of medical coverage for the child at reasonable cost.

(5) The legislature hereby authorizes and encourages the supreme court of the state of Idaho to adopt and to periodically review for modification guidelines that utilize and implement the factors set forth in subsections (1) through (4) of this section to create a uniform procedure for reaching fair and adequate child support awards. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate. If the court determines that circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court.

SECTION 2. That Section 32-706A, Idaho Code, be, and the same is hereby repealed.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 108
(H.B. No. 421)

AN ACT

RELATING TO THE RECORD ON APPEAL IN CRIMINAL PROCEEDINGS AND MAKING PROVISIONS FOR THE DISTRIBUTION OF THE PRESENTENCE REPORT; AMENDING SECTION 19-2803, IDAHO CODE, TO PROVIDE THAT APPELLATE COUNSEL SHALL RECEIVE A COPY OF THE PRESENTENCE REPORT AND DOCUMENTARY EXHIBITS WHERE THE PRESENTENCE REPORT OR DOCUMENTARY EXHIBITS WERE TRANSMITTED TO THE SUPREME COURT OR COURT OF APPEALS FOR USE IN APPELLATE PROCEEDINGS TO WHICH THE STATE OR ANY OF ITS OFFICERS IS A PARTY IN AN OFFICIAL CAPACITY AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 19-2803, Idaho Code, be, and the same is hereby amended to read as follows:

19-2803. RECORD ON APPEAL -- ORAL ARGUMENT -- EXHIBITS -- PRESENTENCE REPORT ON APPEAL. (a) The clerk's record and the reporter's transcript in an appeal of a criminal action to the ~~S~~supreme ~~C~~court shall contain such portions and documents of the proceedings of the district court, and be prepared, processed and transmitted to the ~~S~~supreme ~~C~~court as provided by ~~R~~rule of the ~~S~~supreme ~~C~~court. Argument of a criminal appeal shall be as prescribed by ~~R~~rule of the ~~S~~supreme ~~C~~court, but the defendant shall not have any right to appear at the time of oral argument unless otherwise ordered by the ~~S~~supreme ~~C~~court.

(b) In any case where a presentence report is relevant to any issue on appeal, and is transmitted to the ~~S~~supreme ~~C~~court or the court of appeals for such use, the clerk of the district court shall serve a copy of the report on the attorney general and on appellate counsel for the defendant.

(c) In any case where a documentary exhibit is transmitted to the ~~S~~supreme ~~C~~court or the court of appeals for use in appellate proceedings to which the state or any of its officers is a party in an official capacity, the clerk of the district court shall serve a copy of the exhibit on the attorney general and on appellate counsel for the defendant.

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 30, 2000.

CHAPTER 109
(H.B. No. 428)

AN ACT
RELATING TO THE CIRCUIT BREAKER PROPERTY TAX RELIEF; AMENDING SECTION 63-701, IDAHO CODE, TO FURTHER DEFINE THE TERM "OWNER"; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year in which the claim was filed a claimant must be an owner of a homestead and be:

(a) Not less than sixty-five (65) years old; or

(b) A fatherless or motherless child under the age of eighteen (18) years of age; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States veterans administration; or

(f) A person as specified in 42 USC 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant and used as the primary dwelling place of the claimant and occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. Homestead does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and any person or persons who live in the same dwelling, and share its furnishings, facilities, accommodations or expenses. The term includes any person owing a duty of support to the applicant pursuant to section 32-1002, Idaho Code, unless the person qualifies as a "nonhousehold member" pursuant to

subsection (6) of this section. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (9)(b) of this section.

(4) "Household income" means all income received by all persons of a household in a calendar year while members of the household.

(5) "Income" means the sum of federal adjusted gross income as defined in the internal revenue code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income, alimony, support money, income from inheritances, nontaxable strike benefits, the nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act, state unemployment insurance laws, and veterans disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the internal revenue code), nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities, worker's compensation and the gross amount of loss of earnings insurance. It does not include capital gains, gifts from nongovernmental sources or inheritances. To the extent not reimbursed, cost of medical care as defined in section 213(d) of the internal revenue code, incurred by the household may be deducted from income. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse, provided however, that the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant does not file a federal tax return the claimant's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant filed a federal tax return.

(6) "Nonhousehold member" means any nonspouse who lives in the claimant's dwelling for the purpose of providing protective oversight, caregiving, or personal care services to the claimant, or who is receiving disability benefits pursuant to subsection (1)(d) or (e) of this section, or who is over age sixty-five (65) and lives in the claimant's dwelling and receives protective oversight, caregiving or personal care services provided by the claimant.

(7) "Occupied" means actual use and possession.

(8) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who as grantor created a revocable or irrevocable trust and named himself as beneficiary of that trust, or who is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation which holds title in fee simple or holds a certificate of motor vehicle title and who has retained or been granted a life estate. "Owner" shall not include any person that otherwise occupies property as beneficiary of a trust. "Owner" includes a vendee in pos-

session under a land sale contract. Any partial ownership shall be considered ownership for determining qualification for property tax reduction benefits, however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property is held by a person who has died without timely filing a claim for property tax reduction, the estate shall be the "owner."

(9) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and:

(i) At least six (6) months during the prior year; or

(ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or

(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(16), Idaho Code, or a dwelling other than the one (1) upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

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, 2000.

Approved March 30, 2000.

CHAPTER 110
(H.B. No. 429)

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTION 37-2707, IDAHO CODE, TO REMOVE THE DRUG DRONABINOL FROM SCHEDULE II AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 37-2709, IDAHO CODE, TO ADD THE DRUGS KETAMINE AND DRONABINOL TO SCHEDULE III AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 37-2707, Idaho Code, be, and the same is hereby amended to read as follows:

37-2707. SCHEDULE II. (a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, naltrexone and their respective salts, but including the following:

1. Raw opium;
2. Opium extracts;
3. Opium fluid extracts;
4. Powdered opium;
5. Granulated opium;
6. Tincture of opium;
7. Codeine;
8. Ethylmorphine;
9. Etorphine hydrochloride;
10. Hydrocodone;
11. Hydromorphone;
12. Metopon;
13. Morphine;
14. Oxycodone;
15. Oxymorphone;
16. Thebaine.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Methylbenzoylecgonine (Cocaine - its salts, optical isomers, and salts of optical isomers).

(6) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Bulk Dextropropoxyphene (nondosage forms);

(6) Carfentanil;

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(17) Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl propane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenyl-piperidine;

(20) Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Sufentanil.

(d) 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:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, its salts, isomers, and salts of its isomers;

(3) Phenmetrazine and its salts;

(4) Methylphenidate.

(e) Depressants. 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 depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phencyclidine;

(5) Secobarbital.

(f) Hallucinogenic substances.

(1) ~~Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product (21 C.F.R. 1308.12 (f)).~~

~~(2)~~ Nabiline .....(another name for nabilone: (+)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one) (21 C.F.R. 1308.12 (f)).

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(a) Anthranilic acid;

(b) Ephedrine;

(c) Lead acetate;

(d) Methylamine;

(e) Methyl formamide;

(f) N-methylephedrine;

(g) Phenylacetic acid;

(h) Phenylacetone;

(i) Phenylpropanolamine;

(j) Pseudoephedrine.

Except that any combination or compound containing ephedrine, or any of its salts and isomers, or phenylpropanolamine or its salts and isomers, or pseudoephedrine, or any of its salts and isomers which is prepared for dispensing or over-the-counter distribution is not a controlled substance for the purpose of this section, unless such substance is possessed, delivered, or possessed with intent to deliver to another with the intent to manufacture methamphetamine, amphetamine or any other controlled substance in violation of section 37-2732, Idaho Code. For purposes of this provision, the requirements of the uniform

controlled substances act shall not apply to a manufacturer, wholesaler or retailer of over-the-counter products containing the listed substances unless such person possesses, delivers, or possesses with intent to deliver to another the over-the-counter product with intent to manufacture a controlled substance.

(2) Immediate precursors to phencyclidine (PCP):

(a) 1-phenylcyclohexylamine;

(b) 1-piperidinocyclohexanecarbonitrile (PCC).

SECTION 2. That Section 37-2709, Idaho Code, be, and the same is hereby amended to read as follows:

37-2709. SCHEDULE III. (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) 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, (whether optical or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under C.F.R. Sec. 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine.

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

i. Amobarbital;

ii. Secobarbital;

iii. Pentobarbital or any salt thereof and one <u>(1)</u> or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

i. Amobarbital;

ii. Secobarbital;

iii. Pentobarbital or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof;

(4) Chlorhexadol;

(5) <u>Ketamine, its salts, isomers, and salts of isomers - 7285.</u>

(Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone).

(6) Lysergic acid;

(~~6~~7) Lysergic acid amide;

(~~7~~8) Methyprylon;

(~~8~~9) Sulfondiethylmethane;

(~~9~~10) Sulfonethylmethane;

(~~10~~11) Sulfonmethane;

(~~11~~12) Tiletamine and zolazepam or any salt thereof.

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and human growth hormones. Any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins and corticosteroids) that promotes muscle growth including any salt, ester or isomer of a drug or substance listed in this paragraph, if that salt, ester or isomer promotes muscle growth.

(1) Boldenone;

(2) Chlorotestosterone (4-chlortestosterone);

(3) Chorionic gonadotropin;
(4) Clostebol;
(5) Dehydrochlormethyltestosterone;
(6) Dihydrotestosterone (4-dihydrotestosterone);
(7) Drostanolone;
(8) Ethylestrenol;
(9) Fluoxymesterone;
(10) Formebulone;
(11) Human growth hormones;
(12) Mesterolone;
(13) Methandienone;
(14) Methandranone;
(15) Methandriol;
(16) Methandrostenolone;
(17) Methenolone;
(18) Methyltestosterone;
(19) Mibolerone;
(20) Nandrolone;
(21) Norethandrolone;
(22) Oxandrolone;
(23) Oxymesterone;
(24) Oxymetholone;
(25) Stanolone;
(26) Stanozolol;
(27) Testolactone;
(28) Testosterone;
(29) Testosterone cypionate;
(30) Testosterone enanthate;
(31) Testosterone propionate;
(32) Trenbolone.

Anabolic steroids that are expressly intended for administration through implants to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for such use, shall not be classified as controlled substances under this act and shall not be governed by its provisions.

In addition to the penalties prescribed in article IV of the uniform controlled substances act, any person shall be guilty of a felony who prescribes, dispenses, supplies, sells, delivers, manufactures or possesses with the intent to prescribe, dispense, supply, sell, deliver or manufacture anabolic steroids or any other human growth hormone for purposes of enhancing performance in an exercise, sport or game or hormonal manipulation intended to increase muscle mass, strength or weight without a medical necessity as determined by a physician.

(g) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in the federal Food and Drug Administration approved product - 7369. (Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

(h) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, includ-

ing its salts:

(1) Butorphanol.

(~~h~~i) The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 111
(H.B. No. 438)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-518, IDAHO CODE, TO ALLOW FOR THE DETENTION OF PERSONS EIGHTEEN YEARS OF AGE AND OVER IN THE COUNTY JAIL; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 20-518, Idaho Code, be, and the same is hereby amended to read as follows:

20-518. STANDARDS FOR DETENTION. The following shall be minimum standards for the detention of juveniles provided for in section 20-517, Idaho Code:

(1) Juvenile detention facilities must be so constructed and/or maintained as to keep juveniles segregated from adult offenders or those being treated as adult offenders under section 20-508 or 20-509, Idaho Code, with there to be no contact as to sight and/or sound between the two (2) classes.

(2) Juvenile detention facilities must provide supervision and observation of juvenile detainees sufficient to protect the physical and mental health of the detainees.

(3) Juveniles held in detention must be provided with at least three (3) adequate and nutritional meals per day.

(4) Juveniles held in detention must have access to reading materials on a regular and systematic basis. Detained juveniles may receive books, newspapers and periodicals from any source including delivery to the detention facilities by family members, subject to the right of detention authorities to inspect and remove dangerous or harmful materials. Detention authorities may forbid the introduction into holding quarters of obscene books or periodicals.

(5) A visiting program shall be established in juvenile detention facilities which will allow for family visits to each juvenile for at least two (2) hours each week.

(6) Notwithstanding any other provision in this chapter, the minimum standards set forth herein shall not apply to any person who attains his or her eighteenth birthday prior to beginning or while in detention. When such person attains his or her eighteenth birthday, he or she shall be transferred from juvenile detention to the county jail.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 112
(H.B. No. 440)

AN ACT

RELATING TO COUNTY JAILS; AMENDING SECTION 20-617, IDAHO CODE, TO PROVIDE THAT PERSONS CONFINED IN THE COUNTY JAIL UNDER A JUDGMENT OF CONVICTION, SUSPENDED SENTENCE OR WITHHELD JUDGMENT RENDERED IN ANY CRIMINAL CASE EITHER UNDER A JUDGMENT OF IMPRISONMENT OR A JUDGMENT FOR THE PAYMENT OF A FINE AND COSTS MAY BE REQUIRED TO PERFORM LABOR ON FEDERAL, STATE OR OTHER GOVERNMENTAL PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 20-617, Idaho Code, be, and the same is hereby amended to read as follows:

20-617. LABOR OF PRISONERS ON PUBLIC WORKS. Persons confined in the county jail under a judgment of conviction, suspended sentence or withheld judgment rendered in any criminal case, either under a judgment of imprisonment or a judgment for the payment of a fine and costs, may be required ~~by an order of the board of county commissioners~~ to perform labor on ~~the public works or ways in and for the county, or perform labor for municipalities, school districts, highway districts, good road districts, and irrigation districts, provided, that when labor is performed on other than public works or ways in and for the county, the board of county commissioners may make a reasonable charge for such labor and shall pay twenty five per cent (25%) of the proceeds of such labor to the person performing the same if he is single, or if he is married seventy five per cent (75%) of the proceeds shall be paid to his family; the balance of such proceeds to be paid to the county treasurer for the general fund of the county. Provided further, that in case a prisoner has been transferred to another county and required to work there, the county's proportion of the proceeds of his work as provided in this section shall be paid to the county from which the prisoner was transferred~~ federal, state or other governmental projects.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 113
(H.B. No. 441)

AN ACT
RELATING TO THE PEACE OFFICER STANDARDS AND TRAINING COUNCIL; AMENDING SECTION 19-5109, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE REGARDING DETENTION OFFICERS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 19-5109, Idaho Code, be, and the same is hereby amended to read as follows:

19-5109. POWERS OF THE COUNCIL -- STANDARDS OF TRAINING, EDUCATION AND EMPLOYMENT OF PEACE OFFICERS -- CERTIFICATION -- PENALTIES. (a) It shall be the duty of and the council shall have the power:

(1) To establish the requirements of minimum basic training which peace officers shall complete in order to be eligible for permanent employment as peace officers, and the time within which such basic training must be completed.

(2) To establish the requirements of minimum education and training standards for employment as a peace officer in probationary, temporary, part-time, and/or emergency positions.

(3) To establish the length of time a peace officer may serve in a probationary, temporary, and/or emergency position.

(4) To approve, deny approval or revoke the approval of any institution or school established by the state or any political subdivision or any other party for the training of peace officers.

(5) To establish the minimum requirements of courses of study, attendance, equipment, facilities of all approved schools, and the scholastic requirement, experience and training of instructors at all approved schools.

(6) To establish such other requirements for employment, retention and promotion of peace officers, including minimum age, physical and mental standards, citizenship, moral character, experience and such other matters as relate to the competence and reliability of peace officers.

(7) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state.

(8) To receive and file for record copies of merit regulations or local ordinances passed by any political subdivision.

(9) To maintain permanent files and transcripts for all peace officers certified by the council to include any additional courses or advance courses of instruction successfully completed by such peace officers while employed in this state.

(10) To receive applications for financial assistance from the state and from political subdivisions and disburse available state funds to the state and to political subdivisions for salaries and allowable living expenses or any part thereof, as authorized by the council, incurred while in attendance at approved training programs and schools. The annual reimbursements authorized by this section shall not exceed the funds available for such purpose and authorized by section 31-3201B, Idaho Code.

(11) To allow a peace officer of a federally recognized Indian tribe within the boundaries of this state to attend the peace officer standards and training academy if said peace officer meets minimum physical and educational requirements of the academy. The Indian tribal law enforcement agency shall reimburse the peace officer standards and training academy for the officer's training. Upon satisfactory completion of the peace officer standards and training academy, the tribal peace officer shall receive a certificate of satisfactorily completing the academy.

(b) After January 1, 1974, any peace officer as defined in section 19-5101(d), Idaho Code, employed after January 1, 1974, except any elected official~~, any deputy sheriff working as a detention officer in the county jail,~~ or deputy serving civil process, the superintendent of the Idaho state police, or any person serving under a temporary commission with any law enforcement agency in times of natural or man-caused disaster declared to be an emergency by the board of county commissioners or by the governor of the state of Idaho, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, or any peace officer acting under a special deputy commission from the department of law enforcement, shall be certified by the council within one (1) year of employment; provided, however, that the council may establish criteria different than that required of other peace officers for certification of city police chiefs or administrators within state agencies having law enforcement powers, who, because of the number of full-time peace officers they supervise, have duties which are primarily administrative. Any such chief of police or state agency administrator employed in such capacity prior to July 1, 1987, shall be exempt from certification.

(c) No peace officer shall have or exercise any power granted by any statute of this state to peace officers unless such person shall have been certified by the council within one (1) year of the date upon which such person commenced employment as a peace officer, except in cases where the council, for good cause and in writing, has granted additional time to complete such training. The council may decertify any officer who pleads guilty or is found guilty, regardless of the form of judgment or withheld judgment of:

(1) Any felony or offense which would be a felony if committed in this state;

(2) Any misdemeanor;

(3) Any unlawful use, possession, sale or delivery of any controlled substance; or who

(4) Willfully or otherwise falsifies or omits any information to obtain any certified status; or who

(5) Violates any of the standards of conduct as established by

the council's code of ethics, as adopted and amended by the council.

All proceedings taken by the council shall be done in accordance with chapter 52, title 67, Idaho Code.

(d) Any law enforcement agency as defined in section 19-5101(c), Idaho Code, in which any peace officer shall resign as a result of any disciplinary action or in which a peace officer's employment is terminated as a result of any disciplinary action, shall, within thirty (30) days of such action, make a report to the council.

(e) The council shall, pursuant to the requirements of this section, establish minimum basic training and certification standards for county detention officers that can be completed within one (1) year of employment as a county detention officer.

(f) The council may, upon recommendation of the juvenile training council and pursuant to the requirements of this section, implement minimum basic training for juvenile probation officers and implement minimum training and certification standards for juvenile detention officers.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 114
(H.B. No. 445, As Amended in the Senate)

AN ACT

RELATING TO RECORDING AND FILING LEGAL DESCRIPTIONS AND MAPS OF TAXING DISTRICTS AND REVENUE ALLOCATION AREAS; AMENDING SECTION 50-2907, IDAHO CODE, TO PROVIDE MORE DEFINITE TIMES WITHIN WHICH ORDINANCES, LEGAL DESCRIPTIONS AND MAPS SHALL BE TRANSMITTED AS REQUIRED BY LAW; AMENDING SECTION 63-215, IDAHO CODE, TO EXPAND THE TIME FOR FILING MAPS AND LEGAL DESCRIPTIONS WITH THE COUNTY RECORDER, THE COUNTY ASSESSOR AND THE STATE TAX COMMISSION AND TO CLARIFY THE REQUIREMENTS FOR URBAN RENEWAL AGENCIES WITH REGARD TO REVENUE ALLOCATION AREAS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 50-2907, Idaho Code, be, and the same is hereby amended to read as follows:

50-2907. TRANSMITTAL OF REVENUE ALLOCATION AREA DESCRIPTION AND OTHER DOCUMENTS TO TAXING AGENCIES. After the effective date of an ordinance enacted by the local governing body of an authorized municipality, the clerk of the authorized municipality shall transmit, to the county auditor and tax assessor of the county in which the revenue allocation area is located, to the affected taxing districts, and to the state tax commission, a copy of the ordinance enacted, a copy of the legal description of the boundaries of the revenue allocation

area, and a map ~~or plan~~ indicating the boundaries of the revenue allocation area. Such documents shall be transmitted ~~as promptly as practicable following the enactment of such ordinance~~ within the time required by section 63-215, Idaho Code.

SECTION 2. That Section 63-215, Idaho Code, be, and the same is hereby amended to read as follows:

63-215. LEGAL DESCRIPTION AND MAP OF BOUNDARIES TO BE RECORDED AND FILED. (1) Any taxing district ~~or urban renewal district~~ which shall be formed or organized hereafter, or which shall change any existing boundaries hereafter, shall cause one (1) copy of the legal description and map prepared in a draftsmanlike manner which shall plainly and clearly designate the boundaries of such district or municipality as formed or organized, or as altered, to be recorded with the county recorder and filed with the county assessor in the counties within which the unit is located~~,~~ and with the state tax commission within ~~ten~~ thirty (~~1~~30) days following the effective date of such formation, organization or alteration but no later than the tenth day of January of the year following such formation, organization or alteration. In the case of fire protection districts, the board of county commissioners approving the boundaries shall be responsible for delivering to the assessor and recorder the map and legal description of the amended district boundaries.

(2) Urban renewal agencies shall comply with the requirements of subsection (1) of this section when a revenue allocation area within the jurisdiction of the urban renewal agency is formed or when the boundaries of such an area are altered.

(3) The county assessor, county auditor and state tax commission shall retain on file in their respective offices all copies of legal descriptions of taxing district boundaries and maps filed by the various taxing jurisdictions authorized to impose a levy on property.

(~~3~~4) The state tax commission shall be responsible for providing copies of uniform tax code area numbers and maps to the county assessor, county auditor and county treasurer and various companies having operating property subject to assessment in the state of Idaho and under the jurisdiction of the state tax commission for assessment and taxation purposes.

(~~4~~5) Unless otherwise specifically authorized to form with noncontiguous boundaries, or to annex or de-annex properties so as to make noncontiguous boundaries, all taxing districts shall form with and maintain contiguous boundaries.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 115
(H.B. No. 453)

AN ACT

RELATING TO CONFINEMENT OF PRISONERS; AMENDING SECTION 20-614, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE, TO DELETE THE REQUIREMENT OF APPROVAL OF THE SENTENCING COURT, TO PROVIDE A GRAMMATICALLY CORRECT PRONOUN, TO PROVIDE FOR MANDATORY REIMBURSEMENT FOR COSTS OF CONFINEMENT AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 20-614, Idaho Code, be, and the same is hereby amended to read as follows:

20-614. PRISONERS MUST BE ACTUALLY CONFINED EXCEPT ON ORDER OF COURT FOR PRIVATE EMPLOYMENT. (1~~.~~) A prisoner committed to the county jail by any court for trial or examination, or upon conviction for a public offense, must be confined in the jail until he is legally discharged unless the court specifies otherwise.

(2~~.~~) If the committed person has been regularly employed, the sheriff shall, if ordered by the committing judge, arrange for a continuation of said employment insofar as possible without interruption. ~~Any prisoner so employed shall be paid a fair and reasonable wage--for such--work--and shall work at fair and reasonable employment and hours per day and per week.~~

(3~~.~~) Whenever the prisoner is not employed, and between the hours or periods of his employment, he shall be confined in jail as an ordinary prisoner~~,--unless the court shall direct otherwise~~.

(4~~.~~) In case of any violation of the conditions laid down for his conduct, custody and employment the prisoner shall be returned to the court, and the court may then require the balance of his or her sentence be spent in actual confinement and may cancel any earned diminution of his or her term.

(5~~.~~) The sheriff shall receive such extra compensation and mileage for the administration of this act as the county commissioners determine.

(6~~.~~) The court may also by its order authorize the use of a jail in a contiguous or other county where the prisoner is employed, and while the prisoner is so employed under this act such prisoner shall be in the other county's custody.

(7~~.~~) ~~With--the--approval--of the sentencing court,--t~~The defendant may be incarcerated on nonemployment days only. If such confinement is approved, the court ~~may~~ shall provide that the county jail shall be reimbursed the costs of confinement, in the amount provided in section 20-605, Idaho Code, by the defendant.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 116
(H.B. No. 455, As Amended)

AN ACT

RELATING TO PROSECUTING ATTORNEYS; AMENDING SECTION 31-3113, IDAHO CODE, TO DELETE REFERENCE TO FULL-TIME PROSECUTING ATTORNEYS AND TO PROVIDE THAT COUNTY PROSECUTING ATTORNEYS MAY CONTRACT WITH A CITY IN THE COUNTY TO PROSECUTE NONCONFLICTING INFRACTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 31-3113, Idaho Code, be, and the same is hereby amended to read as follows:

31-3113. CONTRACTED DUTIES OF PROSECUTING ATTORNEYS WITH CITIES. ~~The p~~Prosecuting attorneys, ~~in the following counties are required to devote full time to the discharge of their duties: Bannock, Bonner, Bonneville, Canyon, Elmore, Gem, Kootenai, Latah, Payette and Twin Falls.~~ ~~W~~with the unanimous approval of the board of county commissioners, and with the consent of the prosecuting attorney, ~~the prosecuting attorney~~ may contract with any city within the county to prosecute nonconflicting misdemeanors ~~in those counties where the prosecuting attorneys are required to devote full time to the discharge of their duties~~ and infractions.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 117
(H.B. No. 487)

AN ACT

RELATING TO STATE PROPERTY; AMENDING CHAPTER 3, TITLE 58, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 58-330, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF LANDS SHALL MAINTAIN A DATABASE TO CENTRALIZE THE DEEDS OF ALL FEE SIMPLE PROPERTY AND ENCUMBRANCES THAT ARE OWNED BY THE STATE, TO PROVIDE FOR STATE OWNED BUILDINGS TO BE INTEGRATED INTO THE DATABASE AND TO PROVIDE FOR RULES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 3, Title 58, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 58-330, Idaho Code, and to read as follows:

58-330. INTEGRATED PROPERTY RECORDS SYSTEM. (1) The department of lands shall maintain a database to centralize the deeds of all fee simple property and encumbrances that are owned by the state in the department's central office. As deeds are collected by the employees or contractors of the department, the deeds will be platted, errors and discrepancies will be identified, researched and resolved and the clean records and plats shall be integrated into a comprehensive geographic information system (GIS) database. The system shall include all property rights, leases and easements for endowment, public trust and other state lands.

(2) State owned buildings shall be integrated into the database enumerated in subsection (1) of this section in necessary supplemental files. State building leases shall be integrated into the database enumerated in subsection (1) of this section in participation with the division of public works of the department of administration. The department of lands shall integrate various easements, rights-of-way and other nonfee simple property rights except those held and administered by the Idaho transportation department.

(3) The department may promulgate necessary rules to implement the provisions of this section.

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

Approved March 30, 2000.

CHAPTER 118
(H.B. No. 501, As Amended in the Senate)

AN ACT

RELATING TO THE TOBACCO MASTER SETTLEMENT AGREEMENT; AMENDING SECTION 39-7803, IDAHO CODE, TO DELETE LANGUAGE STATING THAT ALL PER UNIT NUMBERS ARE SUBJECT TO VERIFICATION 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 39-7803, Idaho Code, be, and the same is hereby amended to read as follows:

39-7803. REQUIREMENTS. Any tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this act shall do one (1) of the following:

(a) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b) (1) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

1999: $.0094241 per unit sold after the date of enactment of this act;

2000: $.0104712 per unit sold;

For each of 2001 and 2002: $.0136125 per unit sold;

For each of 2003 through 2006: $.0167539 per unit sold;

For each of 2007 and each year thereafter: $.0188482 per unit sold.

~~All per unit numbers are subject to verification.~~

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) of this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(A) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subparagraph: (i) in the order in which they were placed into escrow; and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the inflation adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) To the extent not released from escrow under subparagraphs (A) or (B) of this paragraph, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the attorney general that it is in compliance with this section. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(A) Be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this section, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed five percent

(5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;

(B) In the case of a knowing violation, be required within fifteen (15) days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent (300%) of the original amount improperly withheld from escrow; and

(C) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two (2) years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

(4) In any action brought under this section, the court shall award the attorney general, if he is the prevailing party, reasonable costs, expenses and attorney's fees in bringing his action.

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, 2000.

Approved March 30, 2000.

CHAPTER 119
(H.B. No. 549, As Amended)

AN ACT

RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-223, IDAHO CODE, TO FURTHER CLARIFY ATTORNEY FEE OBLIGATIONS WHEN CLAIMS ARE MADE AGAINST A THIRD PARTY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 72-223, Idaho Code, be, and the same is hereby amended to read as follows:

72-223. THIRD PARTY LIABILITY. (1) The right to compensation under this law shall not be affected by the fact that the injury, occupational disease or death is caused under circumstances creating in some person other than the employer a legal liability to pay damages therefor, such person so liable being referred to as the third party. Such third party shall not include those employers described in section 72-216, Idaho Code, having under them contractors or subcon-

tractors who have in fact complied with the provisions of section 72-301, Idaho Code; nor include the owner or lessee of premises, or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workmen there employed.

(2) Action may be instituted against such third party by the employee, or in event compensation has been claimed and awarded, by the employee and employer jointly, in the employee's name, or, if the employee refuses to participate in such action, by the employer in the employee's name.

(3) If compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefor, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability.

(4) ~~On any recovery by the employee against a third party, the employer shall pay or have deducted from his subrogated portion thereof, a proportionate share of the costs and attorney's fees incurred by the employee in obtaining such recovery~~ Unless otherwise agreed, upon any recovery by the employee against the third party, the employer shall pay or have deducted from its subrogated portion thereof, a proportionate share of the costs and attorney's fees incurred by the employee in obtaining such recovery unless one (1) or more of the following circumstances exist:

(a) If prior to the date of a written retention agreement between the employee and an attorney, the employer has reached an agreement with the third party, in writing, acknowledging the third party's obligation to pay the subrogated interest;

(b) If the employee alleges or asserts a position in the third party claim adverse to the employer, then the commission shall have jurisdiction to determine a reasonable fee, if any, for services rendered to the employer;

(c) If there is a joint effort between the employee and employer to pursue a recovery from the third party, then the commission shall have jurisdiction to determine a reasonable fee, if any, and apportion the costs and attorney's fees between the employee and employer.

(5) If the amount recovered from the third party exceeds the amount of the subrogated portion payable to the employer for past compensation benefits paid, then to the extent the employer has a future subrogated interest in that portion of the third party recovery paid to the employee, the employer shall receive a credit against its future liability for compensation benefits. Such credit shall apply as future compensation benefits become payable, and the employer shall reimburse the employee for the proportionate share of attorney's fees and costs paid by the employee in obtaining that portion of the third party recovery corresponding to the credit claimed. The employer shall not be required to pay such attorney's fees and costs related to the future credit prior to the time the credit is claimed. However, the employer and employee may agree to different terms if approved by the industrial commission.

(6) If death results from the injury or occupational disease and if the employee leaves no dependents entitled to benefits under this

law, the surety shall have a right of action against the third party for recovery of income benefits, reasonable expenses of medical and related services and burial expense actually paid by the surety and for recovery of amounts paid into the industrial special indemnity account pursuant to section 72-420, Idaho Code, and such right of action shall be in addition to any cause of action of the heirs or personal representatives of the deceased.

(7) All rights and restrictions herein granted to the employer have previously been intended to be, and are hereby expressly granted to the industrial special indemnity account.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 120
(H.B. No. 583)

AN ACT

RELATING TO ELECTRICAL CONTRACTORS AND JOURNEYMEN AND PLUMBING AND PLUMBERS; AMENDING SECTION 54-1006, IDAHO CODE, TO DELETE REFERENCE TO THE POSITION OF CHIEF ELECTRICAL INSPECTOR AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2627, IDAHO CODE, TO DELETE REFERENCE TO THE POSITIONS OF CHIEF INSPECTOR AND DEPUTY INSPECTORS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 54-1006, Idaho Code, be, and the same is hereby amended to read as follows:

54-1006. IDAHO ELECTRICAL BOARD. (1) The Idaho electrical board, hereinafter known as the board, is hereby created and made a part of the division of building safety. It shall be the responsibility and duty of the administrator of the division of building safety to administer and enforce the provisions of this act, and to serve as secretary to the Idaho electrical board~~, and to appoint the chief electrical inspector~~.

(2) The board shall consist of nine (9) members to be appointed by the governor with power of removal for cause. Two (2) members shall be licensed journeymen or master electricians; two (2) members shall be employees or officers of licensed electrical contractors; one (1) member shall be a licensed specialty journeyman or contractor; one (1) member shall be an employee or officer of an electrical power provider; one (1) member shall be an employee or officer of a manufacturing plant or other large power user; one (1) member shall be an employee or director of a manufacturer or distributor of electrical supplies or materials; and one (1) member shall be from the public at large not directly associated with the electrical industry. Board members shall be appointed for a term of four (4) years. Whenever a

vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(3) All members of the board shall be citizens of the United States, residents of this state for not less than two (2) years and shall be qualified by experience, knowledge and integrity in formulating rules for examinations, in passing on the fitness and qualifications of applicants for electrical contractor and journeyman electrician licenses and in establishing standards for electrical products to be used in electrical installations coming under the provisions of this act.

(4) The members of the board shall, at their first regular meeting following the effective date of this act and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board. In the event the chairman is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the board shall constitute a quorum.

(5) The board is authorized and directed to prescribe and amend rules consistent with this act for the administration of this chapter and to effectuate the purpose thereof, and for the examination and licensing of electrical contractors, journeyman electricians, master ~~journeyman~~ electricians, specialty electricians, specialty electrical contractors, specialty electrical trainees and apprentice electricians. The board shall also establish the classifications for specialty electrician and specialty electrical contractor licensing and the fees to be charged for permits and inspections of electrical systems. The board shall establish by administrative rule the fines to be paid for citations issued for violations of this act and the rules of the Idaho electrical board.

(6) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(g), Idaho Code.

SECTION 2. That Section 54-2627, Idaho Code, be, and the same is hereby amended to read as follows:

54-2627. APPOINTMENT OF INSPECTORS -- QUALIFICATIONS -- UNLAWFUL PRACTICES. The administrator of the division of building safety shall appoint ~~a chief inspector and~~ such number of ~~deputy~~ inspectors as may be required for the effective enforcement of this act. All inspectors shall be skilled in plumbing installations with not less than five (5) years actual experience, shall possess certificates of competency prior to appointment, and shall be fully familiar with the provisions of this act and rules made by both the administrator and the Idaho plumbing board. No inspector employed by the division of building safety and assigned to the enforcement of this act shall be engaged or financially interested in a plumbing business, trade, practice or work, or the sale of any supplies connected therewith, nor shall he act as an agent, directly or indirectly, for any person, firm, copartnership, association or corporation so engaged. Inspectors employed by municipalities electing to claim exemption under this act must possess the qualifications set forth in this section.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 121
(H.B. No. 594)

AN ACT

RELATING TO THE PERSONNEL SYSTEM FOR STATE EMPLOYEES; AMENDING SECTION 67-5302, IDAHO CODE, TO DEFINE "EARNED ADMINISTRATIVE LEAVE"; AMENDING SECTION 67-5332, IDAHO CODE, TO PROVIDE THAT CREDITED STATE SERVICE SHALL NOT BE EARNED WHEN COMPENSATORY TIME OR EARNED ADMINISTRATIVE LEAVE IS TAKEN; AMENDING SECTION 67-5333, IDAHO CODE, TO PROVIDE THAT SICK LEAVE SHALL NOT ACCRUE WHEN COMPENSATORY TIME OR EARNED ADMINISTRATIVE LEAVE IS TAKEN; AMENDING SECTION 67-5334, IDAHO CODE, TO PROVIDE THAT VACATION TIME SHALL NOT ACCRUE WHEN COMPENSATORY TIME OR EARNED ADMINISTRATIVE LEAVE IS TAKEN; AND AMENDING SECTION 59-1604, IDAHO CODE, TO PROVIDE THAT ELIGIBLE NONCLASSIFIED OFFICERS AND EMPLOYEES SHALL ACCRUE CREDITED STATE SERVICE AT THE SAME RATE AND UNDER THE SAME CONDITIONS AS IS PROVIDED FOR CLASSIFIED OFFICERS AND EMPLOYEES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 67-5302, Idaho Code, be, and the same is hereby amended to read as follows:

67-5302. DEFINITIONS. As used in this chapter, and other applicable sections of the Idaho Code, 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. Such terms and their definitions are:

(1) "Administrative employee" means any person, nonclassified or classified appointed to a position which meets the following criteria:

1. (a) Responsible office or nonmanual work directly related to the management policies of a department or section; or

(b) Responsible work that is directly related to academic instruction or training carried on in the administration of a school system or educational establishment; and

2. The employee must customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures. The employee must have the authority to make important decisions; and

3. The employee must:

(a) Regularly assist a bona fide executive or administrative employee; or

(b) Perform work under general supervision along specialized or technical lines requiring special training, experience or knowledge; or

(c) Execute under only general supervision special assignments; and

4. The employee is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established by section 67-5309C, Idaho Code.

5. Final designation of a classified position as "administrative" within this definition shall be made by the administrator of the division of human resources.

(2) "Administrator" means the administrator of the division of human resources in the governor's office.

(3) "Appointing authority" means the officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to make appointments to or employ personnel in any department.

(4) "Class" means a group of positions sufficiently similar as to the duties performed, degree of supervision exercised or required, minimum requirements of training, experience or skill, and other characteristics, that the same title, the same tests of fitness and the same schedule of compensation may be applied to each position in the group.

(5) "Classified officer or employee" means any person appointed to or holding a position in any department of the state of Idaho which position is subject to the provisions of the merit examination, selection, retention, promotion and dismissal requirements of chapter 53, title 67, Idaho Code.

(6) "Commission" means the Idaho personnel commission.

(7) "Compensatory time" means approved time off from duty provided in compensation for overtime hours worked.

(8) "Department" means any department, agency, institution or office of the state of Idaho.

(9) "Disabled veteran" means an individual who has served on military duty in the armed forces of the United States during any period of war recognized by the United States department of veterans affairs for the purposes of awarding federal veterans benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11), or during any other conflict recognized by the award of a campaign or service medal of the United States; and has been separated therefrom under honorable conditions; and has established the present existence of a service-connected disability; and is receiving compensation, disability retirement benefits, or pension under a public statute as administered by the department of veterans affairs or a military department.

(10) "Earned administrative leave" means hours which exceed the regularly scheduled hours but do not result in overtime. These hours may accrue after hours worked and hours on paid leave exceed forty (40) hours in one (1) work week.

(11) "Eligible" means a person who has been determined to be qualified for a classified position and whose name has been placed on the register of eligibles.

(~~11~~12) "Executive employee" means any person, nonclassified or classified, appointed to a position equivalent to a bureau chief or above as provided in section 67-2402, Idaho Code, or any employee meeting the following criteria:

1. An individual whose primary duty is management of a department, division or section; and

2. Who customarily and regularly directs the work of at least two (2) or more other employees therein; and

3. Who has the authority to hire and fire, or to recommend hiring and firing; or whose recommendation on these and other actions affecting employees is given particular weight; and

4. Who customarily and regularly exercises discretionary powers; and

5. Who is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established by section 67-5309C, Idaho Code.

6. Final designation of a classified position as "executive" in this definition shall be made by the administrator.

(~~12~~3) "Exempt employee" means any employee, classified or nonclassified, who is determined to be an executive, professional or administrative employee as defined herein, or who qualifies for any other exemption from cash compensation for overtime under applicable federal law. Final designation of a classified position as exempt shall be made by the administrator.

(~~13~~4) "Full-time employee" means any employee working a forty (40) hour work week.

(~~14~~5) "Holiday" means the following:

January 1 (New Year's Day);
Third Monday in January (Martin Luther King, Jr.-Idaho Human Rights Day);
Third Monday in February (Washington's Birthday);
Last Monday in May (Decoration Day);
July 4 (Independence Day);
First Monday in September (Labor Day);
Second Monday in October (Columbus Day);
November 11 (Veterans Day);
Fourth Thursday in November (Thanksgiving);
December 25 (Christmas).

In addition, the term "holiday" shall mean any day so designated by the President of the United States or the governor of this state for a public fast, thanksgiving or holiday.

In the event that a holiday occurs on a Saturday, the preceding Friday shall be a holiday, and if the holiday falls on a Sunday, the following Monday shall be a holiday.

A holiday is a day of exemption from work granted to employees during which said employees shall be compensated as if they actually worked.

(~~15~~6) "Hours worked" means those hours actually spent in the performance of the employee's job on any day including holidays, and shall not include vacation or sick leave or other approved leave of absence.

(~~16~~7) "Nonclassified employee" means any person appointed to or holding a position in any department of the state of Idaho, which position is exempted from the provisions of chapter 53, title 67, Idaho Code, as provided for in section 67-5303, Idaho Code.

(~~17~~8) "Normal work week" means any forty (40) hours worked during a particular one hundred sixty-eight (168) hour period as previously

established by the employee's appointing authority.

(~~18~~9) "Open competitive examination" means an examination which may be taken by qualified applicants to compete on an equal basis for listing on the register of eligibles.

(~~19~~20) "Overtime work" means time worked on holidays and time worked in excess of forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours, except that in the case of those employees engaged in law enforcement, correctional and fire protection activities characterized by irregular shift work schedules, time worked in excess of one hundred sixty (160) hours in a period of twenty-eight (28) consecutive days shall constitute overtime work within the meaning of this chapter.

(~~20~~1) "Participating department" means any department of the state of Idaho which employs persons in classified positions subject to the merit examination, selection, retention, promotion and dismissal requirements of this chapter.

(~~21~~2) "Part-time employee" means any employee whose usually scheduled work is less than forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours.

(~~22~~3) "Personnel system" means the procedure for administering employees in accordance with this chapter.

(~~23~~4) "Political office" means a public office for which partisan politics is a basis for nomination, election or appointment.

(~~24~~5) "Political organization" means a party which sponsors candidates for election to political office.

(~~25~~6) "Position" means a group of duties and responsibilities legally assigned or delegated by one (1) or more appointing authorities and requiring the employment of one (1) person.

(~~26~~7) "Professional employee" means any person, nonclassified or classified, appointed to a position which meets the following criteria:

1. The employee's primary duty must be either:
   (a) Work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study; or
   (b) Work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on his invention, imagination, or talent; or
   (c) Work as a teacher certified or recognized as such in a school system or educational institution by which he is employed; and
2. The employee must consistently exercise discretion and judgment; and
3. The employee must do work that is predominantly intellectual and varied, as distinguished from routine or mechanical duties; and
4. The employee is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established in section 67-5309C, Idaho Code.
5. Final designation of a classified position as "professional" within this definition shall be made by the administrator.

(2~~7~~8) "Provisional appointment" means appointment to a classified position pending the establishment of a register for such position and employment shall not be continued in this status longer than thirty (30) days after establishment of a register.

(2~~8~~9) "Qualifying examination" means an examination or evaluation given to a selected person to determine eligibility for reclassification or appointment to a position in a classification.

(~~29~~30) "Register" means a list of names of persons who have been determined to be eligible for employment in a classified position as determined on the basis of examination and merit factors as established by the administrator.

(3~~0~~1) "Seasonal appointment" means an appointment to a position which is permanent in nature, but which has intermittent work periods throughout the year.

(3~~1~~2) "Service rating" means a recorded evaluation of work performance and promotional potential of an employee by his supervisor.

(3~~2~~3) "Temporary appointment" means appointment to a position which is not permanent in nature, and in which employment will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period. No person holding a temporary appointment may work in excess of one thousand three hundred eighty-five (1,385) hours during a twelve (12) month period of time for any one (1) department, except upon petition by the appointing authority of the department of lands that demonstrates good cause, the administrator of the division of human resources may extend the one thousand three hundred eighty-five (1,385) hour limit for employees of the department who are required to perform fire suppression activities.

(3~~3~~4) "Vacation leave" means a period of exemption from work granted to employees during which time said employees shall be compensated. The term shall not include compensatory time for overtime work.

(3~~4~~5) "Veteran" means any person who has served in the active service of the armed forces of the United States during 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), or during any other conflict recognized by the award of a campaign or service medal of the United States, and who has been discharged under other than dishonorable conditions.

SECTION 2. That Section 67-5332, Idaho Code, be, and the same is hereby amended to read as follows:

67-5332. CREDITED STATE SERVICE -- APPLICABILITY -- COMPUTATION. (1) For the purposes of payroll, vacation or annual leave, sick leave and other applicable purposes, credited state service shall be earned by:

(a) Classified officers and employees of any department, commission, division, agency or board of the executive department;

(b) Such other classified officers and employees as may be prescribed by law or by order of the state board of examiners.

(2) Service in the employ of any of the following units of government, or other similar units, shall not earn credited state service: counties, cities, school districts, community college districts,

irrigation districts and highway districts. Service as an independent contractor or consultant is not state service.

(3) One (1) hour of credited state service shall be earned by each eligible state officer or employee for each hour, or major fraction thereof, worked or on approved leave as provided in subsection (4) of this section.

(4) Credited state service shall be earned when on approved leave with pay, on approved vacation leave, approved military leave, on approved sick leave, and holiday leave, but not when compensatory time or earned administrative leave is taken.

(5) Service for retirement purposes shall be as provided in chapter 13, title 59, Idaho Code.

SECTION 3. That Section 67-5333, Idaho Code, be, and the same is hereby amended to read as follows:

67-5333. SICK LEAVE COMPUTATION. (1) The rate per hour at which sick leave shall accrue to classified officers and employees earning credited state service shall be at the rate represented by the proportion 96/2080. Sick leave shall accrue without limit, and shall be transferable from department to department.

(2) Sick leave shall not accrue to any officer or employee on any kind of leave of absence without pay, suspension without pay or layoff. Sick leave shall accrue while an officer or employee is on approved leave with pay, on approved vacation leave, on approved military leave with pay, and on approved sick leave, but not when compensatory time or earned administrative leave is taken.

(3) All accrued sick leave shall be forfeited at the time of separation from state service and no officer or employee shall be reimbursed for accrued sick leave at the time of separation, except as provided in section 67-5339, Idaho Code. If such officer or employee returns to credited state service within three (3) years of such separation, all sick leave credits accrued at the time of separation shall be reinstated, except to the extent that unused sick leave was utilized for the purposes specified in section 67-5339, Idaho Code.

(4) Sick leave shall be taken on a workday basis. Regularly scheduled days off and officially designated holidays falling within a period of sick leave shall not be counted against sick leave. Sick leave shall not be taken in advance of being earned.

(5) In cases where absences for sick leave exceed three (3) consecutive working days, the appointing authority may require verification by a physician or other authorized practitioner.

(6) If an absence for illness or injury extends beyond the sick leave accrued to the credit of the officer or employee, the officer or employee may be granted leave without pay.

(7) The administrator shall prescribe additional requirements for sick leave for classified officers and employees on a part-time or irregular schedule, for maintaining sick leave records, for funeral leave, and such other applicable purposes as necessary.

SECTION 4. That Section 67-5334, Idaho Code, be, and the same is hereby amended to read as follows:

67-5334. VACATION TIME COMPUTATION. (1) Vacation time shall not accrue to any officer or employee on any kind of leave of absence without pay, suspension without pay or layoff. Vacation leave shall accrue while an officer or employee is on approved leave with pay, on approved vacation leave, on approved military leave with pay, and on approved sick leave, but not when compensatory time or earned administrative leave is taken.

(2) The rate per hour at which vacation leave shall accrue to eligible classified officers and employees earning credited state service shall be at the rate represented by the proportion 96/2080 during the first 10,400 hours of credited state service; at the rate represented by the proportion 120/2080 during the second 10,400 hours of credited state service; at the rate represented by the proportion 144/2080 during the third 10,400 hours of credited state service; and at the rate represented by the proportion 168/2080 thereafter.

SECTION 5. That Section 59-1604, Idaho Code, be, and the same is hereby amended to read as follows:

59-1604. CREDITED STATE SERVICE. (1) For the purposes of payroll, vacation or annual leave, sick leave and other applicable purposes, credited state service shall be earned by:

(a) The elective officers of the executive department, except the lieutenant governor;

(b) Nonclassified officers and employees of any department, commission, division, agency or board of the executive department, except for part-time members of boards, commissions and committees;

(c) Officers and employees of the legislative department, except members of the house of representatives and the senate.

(2) ~~One--(1)--hour--of--credited-state-service-shall-be-earned-by each-eligible-state-officer-or-employee-specified--in--subsection--(1) above--for--each--hour,-or-major-fraction-thereof,-that-the-officer-or employee-receives-pay,-whether-for-hours-worked-or-on-approved--leave. The-state-board-of-examiners-shall-adopt-comparative-tables-and-charts to--compute-credited-state-service-on-daily,-weekly,-bi-weekly,-calendar-month-and-annual--periods~~ Eligible nonclassified officers and employees shall accrue credited state service at the same rate and under the same conditions as is provided in section 67-5332, Idaho Code, for classified officers and employees.

(3) Members of the legislature, the lieutenant governor, and members of part-time boards, commissions and committees, shall not be eligible for annual leave or sick leave.

(4) Credited state service for those officers and employees identified by section 67-5303(i), Idaho Code, shall be as determined by the state board of education, except no such officer or employee shall be credited with more than two thousand eighty (2,080) hours during any twelve (12) month period.

Any policy and procedures determined by the state board of education must be communicated to the state controller in writing at least one hundred eighty (180) days in advance of the effective date of the policy and procedures.

(5) Service for retirement purposes shall be as provided in chapter 13, title 59, Idaho Code, or in chapter 20, title 1, Idaho Code.

Approved March 30, 2000.

CHAPTER 122
(H.B. No. 599, As Amended)

AN ACT

RELATING TO THE IDAHO BOARD OF VETERINARY MEDICINE; AMENDING SECTION 54-2103, IDAHO CODE, TO PROVIDE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2104, IDAHO CODE, TO REQUIRE AN ACTIVE LICENSE AND TO PROVIDE EXCEPTIONS; AMENDING SECTION 54-2105, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR THE BOARD OF VETERINARY MEDICINE, TO PROVIDE POWERS OF THE BOARD AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2107, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR LICENSE APPLICATIONS; AMENDING SECTION 54-2110, IDAHO CODE, TO PROVIDE FOR LICENSING WITHOUT TAKING THE CLINICAL COMPETENCY TEST; AMENDING SECTION 54-2111, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR TEMPORARY PERMITS; AMENDING SECTION 54-2112, IDAHO CODE, TO PROVIDE FOR EXPIRATION AND RENEWAL OF LICENSES, TO PROVIDE FOR INACTIVE STATUS LICENSING AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 21, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-2113, IDAHO CODE, TO PROVIDE FOR CORPORATE PRACTICE; AMENDING CHAPTER 21, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-2114, IDAHO CODE, TO PROVIDE THAT UNAUTHORIZED PRACTICE IS A MISDEMEANOR; AMENDING SECTION 54-2113, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE GROUNDS FOR DISCIPLINE; AMENDING SECTION 54-2115, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE A REFERENCE TO THE ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 54-2116, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2117, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE FOR VIOLATIONS, TO INCREASE PENALTIES, TO PROVIDE FOR CALCULATION OF MULTIPLE OFFENSES AND TO PROVIDE WHO MAY BRING AN ACTION TO ENJOIN VIOLATIONS; AMENDING SECTION 54-2118, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTION 54-2119, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE A REFERENCE TO THE ATTORNEY GENERAL'S OFFICE; AND AMENDING SECTION 54-2120, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-2103, Idaho Code, be, and the same is hereby amended to read as follows:

54-2103. DEFINITIONS. As used in this chapter:

(1) "Accredited continuing education activity" means a course, seminar, scientific program or any other activity approved by the board or its designees for continuing education credit.

(2) "Accredited school of veterinary medicine" means any veterinary college or division of a university or college that offers the

degree of doctor of veterinary medicine, veterinary medicine doctor, or its equivalent and is accredited by the American veterinary medical association.

(3) "Allied health professional" means a person ~~currently licensed~~ holding a current active license, in good standing, in any state to practice one (1) of the healing arts including, but not limited to medicine, dentistry, osteopathy, chiropractic, acupuncture and podiatry.

(4) "Anesthetized" means any condition of general anesthesia, caused by the administration of a drug or combination of drugs in sufficient quantity to produce a state of unconsciousness or disassociation and blocked response to a given pain or alarm stimulus. At a minimum, each anesthetized patient shall be under continuous observation until the swallowing reflex has returned.

(~~3~~5) "Animal" means any animal other than man and includes fowl, birds, fish and reptiles, wild or domestic, living or dead.

(~~4~~6) "Assistant" means any individual who is employed by an actively licensed veterinarian to perform acts pertaining to the practice of veterinary medicine and receives compensation for such acts from the employing veterinarian but is not a certified veterinary technician or licensed veterinarian.

(~~5~~7) "Board" means the state board of veterinary medicine.

(~~6~~8) "Certified euthanasia agency" or "C.E.A." means an law enforcement agency, an animal control agency or a society for the prevention of cruelty to animals, which has been inspected~~, licensed~~ and certified by the euthanasia task force or the board.

(~~7~~9) "Certified euthanasia technician" or "C.E.T." means:

(a) A person employed by a certified euthanasia agency~~, a law enforcement agency, an animal control agency, a society for the prevention of cruelty to animals,~~ or working under the indirect supervision of a licensed veterinarian, but not to include an individual~~s~~ employed as a technician~~s~~ by animal research laboratories, who is instructed~~, licensed~~ and certified by the euthanasia task force or the board as defined in the rules of the board.

(b) Any person who is trained prior to December 31, 1992, in euthanasia methods, in a course approved by the board, may be certified upon presentation of evidence of such training to either the euthanasia task force or the board.

(10) "Certified veterinary technician" means a person who has fulfilled the certification requirements prescribed by board rule and has been certified by the board to practice veterinary technology in this state.

(~~8~~11) "Consultation" means a deliberation between two (2) or more veterinarians concerning the diagnosis of a disease or the proper management of the case.

(~~9~~12) "Credit hour" means fifty (50) minutes of participation in an accredited continuing education activity.

(~~10~~3) "Dentistry" is the practice of veterinary medicine and means~~:~~

~~(a)~~ ~~T~~the application or use of any instrument or device to any portion of an animal's tooth, gum or any related tissue for the prevention, cure or relief of any wound, fracture, injury, disease or other condition of an animal's tooth, gum or related tissue~~;~~

and. Dentistry includes, but is not limited to:

(~~b~~a) "Preventive dental procedures" including, but not limited to, the removal of calculus, soft deposits, plaque, stains, and floating to shape the teeth above the gum line or the smoothing, filing or polishing of tooth surfaces above the gum line; and

(b) "Operative dentistry/oral surgery" or any other dental procedure that invades the hard or soft oral tissue including a procedure that alters the structure of one (1) or more teeth, or repairs damaged and diseased teeth, or the deliberate extraction of one (1) or more teeth.

(1~~1~~4) "Direct supervision" means the supervisor is on the premises where the animal is being treated, ~~and~~ is quickly and easily available and the animal has been examined by ~~a~~ the supervising veterinarian as acceptable veterinary medical practice requires.

(15) "Discipline" means board action including, but not limited to:

(a) Refusing to issue, renew or reinstate a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;

(b) Denial, revocation, suspension, sanction, probation or voluntary surrender of a license, permit or certification to practice as a licensed veterinarian, a certified veterinary technician, a certified euthanasia agency or a certified euthanasia technician;

(c) The ability to enter into consent agreements and negotiated settlements with licensed veterinarians, certified veterinary technicians, certified euthanasia agencies and certified euthanasia technicians.

(1~~2~~6) "Emergency" means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

(1~~3~~7) "Emergency veterinary hospital" means a facility in which ~~provides~~ veterinary services ~~at all times including weekends and legal holidays~~ are provided by either a "veterinarian on premises" or "veterinarian on call."

(1~~4~~8) "Euthanasia task force" means a task force established by the board for the purposes of training, examining, ~~licensing,~~ certifying and inspecting certified euthanasia agencies and certified euthanasia technicians.

(19) "Extra label use" means the actual or intended use of a human or veterinary drug in an animal in a manner that is not in accordance with the drug's labeling.

(20) "Floating" means shaping the posterior (cheek) teeth and the incisors (cutting teeth) in horses, mules and donkeys through the use of hand floats, rasps, burs, mechanical files or other file-like instruments to restore balance, allow more efficient mastication, and reduce pain and trauma to the periodontal tissues.

(21) "Herd, litter or flock" of animals means animals managed as a group for purposes including, but not limited to, breeding, sale, show or food production.

(~~1~~5~~2~~2) "Immediate supervision" means the supervisor is in the immediate area, ~~and~~ in audible and visual range of the animal patient and the person treating the patient and the animal has been examined

by the supervising veterinarian as acceptable veterinary medical practice requires.

(23) "In good standing" means that an applicant:

(a) Has not been the recipient of any administrative penalties regarding his practice of veterinary medicine including, but not limited to, fines, formal reprimands, license suspensions or revocations (except for license revocations for nonpayment of license renewal fees) or probationary limitations, or has not entered into any consent agreement or negotiated settlement that contains conditions placed by a board on his professional conduct and practice, including any voluntary surrender of a license; and

(b) Has never had his United States drug enforcement administration privileges restricted or revoked; and

(c) Is not currently under investigation by another veterinary licensing authority for acts which would provide a basis for disciplinary action in this state, as determined by the board; and

(d) Has no physical or mental impairment related to drugs, alcohol, or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public; and

(e) Has not been convicted of a felony as defined in chapter 1, title 18, Idaho Code; and

(f) Has no criminal conviction record nor pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of veterinary medicine. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the board in sufficient detail to enable the board to make a determination whether the record or charge is substantially related to the practice of veterinary medicine.

(~~16~~24) "Indirect supervision" means the supervisor is not on the premises but is available for immediate contact by telephone, radio or other means, has given either written or oral instructions for treatment of the animal patient, ~~and~~ the animal has been examined by ~~a~~ the supervising veterinarian as acceptable veterinary medical practice requires, and the animal, ~~is not in a surgical plane of anesthesia~~ if previously anesthetized, has recovered to the point of being conscious and sternal.

(25) "Legend/Prescription drug" means any drug which, under federal law, regulation or rule, is required, prior to being distributed, to be labeled with the following statement: "Caution: Federal law restricts this drug to be used by or on the order of a licensed veterinarian," or a drug which is required by any state or federal law, rule or regulation to be distributed pursuant to a prescription or used by licensed practitioners only.

(~~17~~26) "Liaison officer" means the veterinary board member whose four (4) year board member term has expired and who serves a fifth year advising the board, reviewing and mediating complaints and performing other tasks assigned by the board.

(~~18~~27) "Licensed veterinarian" means a person who is validly and currently licensed to practice veterinary medicine in this state.

(28) "Malpractice" means, but is not limited to:

(a) Treatment in a manner contrary to accepted veterinary practices and with injurious results; or

(b) Any professional misconduct or unreasonable lack of professional skill or fidelity in the performance of the professional practice of veterinary medicine; or

(c) Failure to provide adequate supervision, except in an emergency situation; or

(d) Allowing an unqualified individual to perform a procedure that is part of the practice of veterinary medicine; or

(e) The negligent practice of veterinary medicine, as determined by the standard of practice for the area, that results in injury, unnecessary suffering or death.

(29) "Medical incompetence" means lacking in sufficient medical knowledge or skills or both to a degree likely to endanger the health of patients.

(~~19~~30) "Mobile clinic" means a vehicle including, but not limited to, a camper, motor home, trailer or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.

(31) "Owner/Ownership" means ownership as defined by the laws of property and ownership, chapter 1, title 55, Idaho Code.

(~~20~~32) "Person" means any individual, firm, partnership, association, joint venture, cooperative and corporation, or any other group or combination acting in concert; and whether or not acting as principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person.

(33) "Physical or mental incompetence" means the veterinarian's ability to practice veterinary medicine with reasonable skill and safety is impaired by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals or any other substance, or as a result of any mental or physical disability.

(~~21~~34) "Practice of veterinary medicine" includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine and means:

(a) To diagnose, treat, correct, change, relieve~~,~~ or prevent animal disease, deformity, defect, injury~~,~~ or other physical or mental conditions; including the prescription or administration of any drug, medicine, biologic, apparatus application, anesthetic~~,~~ or other therapeutic or diagnostic substance or technique, ~~and~~ or the use of any obstetrical procedure or any manual or mechanical procedure for artificial insemination, for testing or examining for pregnancy, fertility evaluation, embryo transplant, grading of fresh semen, or to render advice or recommendation with regard to any of the above.

(b) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subsection (~~21~~34)(a) of this section.

(c) To use any title, words, abbreviations or letter in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subsection

(~~21~~34)(a) of this section, except where such person is a licensed veterinarian.

(~~22~~35) "Professional supervision" means the supervisor is in daily contact by telephone, radio or other means with the temporary licensee.

(~~23~~36) "Referral" means the transfer of responsibility for diagnosis and treatment from the referring veterinarian to the receiving veterinarian, or from the referring veterinarian to the board-certified specialist, or from the referring veterinarian to an allied health professional.

(37) "Regular employee" means a person who performs services for the animal's owner other than, or in addition to, feeding, boarding, castrating and dehorning, but does not include independent contractors or agents.

(38) "Supervision" means the action or process of directing activities or a course of action, and pertains to any and all employees of the veterinarian.

~~(24) "School of veterinary medicine" means any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and that conforms to the standards required for accreditation by the American veterinary medical association.~~

(~~25~~39) "Supervisor" means an actively licensed veterinarian employing ~~or~~ and utilizing the services of a temporary licensee, certified veterinary technician, veterinary technician with a temporary certification, veterinary assistant, ~~or~~ certified euthanasia technician, or as provided by rule. A supervisor shall be individually responsible and liable, regardless of the supervision provided, for all damages arising out of his own acts or omissions or for the performance of ~~the~~ any acts and omissions pertaining to the practice of veterinary medicine that are delegated to the temporary licensee, certified veterinary technician, veterinary technician, veterinary assistant or certified euthanasia technician. Nothing herein shall be construed to ~~relieve~~ deprive the board of its disciplinary authority with respect to the temporary licensees, certified veterinary technicians, veterinary assistants or certified euthanasia technicians. ~~of any responsibility or liability for any of their own acts and omissions.~~

~~(26) "Therapeutic options or alternate therapies" include, but are not limited to, the veterinary practice of acupuncture, chiropractic, magnetic field therapy, holistic medicine, homeopathy, herbology/naturopathy, massage and physical therapy. Diagnostic evaluation by a licensed veterinarian is required prior to the application of any of these options or therapies.~~

(40) "Unethical or unprofessional conduct" means to knowingly engage in conduct of a character likely to deceive or defraud the public, false or misleading advertising or solicitation, obtaining any fee or compensation by fraud or misrepresentation, sharing office space and working in conjunction with any person illegally practicing veterinary medicine, employing either indirectly or directly an unlicensed or uncertified person to perform acts pertaining to the practice of veterinary medicine, except as provided by law or rule, or the violation of any law or rules adopted by the board pertaining to unethical or unprofessional conduct, or that provide a code of profes-

sional conduct to be followed and carried out by persons licensed or certified by the board.

(41) "Unlicensed practice" means:

(a) The practice of veterinary medicine without a valid, unexpired, unrevoked, and unsuspended active license or certification in this state to do so, except as provided by law or rule; or

(b) Representing one's self through offerings, advertisements or use of professional titles or designations as being qualified to practice veterinary medicine.

(~~27~~42) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine from an accredited school of veterinary medicine or as otherwise provided by law or rule.

(~~28~~43) "Veterinarian on premises" means a veterinarian is ~~actually~~ present at the ~~hospital~~ veterinary medical facility and ~~who~~ is prepared and qualified to render veterinary services.

(~~29~~44) "Veterinarian on call" means a veterinarian is not present at the ~~hospital~~ veterinary medical facility, but is able to respond within a reasonable time to requests for emergency veterinary services and has been designated to so respond.

(~~30~~45) "Veterinary medical facility" means any premises, unit, structure or mobile unit used or controlled by a veterinarian for the practice of veterinary medicine and where any animal is received or confined to be examined, diagnosed or treated medically, surgically or prophylactically. This does not include the owner's animal on the owner's premises.

~~(31)-"Veterinary--medicine"--includes--veterinary-surgery,-obstetrics,-dentistry,-and-all-other-branches-or-specialties--of--veterinary medicine.~~

(~~32~~46) "Veterinary technician" means a person who has graduated from a veterinary technology program accredited by the American veterinary medical association or a person who has received equivalent training as ~~recognized-by-the-Idaho-board-of-veterinary-medicine~~ set forth in the rules of the board.

(~~33~~47) "Veterinary technology" means the performance of services within the ~~field~~ practice of veterinary medicine by a person employed by a licensed veterinarian to perform ~~such~~ duties that require an understanding of veterinary medicine ~~as--are--required~~ in order to carry~~ing~~ out the orders of the veterinarian. However, such services shall not include prognosis, diagnosis, operative dentistry, deliberate tooth extraction procedures or the prescribing of treatment or performing surgery of any kind.

SECTION 2. That Section 54-2104, Idaho Code, be, and the same is hereby amended to read as follows:

54-2104. LICENSE A PREREQUISITE TO PRACTICE -- EXCEPTIONS. (1) No person may practice veterinary medicine in the state who is not an actively licensed veterinarian or the holder of a valid temporary permit issued by the board.

(2) This chapter shall not be construed to prohibit:

(a) A veterinarian employed by the federal, state~~,~~ or local government from performing his official duties specifically required under any lawful act or statute, except that this exemption shall

not apply to such persons not actively engaged in performing or fulfilling their official duties and responsibilities.

(b) A person who is a regular student currently enrolled and in good standing in ~~a veterinary~~ an accredited school of veterinary medicine, veterinary science department or an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education from performing duties or actions assigned by his instructors, or from working under the direct supervision of an actively licensed veterinarian during a school vacation period. The unsupervised or unauthorized practice of veterinary medicine by a student, even though on the premises of an accredited school of veterinary medicine, veterinary science department, an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education or at a veterinary medical facility, is prohibited.

(c) A person who is a regular student currently enrolled and in good standing in a nonaccredited educational institution, that holds a valid certificate of registration issued by the Idaho state board of education, from performing duties or actions assigned by his instructors. This exemption does not include the administration of controlled substances or legend/prescription drugs, unless specifically allowed by state or federal law, rule or regulation. The unsupervised or unauthorized personal practice of veterinary medicine by a student on the premises of a nonaccredited educational institution is prohibited.

(~~c~~d) Idaho extension personnel from performing their official duties.

(~~d~~e) A veterinarian ~~regularly licensed~~ holding a current, active license, in good standing, in another state, from consulting with a licensed veterinarian in this state.

(~~e~~f) Any merchant or manufacturer from selling nonprescription and noncontrolled medicines, biologics, feed, medicated feed, appliances or other products for the prevention or treatment of animal and poultry diseases. Such merchants or manufacturers shall not, either directly or indirectly, attempt to diagnose a symptom or disease in order to advise treatment, use of drugs, medicines, appliances or products.

(~~f~~g) A farmer, rancher or feedlot operator, including custom ranch or feedlot operators, and their regular employees, ~~or agents thereof,~~ from caring for and treating animals within their possession or control, ~~including castration or dehorning, or~~ when such animals have been consigned by their legal owner and except where the ownership or possession of the animal was transferred or the employment changed to circumvent this chapter.

(h) ~~T~~the owner of an animal or his regular employees from caring for and treating the animals belonging to such owner, or livestock owners or regular employees pregnancy testing their own or employer's cattle or the exchange of services for which no monetary compensation is paid between owners or their regular employees, ~~or agents who are farmers, ranchers or feedlot operators, including custom ranch or feedlot operators,~~ except where the own-

ership or possession of the animal was transferred ~~for the purposes of~~ or the employment changed to circumvent~~ing~~ this chapter, and provided that only an actively licensed veterinarian may immunize or treat an animal for diseases which require the use of a vaccine that is restricted by state or federal law, rules or regulations, or as otherwise provided by board rule. Notwithstanding the provisions of this paragraph, a veterinarian/client/patient relationship, as defined by rules, must exist when controlled substances or legend/prescription drugs are administered, distributed, dispensed or prescribed.

(~~g~~i) A member of a faculty of ~~a veterinary~~ an accredited school ~~or~~ of veterinary medicine, a veterinary science department, or an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education, from performing his regular functions~~,--or a person lecturing or giving instructions or demonstrations at a veterinary school or veterinary--science--department,--or--in--connection--with a continuing education course or seminar~~. The unsupervised or unauthorized personal practice of veterinary medicine, by a faculty member on the premises of any of the above institutions, is prohibited.

(~~h~~j) Any person from selling or applying any pesticide, insecticide, or herbicide.

(k) A person lecturing or giving instructions or demonstrations at an accredited school of veterinary medicine, veterinary science department or an educational institution accredited by a national or regional accrediting agency recognized by the Idaho state board of education or the United States department of education, or in connection with an approved continuing education course or seminar.

(l) A member of a faculty of a nonaccredited educational institution, who holds a valid certificate of registration issued by the Idaho state board of education, from performing his regular functions. This exemption does not include the administration of controlled substances or legend/prescription drugs, unless specifically allowed by state or federal law, rule or regulation. The unsupervised or unauthorized personal practice of veterinary medicine by a faculty member on the premises of a nonaccredited educational institution is prohibited.

(~~i~~m) ~~Any--person--engaging in bona fide scientific research which reasonably requires experimentation involving--animals--from--performing--his regular functions~~ Individuals employed as instructors or researchers by, or enrolled as students in, any bona fide medical research institution from conducting experiments and scientific research on animals:

(i) In the development of pharmaceuticals, biologicals, serums for treating human or animal ailments; or

(ii) In the development of methods of treatment or techniques for the diagnosis or treatment of human or animal ailments; or

(iii) When engaged in the study and development of methods and techniques directly or indirectly applicable to the practice of veterinary medicine, so long as such research is con-

ducted in compliance with applicable state and federal laws, rules and regulations.

(~~j~~n) Any person from performing artificial insemination of domestic animals as governed by chapter 8, title 25, Idaho Code.

(~~k~~o) Any person from horseshoeing or hoof trimming bovine, equine and farm animals.

(~~l~~p) ~~A member of a~~An allied health professional actively licensed and in good standing in any state from participating in a medical procedure involving an animal, provided that such participation is in his licensed field of medicine and under the indirect supervision of an actively licensed veterinarian.

(~~m~~q) Any person from the gratuitous treatment of animals in an emergency as a neighborly act.

(~~n~~r) Any state or federal livestock inspector from performing his official duties specifically required under any lawful act or statute, and provided that this exemption shall not apply to such persons not actively engaged in performing or fulfilling their official duties and responsibilities.

(~~o~~s) A certified euthanasia agency from operating as a CEA as defined by ~~the board under accompanying~~ law and rules.

(~~p~~t) A certified euthanasia technician from performing those duties as defined by ~~the board under accompanying~~ law and rules.

(~~q~~u) Any person from utilizing cotton swabs, gauze, dental floss, dentifrice~~,~~ or toothbrushes ~~or similar items~~ to clean an animal's teeth.

(v) A certified veterinary technician from practicing veterinary technology under the direct supervision and employ of an actively licensed veterinarian.

(w) An assistant from performing acts pertaining to the practice of veterinary medicine under the direct supervision of the employing, supervising veterinarian that delegated the acts and compensates the assistants for the performance of such acts.

(x) The personal representative, executor or sole surviving heir of a licensed veterinarian from continuing to operate the veterinary medical facility of the deceased for a period of not more than twelve (12) months following death, and providing that an actively licensed veterinarian makes all the decisions pertaining to the diagnosis, care and treatment of the patients.

(3) Nothing in this section shall be construed as limiting the board's authority to provide other exemptions or exceptions to the requirements for licensing, under its rulemaking authority, as the board may find necessary or appropriate.

SECTION 3. That Section 54-2105, Idaho Code, be, and the same is hereby amended to read as follows:

54-2105. BOARD OF VETERINARY MEDICINE -- COMPOSITION -- APPOINTMENT -- VACANCY -- QUALIFICATIONS -- COMPENSATION -- REMOVAL -- MEETINGS -- OFFICERS -- REVENUES -- POWERS. (1) A board of veterinary medicine, which shall consist of six (6) members to be appointed by the governor, is hereby created in the department of self-governing agencies. Five (5) members shall be veterinarians and one (1) member shall be a public member. Each of the five (5) ~~appointive~~ veterinary members

shall serve a term of four (4) years as a veterinary board member and a fifth year as a liaison officer, or until his successor is appointed, except that the terms of the first appointees may be for shorter periods to permit staggering of terms whereby one (1) term expires each year. The public member shall serve for a term of three (3) years or until his successor is appointed.

Whenever the occasion arises for an appointment of a veterinary member under this section, ~~one (1) of~~ the state veterinary medical association or one (1) of the regional veterinary medical associations may nominate three (3) or more qualified persons and forward the nominations to the governor at least thirty (30) days before the date set for the appointment. The governor shall appoint one (1) of the persons so nominated. Vacancies due to death, resignation or removal shall be filled for the remainder of the unexpired term in the same manner as regular appointments. No person shall serve two (2) consecutive terms, except in the case of a person appointed for less than a full term. Each of the five (5) veterinarians shall be qualified to serve as a member of the board if a graduate of an accredited school of veterinary ~~school~~ medicine or, if a foreign veterinary graduate, a letter from the educational commission for foreign veterinary graduates (ECFVG) certifying completion of the ECFVG program or a copy of their ECFVG certificate, in addition to verification of graduation from a nonaccredited school of veterinary medicine, a resident of this state, and has been licensed to practice veterinary medicine in this state for the five (5) years immediately preceding the time of appointment. The public member shall be at least twenty-one (21) years of age and a resident of this state for five (5) years immediately preceding appointment. No person may serve on the board who is, or was, during the two (2) years preceding appointment, a member of the faculty or trustees of an accredited school of veterinary ~~school~~ medicine.

Each member of the board~~,~~ and certified euthanasia task force ~~and veterinary--technical--committee~~ shall be compensated as provided by section 59-509(n), Idaho Code.

Any member of the board may be removed by the governor after a hearing by the board determines cause for removal.

(2) The board shall meet at least once each year at the time and place fixed by rule of the board. Other necessary meetings may be called by the president of the board by giving notice as may be required by state statute or rule. Except as may otherwise be provided, a majority of the board constitutes a quorum. Meetings shall be open and public except that the board may meet in closed session to prepare, approve, administer or grade examinations~~,--or~~; to deliberate the qualifications of an applicant for a license or ~~the disposition of a--proceeding--to discipline a licensed veterinarian~~ certification; to conduct deliberations in disciplinary proceedings; to consider investigatory matters; or as otherwise allowed by law.

(3) The board member serving the fourth year of appointment shall be the president of the board and shall serve as chairman ~~of~~ at the board meetings.

(4) The board member serving the fifth year of appointment shall be the liaison officer of the board.

(5) All revenues received under this chapter shall be paid to the state board of veterinary medicine account created in section

54-2120~~1~~2, Idaho Code, and shall be subject to and administered in accordance with the provisions of this chapter.

(~~5~~6) The board shall have the power to:

(a) Establish qualifications and prescribe the application format for licensure as a veterinarian and certification as a veterinary technician, euthanasia agency or euthanasia technician, review each application for compliance with the licensure and certification requirements, and issue licenses and certifications.

(b) Examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine, or certification to practice veterinary technology or as a euthanasia technician or operate as a certified euthanasia agency in the state.

(~~b~~c) Issue, renew, reinstate, deny, suspend, sanction, place on probation, require voluntary surrender of, or revoke any licenses, ~~and~~ certifications or temporary permits or certifications to practice veterinary medicine or veterinary technology in the state, or ~~otherwise~~ impose other forms of discipline, and enter into consent agreements and negotiated settlements with licensed veterinarians, certified veterinary technicians, certified euthanasia technicians and certified euthanasia agencies consistent with the provisions of this chapter and the rules adopted hereunder.

(~~c~~d) Establish a schedule of fees for licensing, certifying and registering veterinarians, veterinary technicians, ~~certified~~ euthanasia agencies and ~~certified~~ euthanasia technicians.

(e) Review and approve applications from applicants wanting to sit for the national licensing examinations in veterinary medicine, developed by the national board examination committee for veterinary medicine or its designees and the veterinary technician national examination developed by the American association of veterinary state boards or its designees, and administer the veterinary technician national examination.

(~~d~~f) Upon its own motion or upon any complaint, to initiate and c~~C~~onduct investigations ~~for the purpose of discovering violations of this chapter or grounds for disciplining licensed veterinarians, veterinary technicians, certified euthanasia agencies and certified euthanasia technicians~~ on all matters relating to the practice of veterinary medicine or veterinary technology and to initiate and conduct disciplinary hearings or proceedings on its own or through its designated hearing officer, provided such hearings and proceedings shall be held in conformance with the provisions of chapter 52, title 67, Idaho Code.

(~~e~~g) Hold hearings on all matters properly brought before the board, and in connection thereto to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may require the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and may commission depositions. The board may designate one (1) or more of its members or a person appointed by the state board of veterinary medicine to serve as its hearing officer.

(~~f~~h) Employ full-time or part-time personnel, professional, cler-

ical or special, necessary to effectuate the provisions of this chapter and purchase or rent necessary office space, equipment and supplies.

(~~g~~i) Appoint from its own membership one (1) or more members to act as representatives of the board at any meeting within or outside the state where such representation is deemed desirable.

(~~h~~j) Bring proceedings in the courts for the enforcement of this chapter or any rules made pursuant thereto.

(~~i~~k) Levy civil penalties, assess fines, and recover costs and attorney's fees incurred by the board in investigation and prosecution of complaints.

(~~j~~l) Establish a certified euthanasia task force for the purposes of training, examining, licensing and certifying ~~certified~~ euthanasia agencies and ~~certified~~ euthanasia technicians and assess application, ~~license~~ training workshop and certification fees. The fees so assessed are continuously appropriated to the board to support the activities of the task force.

~~(k)--Establish---qualifications---for---licensure---of---certified euthanasia-agencies-and-certified-euthanasia-technicians;~~

~~(l)--Issue,-renew,-deny,-suspend-or-revoke-licenses-to-operate--as a--CEA--or--practice-as-a-CET-in-the-state-or-otherwise-discipline CEA's-and-CET's-consistent-with-this-chapter-and-the-rules-of--the board;~~

~~(m)--Establish--a-veterinary-technical-committee-and-assess-application-and-certification-fees;-The-fees--so--assessed--are--to--be deposited--to--the--state--board-of-veterinary-medicine-account-to support-the-activities-of-the-committee;~~

(~~n~~m) Adopt, amend~~,~~ or repeal all sections of this chapter and rules necessary for its government and all rules necessary to carry into effect the provisions of this chapter pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, including the establishment and publication of standards of professional conduct for the practice of veterinary medicine.

The powers enumerated above are granted for the purpose of enabling the board to effectively supervise the practice of veterinary medicine and are to be construed liberally to accomplish this objective.

SECTION 4. That Section 54-2107, Idaho Code, be, and the same is hereby amended to read as follows:

54-2107. LICENSE APPLICATION -- CONTENTS -- FEE. Any person desiring a license to practice veterinary medicine in this state shall make written application to the board. To apply for a veterinary license, the applicant shall complete the "application for licensure to practice veterinary medicine and surgery" available from the board office. A completed application shall contain the applicant's notarized signature and shall include:

(1) A copy of a birth certificate~~,-religious-certificate~~ or current passport proving that the applicant is twenty-one (21) years of age or more.

(2) Affidavits issued during the year preceding licensure from two (2) veterinarians currently licensed in any state attesting to the

fact that the applicant is of good moral character.

(3) A certified copy of a veterinary school diploma from an accredited school of veterinary medicine or a letter from ~~the graduate's school~~ an accredited school of veterinary medicine verifying satisfactory graduation by the applicant or, if a foreign school graduate, a letter from the ~~American veterinary medical association's~~ educational commission for foreign veterinary graduates (ECFVG) certifying completion of the ECFVG program or a copy of the ECFVG certificate or by completion of the educational and competency requirements as outlined by the rules of the board.

(4) Passing scores on the national examinations developed by the national board of examination committee, or its designee, including, but not limited to: the national board examination (NBE) and the clinical competency test (CCT), or the north American veterinary licensing examination (NAVLE), which may be taken in any state at any time (no time limit).

(5) After November 1, 2000, applicants who have taken their national examinations prior to this date and have not taken and passed the clinical competency test (CCT) may, in lieu of a passing score on the CCT, provide the following documentation from the licensing board in the state in which they are currently actively practicing or from the veterinary information verifying agency of the American association of veterinary state boards:

(a) Verification of seven (7) years of continuous, active practice in the same state where they are currently practicing, and provided that the requirements for licensure in the state are similar to those in Idaho; and

(b) Verification of no disciplinary action taken against the applicant's license to practice veterinary medicine during the same seven (7) year period prior to applying for a veterinary license in this state.

(c) The practice of applicants licensed under this provision will be limited to the same fields of veterinary medicine as they have practiced in another state during the seven (7) year period prior to applying for a veterinary license in this state.

(6) A passing score of at least ninety percent (90%) correct on the Idaho jurisprudence examination.

(6~~7~~) Written verification of license in good standing from the licensing organization in any state in which the applicant has held a license or as provided by the veterinary information verifying agency of the American association of veterinary state boards for any state in which the applicant has held a license.

(7~~8~~) The license application fee and first year's license fee in the amount established in the rules adopted by the board.

(8~~9~~) Any additional information that the board may request.

(9~~10~~) Application materials will be valid and maintained at the board office for a period of one (1) year.

The board will review applications and issue licenses in January and June of each year. Applicants shall have their completed applications at the board office by the first day of January or June. If an applicant is found not qualified, the board shall immediately notify the applicant in writing of such finding and the grounds therefor. An applicant denied licensure may request a hearing pursuant to the pro-

cedures set forth in chapter 52, title 67, Idaho Code. Any applicant who is denied licensure shall be allowed the return of the license fee portion of the application fee.

Any applicant taking and passing the Idaho jurisprudence examination and not wanting to be licensed at the next review by the board, shall be allowed the return of the license fee portion of the application fee only.

SECTION 5. That Section 54-2110, Idaho Code, be, and the same is hereby amended to read as follows:

54-2110. LICENSE WITHOUT CLINICAL COMPETENCY TEST (CCT). (1) The board may, upon payment of the fee prescribed under section 54-2107, Idaho Code, license without the clinical competency test (CCT) any person who is a diplomate with current certification from a specialty board approved by the American veterinary medical association. The applicant shall pass the Idaho jurisprudence exam with a score of at least ninety percent (90%) correct. The veterinary practice of any person who is licensed pursuant to this subsection is limited to referrals in the specialty in which the person is board certified.

(2) After November 1, 2000, the board may, upon payment of the fee prescribed under section 54-2107, Idaho Code, license without the clinical competency test (CCT) any person who has taken their national examinations prior to this date and has not taken and passed the CCT but has fulfilled, in addition to the other requirements for licensure, the requirements of section 54-2107(5), Idaho Code.

(3) The board may require a personal interview of any or all applicants under this section.

SECTION 6. That Section 54-2111, Idaho Code, be, and the same is hereby amended to read as follows:

54-2111. TEMPORARY PERMIT. The board may, at its discretion, issue a temporary permit to an applicant who has passed the NBE and Idaho jurisprudence exam but who has not yet taken the CCT, or to a new graduate, or a currently practicing veterinarian licensed in another state, who has fulfilled the requirements for licensure in this state. ~~The--t~~Temporary permits shall be valid until the next license application review by the board or for no more than one (1) year, during which the applicants issued a temporary permit without having taken the CCT or fulfilling the requirements of section 54-2107(5), Idaho Code, shall take and pass the CCT.~~,-and-u~~Under no circumstances shall a second temporary permit be issued to the same person. A temporary permit shall not be issued to any applicant whose license has been revoked in any state for a reason other than nonpayment of license renewal fees. An applicant granted a temporary permit shall provide verification ~~of-one-(1)-year-of~~ that during the twelve (12) months immediately preceding issuance of the temporary permit he has been in active veterinary practice in another state or shall work under the professional supervision of an actively licensed veterinarian. ~~licensed-in-Idaho~~ An applicant working under a supervised temporary permit will not be allowed to become federally accredited in Idaho until the first year's license has been granted.

SECTION 7. That Section 54-2112, Idaho Code, be, and the same is hereby amended to read as follows:

54-2112. EXPIRATION OF LICENSE -- NOTICE -- RENEWAL -- INACTIVE STATUS. All licenses shall expire annually on July 1 of each year, but may be renewed by submission of the annual renewal form prescribed by the board, proof of completion of the appropriate hours of continuing education, ~~satisfaction--of--any~~ by meeting other requirements as defined in the rules adopted by the board and payment of the renewal fee established and published by the board. On or about May 1 of each year, the board shall mail a notice to each licensed veterinarian that the license will expire on July 1, and shall also provide a form for renewal. The board shall issue a new license to all qualified persons registering under this chapter.

Any veterinarian licensed in Idaho who advises the veterinary board, in writing, that he ~~or-she~~ does not intend to actively practice veterinary medicine in the state of Idaho and therefore does not intend to meet the licensing requirements for an active license for the current licensing year, shall be transferred from active to inactive status and shall be required to pay ~~an~~ inactive status fees as prescribed in the rules of the board. Any person may transfer from inactive to active status by making written application for reinstatement to active status, paying ~~the-active-license-renewal~~ all required fees and by meeting other requirements for reinstatement as defined in the rules of the board.

Any person ~~who-shall-practice~~ practicing veterinary medicine without an active license or after the expiration of a license or during inactive status ~~and-who-fails-to-renew-or-reinstate-the-license~~ shall be practicing in violation of this chapter. ~~Any-person--whose--license expires--prior--to--July--1,-1995,-may-renew-an-expired-license-within five-(5)-years-of-the-date-of-its-expiration-by-making-written--application--for--renewal--and-paying-the-current-reinstatement-and-renewal fees-plus-all-delinquent-renewal-fees-and-by--meeting--other--requirements--as-defined-in-the-rules-of-the-board.--After-five-(5)-years-have elapsed-since-the-date-of-expiration,-or-if-a--license--expires--after July--1,--1995,-the-license~~ A license or certification that is allowed to expire may not be renewed or reinstated, but the holder may make application for a new license.

The board may by rule waive the payment of the ~~registration~~ annual renewal fee of a licensed veterinarian during the period when the licensee is on active duty with the armed services of the United States, not to exceed the longer of three (3) years or the duration of a national emergency.

SECTION 8. That Chapter 21, 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 54-2113, Idaho Code, and to read as follows:

54-2113. CORPORATE PRACTICE. (1) A veterinary medical practice may be conducted only as a sole proprietorship, as a partnership or as a professional service corporation as defined in chapter 13, title 30, Idaho Code. No business corporation, other than a professional service

corporation, shall be organized for the practice of veterinary medicine or shall provide veterinary medical services.

(2) A not-for-profit corporation may own property in connection with a veterinary medical facility or animal shelter, provided that an actively licensed veterinarian makes all the decisions pertaining to diagnosis, care and treatment of the patients.

SECTION 9. That Chapter 21, 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 54-2114, Idaho Code, and to read as follows:

54-2114. UNAUTHORIZED PRACTICE A MISDEMEANOR. (1) Anyone not authorized to practice veterinary medicine under this chapter in which an active veterinary license in this state is a prerequisite to practice, who does practice or offers to practice or holds himself out as being able to practice veterinary medicine, or who practices veterinary medicine as an exempt person during the time when his license is expired, suspended, revoked or annulled, shall be practicing in violation of this chapter and is subject to the provisions of section 54-2117, Idaho Code.

(2) Any licensed veterinarian that aids or abets an unlicensed or uncertified person to practice veterinary medicine or employs or holds such unlicensed person out as being able to practice veterinary medicine, shall be subject to the provisions of sections 54-2115 and 54-2117, Idaho Code.

(3) Anyone not authorized to practice veterinary medicine under this chapter in which an active veterinary license in this state is a prerequisite to practice, who offers services in the field of veterinary medicine to an individual in this state, through telephonic, electronic or other means, regardless of the location or profession of this individual, shall be practicing in violation of this chapter and be subject to the provisions of section 54-2117, Idaho Code.

SECTION 10. That Section 54-2113, Idaho Code, be, and the same is hereby amended to read as follows:

54-211~~3~~5. ~~REVOCATION OR SUSPENSION---~~ GROUNDS FOR DISCIPLINE. The board may refuse to issue, renew or reinstate the license of a veterinarian, or may deny, revoke, ~~or~~ suspend, ~~for a certain time~~ sanction, place on probation or require voluntary surrender of, the license of a veterinarian, or ~~otherwise~~ may impose other forms of discipline~~,~~ and enter into consent agreements and negotiated settlements with any licensed veterinarian pursuant to the procedures set forth in chapter 52, title 67, Idaho Code, for any of the following reasons:

(1) The employment of fraud, misrepresentation or deception in obtaining a license.

(2) ~~Adjudication of insanity.~~

~~(3)~~ Unethical or u~~U~~nprofessional conduct, as defined by section 54-2103, Idaho Code, the rules of the board, and ~~includes, but is not limited to,~~ the code of professional conduct established by the rules of the board.

(3) C~~c~~onviction of a charge of violating any federal or state

statute or rule or regulation regulating narcotics, dangerous drugs or controlled substances.

(4) ~~The use of advertising or solicitation which is false, misleading, or fraudulent.~~

~~(5)~~ Being found guilty, convicted, placed on probation, having entered a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure a defendant's appearance, or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following:

(a) Any felony as defined in chapter 1, title 18, Idaho Code; or

(b) Any other criminal act which in any way is related to the ~~qualifications, functions or duties~~ practice of veterinary medicine~~, surgery, or dentistry~~ as defined by section 54-2103, Idaho Code.

(6~~5~~) Medical i~~I~~ncompetence~~, gross negligence, or other malpractice~~ in the practice of veterinary medicine, as defined by section 54-2103, Idaho Code.

(6) Physical or mental incompetence, in the practice of veterinary medicine, as defined in section 54-2103, Idaho Code.

(7) Malpractice or negligence, in the practice of veterinary medicine, as defined in section 54-2103, Idaho Code.

(~~7~~8) ~~Having a professional association with or employing or lending one's name to any illegal practitioner of veterinary medicine and the various branches thereof~~ Aiding or abetting an unlicensed or uncertified person to practice veterinary medicine or veterinary technology or employing or holding such unlicensed person out as being able to practice veterinary medicine or veterinary technology.

(~~8~~9) Fraud, dishonesty, failure to report, or gross negligence in the inspection of ~~foodstuffs~~ animals and animal products intended for human consumption, issuance of health or inspection certificates, in the application, treatment~~,~~ or reporting of any test for disease in animals, and in reporting any contagious or infectious disease.

(~~9~~10) Failure to comply with the veterinary standards of practice, ~~or~~ as established by board rule.

(11) Failure to comply with the recordkeeping requirements, as ~~defined in~~ established by the rules of the board.

(1~~0~~2) Cruelty to animals including, but not limited to, the intentional and malicious infliction of pain, physical suffering, injury or death, performance of experimental treatments without the owner's consent, deprivation of necessary sustenance, withholding of appropriate pain medications or levels of pain medications, or the administration of unnecessary procedures and treatment.

(13) Infliction of pain on any animal in self-defense, or to prevent physical harm to others, or in accordance with local custom and culture in moving, handling, treating, dehorning, castrating or performing other procedures on livestock, shall not be considered cruel or physically abusive unless done in an unnecessary or intentionally malicious manner. This provision does not alter section 25-3514, Idaho Code.

(1~~1~~4) The revocation or suspension by a ~~sister~~ state or territory or voluntary surrender of a license or certificate by virtue of which one is licensed to practice veterinary medicine in that state, terri-

tory or district of the United States on grounds other than nonpayment of renewal fees.

(15) Failure to fulfill the continuing education requirements, as established by the rules of the board.

(16) The use, prescription or sale of any controlled substance, veterinary legend/prescription drug or prescription of an extra-label use for any human or veterinary drug without a valid veterinarian/client/patient relationship.

(17) Overtreating, unless the services were contracted for in advance, charging for services which were not rendered, charging for services that were not documented in the patient's records, or charging for services that were not consented to by the owner of the patient or the owner's agent.

(18) Failure to furnish details of a patient's medical record to another veterinarian, hospital, clinic, owner or owner's agent.

(19) Failure of any applicant or licensee to cooperate with the board during any investigation, even if such investigation does not personally concern the applicant or licensee.

(20) Failure to comply with the terms of any order, negotiated settlement or probationary agreement of the board.

(21) Failure to comply with the terms for renewal or to timely pay license, certification or registration renewal fees, as specified by section 54-2112, Idaho Code, and the rules of the board.

(22) Failure of a licensed veterinarian to exercise proper supervision, as defined by the rules of the board, when supervising a temporary licensee or holder of a temporary certification, a certified veterinary technician, a veterinary technician, a veterinary assistant, a certified euthanasia technician or other employee, except in an emergency situation as defined in section 54-2103, Idaho Code.

(23) Delegation of an act pertaining to the practice of veterinary medicine to an unqualified employee, regardless of the supervision provided.

(~~13~~24) Aiding or abetting or violating any of the provisions of this chapter or any lawful rule or order of the board.

~~(13) For the purposes of this chapter, the term "conviction" means a finding of guilt, an entry of a guilty plea by a defendant and its acceptance by the court, or a forfeiture of bail bond or collateral deposited to secure a defendant's appearance, suspended sentence, probation or withheld judgment.~~

SECTION 11. That Section 54-2115, Idaho Code, be, and the same is hereby amended to read as follows:

54-2115~~6~~. JUDICIAL REVIEW. Any party aggrieved by a decision of the board may seek judicial review of the decision pursuant to the administrative procedure act, chapter 52, title 67, Idaho Code.

SECTION 12. That Section 54-2116, Idaho Code, be, and the same is hereby amended to read as follows:

54-2116~~7~~. RELICENSING AND REINSTATEMENT. Any person whose license is suspended or revoked may, at the discretion of the board, be relicensed or reinstated at any time with or without an examination, by

majority vote of the board on written application made to the board showing cause justifying relicensing or reinstatement.

In reinstating a license which has been suspended or revoked under section 54-211~~3~~5, Idaho Code, the board may impose terms and conditions to be followed by the licensee after the license has been reinstated. The authority of the board to impose terms and conditions includes, but is not limited to, the following:

(1) Requiring the licensee to obtain additional professional training and to pass an examination upon completion of the training.

(2) Requiring the licensee to pass an oral, written, practical or clinical examination, or any combination thereof to determine present fitness to engage in the practice of veterinary medicine.

(3) Restricting or limiting the extent, scope, or type of practice of the licensee.

(4) Requiring the licensee to obtain professional counseling and undergo and maintain treatment and testing for alcohol or drug related problems.

SECTION 13. That Section 54-2117, Idaho Code, be, and the same is hereby amended to read as follows:

54-211~~7~~8. VIOLATIONS OF CHAPTER -- REMEDIES AND PENALTIES. In addition to the disciplinary actions set forth in section 54-2115, Idaho Code:

(1) Any person violating the provisions of this chapter, or violating a rule promulgated by the board to implement the provisions of this chapter may be assessed a civil penalty by the board or its duly authorized agent of not more than ~~three~~ five thousand dollars ($~~3~~5,000) for each offense and shall be liable for investigatory expenses and reasonable attorney's fees, and provided that each act on each day of violation shall constitute a separate offense. Assessment of a civil penalty may be made in conjunction with any other board administrative action. 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 board is unable to collect the civil penalty, investigatory expenses or reasonable attorney's fees, or if any person fails to pay all of a set portion of the civil penalty as determined by the board, it may recover such amount by action in the appropriate district court. Any person against whom the board has assessed a civil penalty under this section may, within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the board to have occurred.

(2) Any person who practices veterinary medicine, any person practicing as a certified veterinary technician, a certified euthanasia technician or any agency operating as a certified euthanasia agency without a currently valid, active license, certification, ~~or~~ temporary permit or temporary certification shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars ($100), nor more than ~~five~~ ten thousand dollars ($~~5~~10,000), or imprisoned for no more than one hundred eighty (180) days, or both fined and imprisoned, and provided that each act of such unlawful practice shall constitute a distinct and separate offense.

(3) ~~No--person--who--shall-practice-veterinary-medicine-without-a currently-valid-license-or-temporary-permit-may-receive-any--compensation-for-services-so-rendered.~~

~~(4)~~ The board, the attorney general's office, any district court or county attorney, or any citizen of this state may bring an action to enjoin any person from practicing veterinary medicine or practicing as a certified veterinary technician, certified euthanasia technician, or any agency operating as a certified euthanasia agency without a currently valid, active license, certification, ~~or~~ temporary permit, or temporary certification. If the court finds that the person is violating the provisions of this chapter, it shall enter an injunction restraining that individual from such unlawful acts.

(~~5~~4) The successful maintenance of an action based on any one (1) of the remedies set forth in this section shall in no way prejudice the prosecution of an action based on any other of the remedies.

SECTION 14. That Section 54-2118, Idaho Code, be, and the same is hereby amended to read as follows:

54-211~~8~~9. ADMINISTRATION AND ENFORCEMENT OF CHAPTER. This chapter shall be administered by the board.

SECTION 15. That Section 54-2119, Idaho Code, be, and the same is hereby amended to read as follows:

54-21~~19~~20. ATTORNEY GENERAL'S OFFICE TO ADVISE AND REPRESENT. The attorney general's office of the state of Idaho shall represent the board and shall give opinions on all questions of law arising out of the administration of the laws which it shall administer, and to act for, and on behalf of the board in all actions brought for or against it under the provisions of this chapter, or as otherwise provided by law.

SECTION 16. That Section 54-2120, Idaho Code, be, and the same is hereby amended to read as follows:

54-2120~~1~~. CREATION OF STATE BOARD OF VETERINARY MEDICINE ACCOUNT. All moneys, including civil penalties collected under the provisions of this chapter shall be deposited in the state treasury to the credit of a separate account to be known as the "state board of veterinary medicine account," and all moneys as are now in or may hereafter come into the account are hereby appropriated to the board for carrying out the purposes and ~~objects~~ objectives of this chapter, and to pay all costs and expenses incurred in connection with the provisions of this chapter. All moneys in the occupational licenses account belonging to the state board of veterinary medicine as of July 1, 1983, are hereby transferred and appropriated to the state board of veterinary medicine account hereby created. Moneys shall be paid out of the account upon warrants drawn by the state controller upon presentation of proper vouchers approved by the board.

Approved March 30, 2000.

CHAPTER 123
(H.B. No. 618)

AN ACT

RELATING TO PARTNERSHIPS AND THE FILING OF STATEMENTS OF DISSOCIATION AND DISSOLUTION; AMENDING SECTION 53-3-704, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 65, LAWS OF 1998, TO DELETE THE REQUIREMENT THAT A STATEMENT OF PARTNERSHIP AUTHORITY BE FILED PRIOR TO THE FILING OF A STATEMENT OF DISSOCIATION; AMENDING SECTION 53-3-805, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 65, LAWS OF 1998, TO DELETE THE REQUIREMENT THAT A STATEMENT OF PARTNERSHIP AUTHORITY BE FILED PRIOR TO THE FILING OF A STATEMENT OF DISSOLUTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 53-3-704, Idaho Code, as added by Section 2, Chapter 65, Laws of 1998, be, and the same is hereby amended to read as follows:

53-3-704. STATEMENT OF DISSOCIATION. (a) A ~~partnership which has filed a statement of partnership authority, or a dissociated partner thereof,~~ dissociated partner or the partnership 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.

SECTION 2. That Section 53-3-805, Idaho Code, as added by Section 2, Chapter 65, Laws of 1998, be, and the same is hereby amended to read as follows:

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~~ which 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.

SECTION 3. This act shall be in full force and effect on and after January 1, 2001.

Approved March 30, 2000.

CHAPTER 124
(H.B. No. 619)

AN ACT

RELATING TO BUSINESS ENTITIES AND THEIR REGISTERED OFFICES AND AGENTS; AMENDING SECTION 30-1-1503, IDAHO CODE, TO REQUIRE THAT THE REGISTERED OFFICE OF A FOREIGN CORPORATION HAVE A STREET ADDRESS; AMENDING SECTION 30-3-118, IDAHO CODE, TO REQUIRE THAT THE REGISTERED OFFICE OF A FOREIGN NONPROFIT CORPORATION HAVE A STREET ADDRESS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 53-208, IDAHO CODE, TO REQUIRE THAT THE REGISTERED AGENT OF A LIMITED PARTNERSHIP HAVE A STREET ADDRESS; AMENDING SECTION 53-249, IDAHO CODE, TO REQUIRE THAT THE REGISTERED AGENT OF A FOREIGN LIMITED PARTNERSHIP HAVE A STREET ADDRESS; AMENDING SECTION 53-604, IDAHO CODE, TO REQUIRE THAT THE REGISTERED AGENT FOR A LIMITED LIABILITY COMPANY HAVE A STREET ADDRESS; AMENDING SECTION 53-608, IDAHO CODE, TO CLARIFY THAT A REGISTERED AGENT FOR A LIMITED LIABILITY COMPANY MUST HAVE A STREET ADDRESS; AMENDING SECTION 53-651, IDAHO CODE, TO REQUIRE THAT THE REGISTERED AGENT FOR A FOREIGN LIMITED LIABILITY COMPANY HAVE A STREET ADDRESS; AMENDING SECTION 53-3-1001B, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 65, LAWS OF 1998, TO CLARIFY THAT THE REGISTERED AGENT FOR A LIMITED LIABILITY PARTNERSHIP MUST HAVE A STREET ADDRESS; AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Section 30-1-1503, Idaho Code, be, and the same is hereby amended to read as follows:

30-1-1503. APPLICATION FOR CERTIFICATE OF AUTHORITY. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 30-1-1506, Idaho Code;

(b) The name of the state or country under whose law it is incorporated;

(c) Its date of incorporation;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its registered agent at that office; and

(f) The names and usual business addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

SECTION 2. That Section 30-3-118, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-118. APPLICATION OF FOREIGN CORPORATION FOR CERTIFICATE OF AUTHORITY. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 30-3-121, Idaho Code;

(b) The name of the state or country under whose law it is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its registered agent at that office;

(f) The names and usual business or home addresses of its current directors and officers;

(g) Whether the foreign corporation has members~~; and~~.

(2) The foreign corporation shall deliver with the completed application a certificate of corporate existence or status, or a document of similar import.

SECTION 3. That Section 53-208, Idaho Code, be, and the same is hereby amended to read as follows:

53-208. CERTIFICATE OF LIMITED PARTNERSHIP. (a) In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate shall be on a form prescribed by the secretary of state and shall set forth:

(1) The name of the limited partnership;

(2) The name and street address of the registered agent for service of process required to be maintained by section 53-204, Idaho Code;

(3) The name and the business address of each general partner; and

(4) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance

with the requirements of this section.

SECTION 4. That Section 53-249, Idaho Code, be, and the same is hereby amended to read as follows:

53-249. ADMISSION OF FOREIGN LIMITED PARTNERSHIPS. Before transacting business in this state, a foreign limited partnership shall make application to the secretary of state. In order to be admitted, a foreign limited partnership shall submit to the secretary of state, in duplicate, an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to be authorized to transact business in this state;

(2) The state and date of its formation;

(3) The name and street address of any registered agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state;

(4) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(5) The name and address of each general partner; and

(6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is cancelled or withdrawn.

The application will be accompanied by a certificate certifying to the lawful existence of the limited partnership, issued by the proper officer of the jurisdiction in which the certificate of limited partnership is filed or recorded.

SECTION 5. That Section 53-604, Idaho Code, be, and the same is hereby amended to read as follows:

53-604. REGISTERED OFFICE AND REGISTERED AGENT. (1) A limited liability company shall continuously maintain in this state:

(a) A registered office that may, but need not, be the same as its place of business; and

(b) A registered agent for service of process on the limited liability company that is an individual resident of this state, a limited liability company, a foreign limited liability company authorized to transact business in this state or a corporation formed under the laws of or authorized to transact business in this state. The business office of the registered agent shall be identical with the registered office and shall have a street address.

(2) If at any time after filing the articles of organization the limited liability company appoints a new registered agent, the new registered agent shall consent to the appointment either:

(a) By signing the annual report or the statement of change of registered office or registered agent by which the change is made; or

(b) In a writing which shall be kept available for inspection at the registered office.

(3) A limited liability company may change its registered office or registered agent, or both, by indicating the change on the annual report prescribed in section 53-613, Idaho Code, or by delivering to the secretary of state a statement setting forth:

(a) The name of the limited liability company;

(b) The address of its current registered office;

(c) If the address of its registered office is to be changed, the street address to which the registered office is to be changed;

(d) The name of its current registered agent;

(e) If its registered agent is to be changed, the name of its successor registered agent.

(4) The change of registered office or registered agent is effective on delivery of the annual report or statement to the secretary of state.

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice of resignation, executed in duplicate, to the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its registered office. The appointment of the registered agent terminates thirty (30) days after receipt of the notice by the secretary of state or on the appointment of a successor registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place in this state, it may change the address by delivering a statement to the secretary of state as required in subsection (3) of this section, except that the statement need be signed only by the registered agent. The statement shall recite that a copy of it has been mailed to the limited liability company.

SECTION 6. That Section 53-608, Idaho Code, be, and the same is hereby amended to read as follows:

53-608. ARTICLES OF ORGANIZATION. The articles of organization shall be set forth in a form prescribed by the secretary of state:

(1) A name for the limited liability company that satisfies the requirements of section 53-602, Idaho Code;

(2) The street address of the registered office and the name of the registered agent at that address, as required to be maintained by the provisions of section 53-604, Idaho Code;

(3) If management of the limited liability company is vested in a manager or managers, a statement to that effect;

(4) If the management of the limited liability company is vested in its members, the name and address of one (1) or more of the initial members of the limited liability company;

(5) If the management of the limited liability company is vested in a manager or managers, the name and address of one (1) or more of the initial managers of the limited liability company;

(6) If the limited liability company is a professional service

limited liability company, the principal profession for which members are duly licensed or otherwise legally authorized to render professional services.

SECTION 7. That Section 53-651, Idaho Code, be, and the same is hereby amended to read as follows:

53-651. REGISTRATION. Before transacting business in this state, a foreign limited liability company shall register with the secretary of state by submitting to the secretary of state an original signed copy of an application for registration as a foreign limited liability company, together with a duplicate copy that may be either a signed, photocopied or conformed copy, executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The application shall be prescribed by the secretary of state and set forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;

(2) The state or other jurisdiction where formed, and date of its formation;

(3) The name and street address of a registered agent for service of process required to be maintained by the provisions of section 53-604, Idaho Code;

(4) The address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company; and

(5) The application for registration of a foreign limited liability company shall be accompanied by a certificate from the filing officer in the jurisdiction of creation evidencing that the foreign limited liability company is a "foreign limited liability company" as defined in section 53-601(5), Idaho Code.

SECTION 8. That Section 53-3-1001B, Idaho Code, as added by Section 2, Chapter 65, Laws of 1998 be, and the same is hereby amended to read as follows:

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 street 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.

SECTION 9. Sections 1 through 7 of this act shall be in full force and effect on and after July 1, 2000; section 8 of this act shall be in full force and effect on and after January 1, 2001.

Approved March 30, 2000.

CHAPTER 125
(H.B. No. 658)

AN ACT

RELATING TO BONDS OR TRUST AGREEMENTS OF THE IDAHO HEALTH FACILITIES AUTHORITY; AMENDING SECTION 39-1449, IDAHO CODE, TO PROVIDE FOR DESIGNATION OF A TRUSTEE WITHIN OR WITHOUT THE STATE OF IDAHO AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 39-1450D, IDAHO CODE, TO PROVIDE FOR DESIGNATION OF A TRUSTEE WITHIN OR WITHOUT THE STATE OF IDAHO AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 39-1449, Idaho Code, be, and the same is hereby amended to read as follows:

39-1449. BONDS. (a) The authority is authorized from time to time to issue its bonds in such principal amount as the authority shall determine for the purpose of financing all or a part of the cost of any facilities authorized hereby or for the refinancing of outstanding obligations. In anticipation of the sale of such bonds, the authority may issue bond anticipation notes and may renew the same from time to time. Such notes shall be paid from any revenues of the authority or other moneys available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the authority may contain.

(b) The bonds may be issued as serial bonds or as term bonds or a combination of both types. All bonds issued by the authority shall be payable solely out of the revenues and receipts derived from the leasing, mortgaging or sale by the authority of the facilities concerned or of any part thereof as may be designated in the resolutions of the authority under which the bonds shall be authorized to be issued or as may be designated in a trust indenture authorized by the authority, which such trust indenture shall name a bank or trust company ~~in~~ within or without the state of Idaho as trustee or from other moneys available therefor and not otherwise pledged. Such bonds may be executed and delivered by the authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in fully registered form or in bearer form registerable either as to principal or interest or both, may bear such conversion privileges and be payable in such instalments and at such time or times not exceeding forty (40) years from the date thereof, may be

payable at such place or places whether within or without the state of Idaho, may bear interest at such rate or rates per annum as shall be determined by the authority and without regard to any interest rate limitation appearing in any other law, payable at such time or times and at such place or places and evidenced in such manner, may be executed by such officers of the authority, either manually or by facsimile, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of an authorized officer of the authority and may contain such provisions not inconsistent herewith, all as shall be provided in the resolutions of the authority whereunder the bonds shall be authorized to be issued or as shall be provided in a trust indenture authorized by the authority. Notwithstanding any provision of this section to the contrary, in the case of obligations maturing not later than one (1) year from the date of issuance thereof, the authority may authorize the executive director, associate executive director or any officer of the authority to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum interest rates as the authority shall prescribe by resolution. Any such authorization shall remain effective for the period of time designated in the resolution, regardless of whether the composition of the authority changes in the interim.

(c) If deemed advisable by the authority there may be retained in the resolutions or the trust indenture under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such resolutions or in such trust indenture, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such resolutions or in such trust indenture, and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the authority the right or option to redeem any bonds except as may be provided in the resolutions or in such trust indenture under which they shall be issued.

(d) The bonds or notes of the authority may be sold at public or private sale for such price or prices and in such manner and from time to time as may be determined by the authority, and the authority may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance thereof. The power to fix the date of sale of bonds and notes, to receive bids or proposals, to award and sell bonds and notes, and to take all other necessary action to sell and deliver bonds and notes may be delegated to the executive director of the authority by resolution of the authority. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(e) Issuance by the authority of one (1) or more series of bonds for one (1) or more purposes shall not preclude it from issuing other bonds in connection with the same facilities or any other facilities or any other purpose hereunder, but the resolutions or trust indenture whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the authority at any time outstanding may at any time and

from time to time be refunded by the authority by the issuance of its bonds for such purpose in such amount as the authority may deem necessary and, if deemed advisable by the authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a facility or any portion thereof.

Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities or for any other purpose hereunder, and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise. The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority. Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations determined by the authority. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds or notes to be so refunded, to the payment of principal or interest on the refunding bonds or may be used by the authority in any lawful manner. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner. The portion of the proceeds of any such bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a facility may be invested and reinvested in obligations determined by the authority. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the authority in any lawful manner. All such bonds shall be subject to the provisions of this act in the same manner and to the same extent as other bonds issued pursuant to this act. All bonds and the interest coupons applicable thereto are hereby made and shall be construed to be negotiable instruments within the meaning of and for all the purposes of article 8, uniform commercial code, subject only to the provisions of such bonds, notes or other obligations for registration.

SECTION 2. That Section 39-1450D, Idaho Code, be, and the same is hereby amended to read as follows:

39-1450D. TRUST AGREEMENT TO SECURE BONDS. In the discretion of

the authority any bonds issued under this act may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company ~~in~~ within or without the state of Idaho. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. Such trust agreement or resolution providing for the ~~the~~ issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, and not in violation of law, including particularly such provisions as have been specifically authorized to be included in any resolution or resolutions of the authority authorizing bonds thereof. Any bank or trust company incorporated under the laws of this state, which may act as depository of the proceeds of bonds or of revenues or other moneys, may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of a facility.

Approved March 30, 2000.

CHAPTER 126
(S.B. No. 1295)

AN ACT

RELATING TO PUNISHMENT FOR FIRST-DEGREE KIDNAPPING; AMENDING SECTION 18-4504, IDAHO CODE, TO PROVIDE THAT A SENTENCE OF DEATH SHALL NOT BE IMPOSED FOR FIRST-DEGREE KIDNAPPING UNLESS THE PROSECUTING ATTORNEY FILED A WRITTEN NOTICE OF INTENT TO SEEK THE DEATH PENALTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 45, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-4504A, IDAHO CODE, TO PROVIDE FOR A NOTICE OF INTENT TO SEEK THE DEATH PENALTY, TO PROVIDE THE FILING REQUIREMENTS OF THE NOTICE AND TO PROVIDE FOR WITHDRAWAL OF THE NOTICE; AMENDING SECTION 18-4505, IDAHO CODE, TO PROVIDE THAT A SENTENCE OF DEATH SHALL NOT BE IMPOSED FOR FIRST-DEGREE KIDNAPPING UNLESS A NOTICE OF INTENT TO SEEK THE DEATH PENALTY WAS FILED AND SERVED AS PROVIDED IN SECTION 18-4504A, IDAHO CODE, AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-4504, Idaho Code, be, and the same is hereby amended to read as follows:

18-4504. PUNISHMENT -- LIBERATION OF ~~KIDNAPED~~ KIDNAPPED PERSON. 1. Every person guilty of ~~kidnaping~~ kidnapping in the first degree shall suffer death or be punished by imprisonment in the state prison for life, provided~~,~~ 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 18-4504A, Idaho Code, and provided further that the sentence of death shall not be imposed if prior to its imposition the ~~kidnaped~~ kidnapped person has been liberated unharmed.

2. ~~Kidnaping~~ Kidnapping in the second degree is punishable by imprisonment in the state prison not less than one (1) nor more than twenty-five (25) years.

SECTION 2. That Chapter 45, 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 18-4504A, Idaho Code, and to read as follows:

18-4504A. 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 18-4505, Idaho Code, be, and the same is hereby amended to read as follows:

18-4505. INQUIRY INTO MITIGATING OR AGGRAVATING CIRCUMSTANCES -- SENTENCE IN ~~KIDNAPING~~ KIDNAPPING CASES -- STATUTORY AGGRAVATING CIRCUMSTANCES -- JUDICIAL FINDINGS. 1. After a plea or verdict of guilty, where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the oral or written suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct.

2. 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 18-4504A, 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 outweigh the gravity of any aggravating circumstance found and make imposition of death unjust.

3. 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 defend-

ant 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.

4. 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 outweigh the gravity of any aggravating circumstance found so as to make unjust the imposition of the death penalty, the court shall detail in writing its reasons for so finding.

5. Upon making the prescribed findings, the court shall impose sentence within the limits fixed by law.

6. 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:

(a) The victim of the ~~kidnaping~~ kidnapping was subjected by the ~~kidnaper~~ kidnapper or those acting in concert with him to torture, maiming or the intentional infliction of grievous mental or physical injury.

(b) The defendant knowingly created a great risk of death to any person, including the ~~kidnaped~~ kidnapped.

(c) The ~~kidnaping~~ kidnapping was committed for remuneration or the promise of remuneration or the defendant employed another to commit the ~~kidnaping~~ kidnapping for remuneration or the promise of remuneration.

(d) The ~~kidnaping~~ kidnapping was especially heinous, atrocious or cruel, manifesting exceptional depravity.

(e) The ~~kidnaping~~ kidnapping was committed for the purpose of murdering or maiming a witness or potential witness in a judicial proceeding.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved March 30, 2000.

CHAPTER 127
(S.B. No. 1390)

AN ACT

RELATING TO ACCUMULATION OF UNUSED SICK LEAVE CREDIT BY STATE EMPLOYEES; AMENDING SECTION 67-5339, IDAHO CODE, TO INCREASE THE MAXIMUM UNUSED SICK LEAVE THAT MAY BE CONSIDERED TO DETERMINE THE MONETARY VALUE OF UNUSED SICK LEAVE FOR RETIREMENT PURPOSES AND TO MAKE A

TECHNICAL CORRECTION; REPEALING CHAPTER 138, LAWS OF 1999; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-5339, Idaho Code, be, and the same is hereby amended to read as follows:

67-5339. USE OF UNUSED SICK LEAVE. (1) Upon separation from state employment by retirement in accordance with chapter 13, title 59 or chapter 1, title 33, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 1976, and shall be reported by the employer to the public employee retirement system. A sum equal to one-half (1/2), or the maximum amount allowed by subsection (2) ~~hereof~~ of this section, whichever is the lesser, of the monetary value of such unused sick leave, calculated at the rate of pay for such employee at the time of retirement, shall be transferred from the sick leave account provided by subsection (3) of this section and shall be credited to such employee's retirement account. Such sums shall be used by the Idaho public employee retirement board to pay premiums for such group health, accident, and life insurance programs as may be maintained by the state, to the extent of the funds credited to the employee's account pursuant to this section. Upon an employee's death, any unexpended sums remaining in the account shall revert to the sick leave account.

(2) For the purposes of determining the monetary value of unused sick leave, the maximum unused sick leave which may be considered, shall be:

(a) During the first ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be ~~one~~ four hundred ~~ninety-two~~ twenty (~~192~~420) hours;

(b) During the second ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be ~~two~~ four hundred ~~forty~~ eighty (~~240~~480) hours;

(c) During the third ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be ~~two~~ five hundred ~~eighty-eight~~ forty (~~288~~540) hours; and

(d) Thereafter, the maximum unused sick leave which may be considered shall be ~~three~~ six hundred ~~thirty-six~~ (~~336~~600) hours.

(3) Each employer in state government shall contribute to a sick leave account maintained by the public employee retirement system exclusively for the purpose of the provisions of this section. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined by the board, and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. All moneys payable to the sick leave account are hereby perpetually appropriated to the board, and shall not be included in its departmental budget.

The state insurance fund and public health districts shall be considered employers in state government for purposes of participation under this section.

SECTION 2. That Chapter 138, Laws of 1999, be, and the same is hereby repealed.

SECTION 3. This act shall be in full force and effect on and after June 30, 2000.

Approved March 30, 2000.

CHAPTER 128
(H.B. No. 450, As Amended in the Senate)

AN ACT

RELATING TO LEASE OF COUNTY PROPERTY; AMENDING SECTION 31-836, IDAHO CODE, TO AUTHORIZE THE BOARD OF COUNTY COMMISSIONERS TO LEASE PROPERTY, WITHOUT PUBLIC AUCTION, TO A NONPROFIT CORPORATION OR ASSOCIATION ORGANIZED FOR THE PURPOSE OF ERECTING AND MAINTAINING A SHELTER INTENDED TO HOUSE VICTIMS OF SEXUAL OR DOMESTIC VIOLENCE AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 31-836, Idaho Code, be, and the same is hereby amended to read as follows:

31-836. LEASE OF COUNTY PROPERTY. Except as otherwise provided by law, the board of county commissioners may lease any property belonging to the county:

(1) Without public auction for a term not exceeding five (5) years at such rental as may be determined upon by the unanimous vote of such board, or at public auction to the highest bidder for a term not exceeding thirty (30) years. Rents shall be paid annually in advance provided, however, that the provision requiring the payment of rent in advance shall not apply to a lease to the federal or state government, a municipal corporation of this state, or any governmental agency or department.

(2) Any hospital or hospital grounds or portions thereof to be used in conjunction with hospital operations or hospital equipment belonging to the county may be leased by the board without public auction for a term not exceeding twenty (20) years; <u>or any property suitable for a shelter intended to house victims of sexual or domestic violence which property belonging to the county may be leased by the board without public auction to any nonprofit corporation or association organized for the purpose of erecting and maintaining a shelter to house victims of sexual or domestic violence for a term not exceeding twenty (20) years;</u> and, provided further, that the county, either as lessor or lessee, may enter into any lease or other transaction

concerning any property with the Idaho health facilities authority for any term not to exceed ninety-nine (99) years.

(3) Any property belonging to the county may be leased by the board without public auction for a term not to exceed thirty (30) years, to be used for an industrial park in conjunction with economic development purposes. An industrial park for purposes of this section means facilities for manufacturing, processing, production, assembly warehousing or activities associated therewith.

(4) Without public auction the board of county commissioners may lease any property belonging to the county and not necessary for its use to the state of Idaho or any political subdivision thereof for any public purpose, to any nonprofit corporation or association organized for the purpose of erecting and maintaining thereon any play field, recreation park or stadium to serve as a memorial to the living or deceased soldiers, sailors and marines of an armed conflict entered into by the United States, or to any hospital district organized under ~~title--39,~~ chapter 13, title 39, Idaho Code, for use in furthering the purposes of said district or to any nonprofit corporation or association organized for the purpose of erecting and maintaining an animal shelter. Such lease may be for any term not to exceed ninety-nine (99) years, may provide for only a nominal rental to the county and shall, by its provisions, terminate when the property so leased ceases to be used for any public purpose, as an animal shelter, as a play field, recreation park or stadium serving as a memorial, or by the hospital district for its purposes. Nothing in this subsection shall prohibit the naming or title sponsorship of any play field, recreation park or stadium erected and maintained as a memorial as provided in this subsection as long as the play field, recreation park or stadium continues to serve as such memorial.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 31, 2000.

CHAPTER 129
(S.B. No. 1353)

AN ACT

RELATING TO CRIMES; AMENDING CHAPTER 24, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-2411, IDAHO CODE, TO PROVIDE CRIMINAL PENALTIES FOR CERTAIN USES OF A THEFT DETECTION SHIELDING DEVICE AND TO PROVIDE PENALTIES.

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

SECTION 1. That Chapter 24, 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 18-2411, Idaho Code, and to read as follows:

18-2411. UNLAWFUL USE OF THEFT DETECTION SHIELDING DEVICES. (1) A person commits unlawful use of a theft detection shielding device when he knowingly manufacturers, sells, offers for sale or distributes any laminated, or coated bag or device peculiar to shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

(2) A person commits unlawful possession of a theft detection shielding device when he knowingly possesses any laminated or coated bag or device peculiar to and designed for shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit theft.

(3) A person commits unlawful possession of a theft detection device remover when he knowingly possesses any tool or device designed to allow the removal of any theft detection device from any merchandise without the permission of the merchant or person owning or holding the merchandise.

(4) A person commits the offense of unlawful removal of a theft detection device when he intentionally removes the device from a product prior to purchase.

(5) A person who commits unlawful use of a theft detection shielding device, unlawful possession of a theft detection shielding device, unlawful possession of a theft detection device remover or unlawful removal of a theft detection device shall be guilty of a misdemeanor for a first offense of a violation of the provisions of this section. Any person who pleads guilty to or is found guilty of a violation of the provisions of this section, or any substantially conforming statute in another state or local jurisdiction for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony and shall be punished by a fine not to exceed one thousand dollars ($1,000) or shall be sentenced to the custody of the state board of correction for a term not to exceed five (5) years or both.

Approved March 31, 2000.

CHAPTER 130
(S.B. No. 1354)

AN ACT

RELATING TO CRIMINAL OFFENSES; AMENDING CHAPTER 24, TITLE 18, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 18-2416 THROUGH 18-2421, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR PROHIBITED SALES OF CERTAIN MERCHANDISE, TO PROVIDE RECORD-KEEPING REQUIREMENTS AND VIOLATIONS, TO PROVIDE EXEMPTIONS AND TO PROVIDE PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 24, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 18-2416 through 18-2421, Idaho Code,

and to read as follows:

18-2416. SHORT TITLE. This act may be known and cited as the "Unused Merchandise Ownership Protection Act."

18-2417. DEFINITIONS. As used in the unused merchandise ownership protection act:

(1) "Open market" may include a "swap meet," an "indoor swap meet" or a "flea market" and means an event at which two (2) or more persons offer personal property for sale or exchange and either:

(a) A fee is charged for those persons selling or exchanging personal property or a fee is charged to the public for admission to the event; or

(b) The event is held more than two (2) times in a twelve (12) month period;

(2) "Unused merchandise" means tangible personal property that, since its original production or manufacturing, has never been used or consumed and, if placed in a package or container, is still in its original and unopened package or container; and

(3) "Vendor of unused merchandise" means a person who offers unused merchandise for sale or exchange at an open market.

18-2418. PROHIBITED SALES -- CERTAIN MERCHANDISE. (1) It is a violation of the unused merchandise ownership protection act for a vendor of unused merchandise to sell or offer for sale any baby food or infant formula, cosmetic, drug or medical device at an open market without displaying a written valid authorization from the manufacturer or distributor of the merchandise. The authorization shall identify the vendor of unused merchandise and shall specify the merchandise that the vendor is authorized to sell.

(2) As used in this section:

(a) "Baby food or infant formula" means unused merchandise consisting of a food product manufactured, packaged and labeled specifically for consumption by a child less than two (2) years of age;

(b) "Cosmetic" means unused merchandise, other than soap, that is:

(i) Intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; or

(ii) Intended for use as a component of any articles enumerated in subparagraph (i) of this paragraph;

(c) "Drug" means unused merchandise, other than food, that:

(i) Is recognized in an official compendium;

(ii) Affects the structure or any function of the body of man or other animals; or

(iii) Is intended for use as a component of subparagraph (i) or (ii) of this paragraph, but does not include medical devices or their component parts or accessories;

(d) "Medical device" means unused merchandise that is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any

component, part or accessory, and that is:

(i) Recognized in an official compendium;

(ii) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or

(iii) Intended to affect the structure or function of the body of man or other animals and which does not achieve its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for achievement of its principal intended purposes; and

(e) "Official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them.

18-2419. RECORDKEEPING REQUIREMENTS -- VIOLATIONS. (1) A vendor of unused merchandise shall maintain receipts for the vendor's purchase of any unused merchandise sold or offered for sale by the vendor at an open market. The receipts shall be kept at the open market in which the unused merchandise is offered for sale and at the vendor's residence or principal place of business for two (2) years after the merchandise is sold. Each receipt shall specify:

(a) The date of the purchase;

(b) The name and address of the person from whom the unused merchandise was acquired;

(c) A description of the unused merchandise purchased, including any specific lot numbers or other identifying characteristics;

(d) The amount paid for the unused merchandise; and

(e) The signature of the buyer and the seller of the unused merchandise.

(2) It is a violation of the unused merchandise ownership protection act for a person to knowingly:

(a) Falsify, obliterate or destroy any receipt required to be kept pursuant to this section;

(b) At the request of a police officer, fail or refuse to produce any receipt required to be kept pursuant to this section; and

(c) Fail to maintain any receipt as required by this section.

18-2420. EXEMPTIONS. (1) The following persons are exempt from the provisions of the unused merchandise ownership protection act:

(a) A vendor at an event organized or operated for religious, educational, charitable or other nonprofit purposes if no part of any admission fee or parking fee charged vendors or prospective purchasers and no part of the gross receipts or net earnings from the sale of merchandise at the event is paid to a private person for participating in the organization or operation of the event;

(b) A vendor at an industry or association trade show;

(c) A vendor at an event at which all of the merchandise offered for sale is new and at which all vendors are manufacturers or authorized representatives of manufacturers or distributors; and

(d) A vendor selling by sample, catalog or brochure for future delivery.

(2) The requirements of the unused merchandise ownership protec-

tion act do not apply to sales or offers for sale of the following unused merchandise:

(a) Firewood, sand, gravel, flagstone, building stone or other natural product;

(b) Live animals;

(c) Vehicles subject to registration pursuant to title 49, Idaho Code;

(d) Food intended for human consumption at the open market immediately after sale;

(e) Merchandise offered for sale as an antique or otherwise historical item and, although never used, the style, packaging, material or appearance of which clearly indicates that the merchandise was not produced or manufactured within recent times;

(f) Food offered for sale that was grown, harvested or produced by the vendor or the vendor's principal; and

(g) Art, crafts or handicrafts that were produced by the vendor or the vendor's principal.

18-2421. PENALTIES. A person who violates any provision of the unused merchandise ownership protection act is guilty of a misdemeanor for the first offense. Any person who pleads guilty to or is found guilty of a violation of the unused merchandise ownership protection act, or any substantially conforming statute in another state or any local jurisdiction, for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony and shall be sentenced to the custody of the state board of correction for a term not to exceed five (5) years, or shall be fined an amount not to exceed twenty-five thousand dollars ($25,000) or both.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 31, 2000.

CHAPTER 131
(S.B. No. 1360)

AN ACT

RELATING TO THREATS AGAINST ELECTED OFFICIALS; AMENDING SECTION 18-1353A, IDAHO CODE, TO PROHIBIT THREATS AGAINST ELECTED OFFICIALS OF A COUNTY OR CITY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-1353A, Idaho Code, be, and the same is hereby amended to read as follows:

18-1353A. THREATS AGAINST STATE OFFICIALS OF THE EXECUTIVE, LEGISLATIVE OR JUDICIAL BRANCH <u>OR ELECTED OFFICIALS OF A COUNTY OR CITY.</u> Whoever knowingly and willfully deposits for conveyance in the mail or

for a delivery from any post office or by any letter carrier, any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon any state elected official of the executive or legislative branch, or any justice, judge or magistrate of the judicial branch, or person appointed to fill the vacancy of a state elected official of the executive or legislative branch of the state of Idaho, or knowingly and willfully otherwise makes any such threat against a state elected official of the executive or legislative branch, or any justice, judge or magistrate of the judicial branch, or person appointed to fill the vacancy of a state elected official of the executive or legislative branch of the state of Idaho, or upon any elected official of any county or city, is guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed one thousand dollars ($1,000) and shall be sentenced to not to exceed one (1) year in the county jail. If such threat is made while the defendant exhibits a firearm or other dangerous or deadly weapon, the defendant shall be guilty of a felony. Upon a second or subsequent conviction of an offense under this section, the defendant shall be guilty of a felony and shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved March 31, 2000.

CHAPTER 132
(S.B. No. 1426, As Amended)

AN ACT

RELATING TO A DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 67-2402, IDAHO CODE, TO PROVIDE A DEPARTMENT OF ENVIRONMENTAL QUALITY IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT; AMENDING SECTION 67-2406, IDAHO CODE, TO PROVIDE FOR A DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 59-904, IDAHO CODE, TO PROVIDE FOR APPOINTMENT OF A DIRECTOR OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL QUALITY; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-102A, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT IN CREATING THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-103, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 39-104, IDAHO CODE, TO PROVIDE FOR THE CREATION OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-104A, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-105, IDAHO CODE, TO PROVIDE POWERS AND DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-106, IDAHO CODE, TO PROVIDE FOR POLICIES AND PROCEDURES, TO PROVIDE ADDITIONAL POWERS AND DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO PROVIDE FOR TRANSFER AND CONTINUATION OF RULES AND OTHER PROCEEDINGS; AMENDING SECTION 39-107, IDAHO CODE, TO PROVIDE FOR A BOARD

OF ENVIRONMENTAL QUALITY, TO PROVIDE MEMBERSHIP, TO PROVIDE POWERS AND DUTIES, TO PROVIDE FOR RULES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-107a, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-107B, IDAHO CODE, TO CREATE THE DEPARTMENT OF ENVIRONMENTAL QUALITY FUND; AMENDING CHAPTER 1, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-107C, IDAHO CODE, TO CREATE THE ENVIRONMENTAL PROTECTION TRUST FUND; AMENDING SECTION 39-3628, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY FOR THE WATER POLLUTION CONTROL FUND AND TO PROVIDE FOR REMITTANCE OF SALES TAX MONEYS; AMENDING SECTION 39-3630, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE PURPOSES THAT MONEY IN THE WATER POLLUTION CONTROL FUND MAY BE USED FOR AND TO PROVIDE THAT INTEREST EARNED ON MONEYS INVESTED FROM THE FUND SHALL BE RETURNED TO THE FUND; AMENDING SECTION 39-108, IDAHO CODE, TO PROVIDE INVESTIGATIVE POWERS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-109, IDAHO CODE, TO PROVIDE FOR CIVIL ENFORCEMENT ACTIONS TO BE COMMENCED AT THE REQUEST OF THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-110, IDAHO CODE, TO PROVIDE FOR REGISTRATION OF PERSONS AT THE REQUEST OF THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-111, IDAHO CODE, TO PROVIDE FOR AVAILABILITY OF RECORDS FURNISHED TO THE BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-112, IDAHO CODE, TO PROVIDE FOR AN EMERGENCY ORDER TO BE ISSUED BY THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY, TO PROVIDE INTERPRETATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-113, IDAHO CODE, TO PROVIDE FOR TRANSFER OF EMPLOYEES AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 39-114, IDAHO CODE; AMENDING SECTION 39-115, IDAHO CODE, TO PROVIDE FOR POLLUTION SOURCE PERMITS TO BE ISSUED BY THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-116, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL HAVE THE AUTHORITY TO ISSUE COMPLIANCE SCHEDULES AND TO REVISE WHAT IS CONTAINED IN THEM; AMENDING SECTION 39-118, IDAHO CODE, TO PROVIDE FOR REVIEW OF PLANS BY THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-118D, IDAHO CODE, TO PROVIDE FOR THE IDAHO AIR QUALITY PERMITTING FUND WITHIN THE STATE TREASURY TO BE UTILIZED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-119, IDAHO CODE, TO PROVIDE FOR FEES AUTHORIZED BY THE DIRECTOR AND BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-120, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY BE THE PRIMARY ADMINISTRATIVE AGENCY TO ADMINISTER GROUND WATER QUALITY PROTECTION PROGRAMS; AMENDING SECTION 39-121, IDAHO CODE, TO FURTHER DEFINE TERMS; REPEALING SECTIONS 39-122, 39-123, 39-124 AND 39-125, IDAHO CODE; AMENDING SECTION 39-126, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-129, IDAHO CODE, TO DELETE REFERENCE TO CERTAIN STUDIES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-414, IDAHO CODE, TO PROVIDE FOR DELEGATION BY THE

DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-417, IDAHO CODE, TO PROVIDE FOR RULES OF THE BOARD OF ENVIRONMENTAL QUALITY AND TO PROVIDE A CORRECT CITATION; AMENDING SECTION 39-419, IDAHO CODE, TO PROVIDE A CORRECT CITATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-202B, IDAHO CODE, TO PROVIDE A CORRECT CITATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 57-1701, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AMENDING TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 10, TITLE 56, IDAHO CODE, TO DEFINE TERMS, TO CREATE THE DEPARTMENT OF HEALTH AND WELFARE, TO PROVIDE POWERS AND DUTIES OF THE DIRECTOR, TO PROVIDE FOR THE CREATION OF THE BOARD OF HEALTH AND WELFARE, TO PROVIDE ADDITIONAL POWERS AND DUTIES OF THE DIRECTOR, TO PROVIDE FOR CONSTRUCTION OF TERMS, TO PROVIDE FOR COLLECTION OF FEES AND TO PROVIDE FOR CRIMINAL VIOLATIONS; PROVIDING AN EFFECTIVE DATE, PROVIDING APPLICATION, PROVIDING TRANSITION AND PROVIDING THE EFFECT OF RULES.

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

SECTION 1. That Section 67-2402, Idaho Code, be, and the same is hereby amended to read as follows:

67-2402. STRUCTURE OF THE EXECUTIVE BRANCH OF IDAHO STATE GOVERNMENT. (1) Pursuant to section 20, article IV, Idaho constitution, all executive and administrative offices, agencies, and instrumentalities of the executive department of state, except for those assigned to the elected constitutional officers, are allocated among and within the following departments:

Department of administration
Department of agriculture
Department of commerce
Department of correction
Department of labor
Department of environmental quality
Department of finance
Department of fish and game
Department of health and welfare
Department of insurance
Department of juvenile corrections
Idaho transportation department
Industrial commission
Department of lands
Department of law enforcement
Department of parks and recreation
Department of revenue and taxation
Department of self-governing agencies
Department of water resources
State board of education

The public school districts of Idaho, having condemnation authority, shall be considered civil departments of state government for the purpose of and limited to the purchase of state endowment land at appraised prices.

(2) The governor, lieutenant governor, secretary of state, state

controller, state treasurer, attorney general and superintendent of public instruction each heads a constitutional office.

(3) For its internal structure, unless specifically provided otherwise, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator. The administrator of any division shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor.

SECTION 2. That Section 67-2406, Idaho Code, be, and the same is hereby amended to read as follows:

67-2406. DIRECTORS OF DEPARTMENTS ENUMERATED. The following department directors are created:

Director, department of administration
Director, department of agriculture
Director, department of commerce
Director, department of correction
Director, department of labor
Director, department of finance
Director, department of fish and game
Director, department of environmental quality
Director, department of health and welfare
Director, department of insurance
Director, department of juvenile corrections
Director, Idaho transportation department
Director, department of lands
Director, department of law enforcement
Director, department of parks and recreation
Director, department of water resources.

SECTION 3. That Section 59-904, Idaho Code, be, and the same is hereby amended to read as follows:

59-904. STATE OFFICES -- VACANCIES, HOW FILLED AND CONFIRMED. (a) All vacancies in any state office, and in the supreme and district courts, unless otherwise provided for by law, shall be filled by appointment by the governor. Appointments to fill vacancies pursuant to this section shall be made as provided in subsections (b), (c), (d), (e), and (f) of this section, subject to the limitations prescribed in those subsections.

(b) Nominations and appointments to fill vacancies occurring in the office of lieutenant governor, state controller, state treasurer, superintendent of public instruction, attorney general and secretary of state shall be made by the governor, subject to the advice and consent of the senate, for the balance of the term of office to which the predecessor of the person appointed was elected.

(c) Nominations and appointments to and vacancies in the follow-

ing listed offices shall be made or filled by the governor subject to the advice and consent of the senate for the terms prescribed by law, or in case such terms are not prescribed by law, then to serve at the pleasure of the governor:

Director of the department of administration,
Director of the department of finance,
Director of the department of insurance,
Director, department of agriculture,
Director of the department of labor,
Director of the department of water resources,
Director of the department of law enforcement,
Director of the department of commerce,
Director of the department of environmental quality,
Director of the department of juvenile corrections,
Executive director of the commission of pardons and parole,
The state historic preservation officer,
The administrator of the division of human resources,
Member of the state tax commission,
Members of the board of regents of the university of Idaho and the state board of education,
Members of the Idaho water resources board,
Members of the state fish and game commission,
Members of the Idaho transportation board,
Members of the state board of health and welfare,
Members of the board of environmental quality,
Members of the board of directors of state parks and recreation,
Members of the board of correction,
Members of the industrial commission,
Members of the Idaho public utilities commission,
Members of the Idaho personnel commission,
Members of the board of directors of the Idaho state retirement system,
Members of the board of directors of the state insurance fund,
Members of the commission of pardons and parole.

(d) Appointments made by the state board of land commissioners to the office of director, department of lands, and appointments to fill vacancies occurring in those offices shall be submitted by the president of the state board of land commissioners to the senate for the advice and consent of the senate in accordance with the procedure prescribed in this section.

(e) Appointments made pursuant to this section while the senate is in session shall be submitted to the senate forthwith for the advice and consent of that body. The appointment so made and submitted shall not be effective until the approval of the senate has been recorded in the journal of the senate. Appointments made pursuant to this section while the senate is not in session shall be effective until the appointment has been submitted to the senate for the advice and consent of the senate. Should the senate adjourn without granting its consent to such an interim appointment the appointment shall thereupon become void and a vacancy in the office to which the appointment was made shall exist.

All appointments made pursuant to subsection (c) of this section, except those appointments for which a term of office is fixed by law,

shall terminate at the expiration of any gubernatorial term. Appointments to fill the vacancies thus created by the expiration of the term of office of the governor shall be forthwith submitted to the senate for the advice and consent of that body, and when so submitted shall be as expeditiously considered as possible.

Upon receipt of an appointment in the senate for the purpose of securing the advice and consent of the senate, the appointment shall be referred by the presiding officer to the appropriate committee of the senate for consideration and report prior to action thereon by the full senate.

(f) It is the intent of the legislature that the provisions of this section as amended by this chapter shall not apply to appointments which have been made prior to the effective date of this chapter. It is the further intent of the legislature that the provisions of this section shall apply to the offices listed in this section and to any office created by law or executive order which succeeds to the powers, duties, responsibilities and authorities of any of the offices listed in subsections (c) and (d) of this section.

SECTION 4. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-102A, Idaho Code, and to read as follows:

39-102A. LEGISLATIVE INTENT IN CREATING DEPARTMENT OF ENVIRONMENTAL QUALITY. The legislature finds and declares that:

(1) The creation and establishment of the department of environmental quality to protect human health and the environment as its sole mission is in the public's interest;

(2) That all existing, but no new rights, powers, duties, budgets, funds, contracts, rulemaking proceedings, administrative proceedings, contested cases, civil actions, and other matters relating to environmental protection as described in this chapter, vested in the director of the department of health and welfare and the board of health and welfare on January 1, 2000, shall be transferred to the board of environmental quality, the department of environmental quality and its director as described herein effective July 1, 2000;

(3) That protecting environmental values including, but not limited to, clean air, water and soil, reducing or eliminating environmental pollution arising from human activities, ensuring the proper treatment, storage and disposal of hazardous wastes and ensuring the proper cleanup and restoration of existing natural resources are vital interests of the state of Idaho;

(4) That it is in the interest of the state and its citizens to establish a department of environmental quality to carry out programs to protect human health and the environment, to enforce environmental laws and develop pollution prevention, compliance assistance and other environmental incentive programs;

(5) That the goals to protect human health and the environment can be best achieved by vesting responsibility for environmental protection as specified herein in a state department which has as its sole mission, protection for human health and the environment for the state of Idaho and its residents;

(6) The legislature further intends that environmental quality programs be promulgated and managed such that the benefits of pollution control measures have a reasonable relationship to the public health costs, private property rights, environmental, economic and energy impacts of such measures, provided that this section does not require the preparation of any economic, environmental or other statement;

(7) That the department of environmental quality shall utilize the designated program appropriations made to the department of health and welfare for environmental program functions, the division of environmental quality and the INEEL oversight program for fiscal year 2001.

SECTION 5. That Section 39-103, Idaho Code, be, and the same is hereby amended to read as follows:

39-103. DEFINITIONS. Whenever used or referred to in this act, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Air contaminant" or "air contamination" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, radionuclide, vapor, gas or other gaseous fluid or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.

(2) "Air pollution" means the presence in the outdoor atmosphere of any contaminant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.

~~1.~~(3) "Board" means the board of ~~health and welfare~~ environmental quality.

~~2.~~(4) "Department" means the department of ~~health and welfare~~ environmental quality.

~~3.~~(5) "Director" means the director of the department of ~~health and welfare~~ environmental quality or the director's designee.

~~4. "State" means the state of Idaho.~~

~~5. "Air contaminant" or "air contamination" means the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas or other gaseous fluid or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere.~~

~~6. "Air pollution" means the presence in the outdoor atmosphere of any contaminant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property.~~

~~7.~~(6) "Emission" means any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air contaminant or combination thereof. Emission also includes any release or discharge of any air contaminant from a stack, vent or other means into the outdoor atmosphere that originates from an emission unit.

~~8. "Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the~~

~~state,-or-such-discharge-of-any-contaminant-into--the--waters--of--the state--as-will-or-is-likely-to-create-a-nuisance-or-render-such-waters harmful-or-detrimental-or-injurious-to-public-health,-safety--or--welfare-or-to-domestic,-commercial,-industrial,-recreational,-esthetic-or other--legitimate--uses--or-to-livestock,-wild-animals,-birds,-fish-or other-aquatic-life.~~

~~9.--"Waters"-mean-all-the--accumulations--of--water,--surface--and underground,--natural--and--artificial,--public--and-private,-or-parts thereof-which-are-wholly-or-partially-within,-flow-through--or--border upon-this-state.~~

~~10.--"Solid--waste"--means--garbage,--refuse,--and-other-discarded solid-materials,-including-solid-waste-materials-resulting-from-industrial,-commercial,-and-agricultural--operations,--and--from--community activities,--but--does--not--include--solid--or-dissolved-materials-in domestic-sewage-or-other-significant-pollutants--in--water--resources, such--as-silt,-dissolved-or-suspended-solids-in-industrial-waste-water effluents,-dissolved-materials-in-irrigation--return--flows--or--other common-water-pollutants.~~

~~11.--"Solid--waste-disposal"-means-the-collection,-storage,-treatment,-utilization,-processing-or-final-disposal-of-solid-waste.~~

~~12.--"Laboratory"--means--not--only--facilities--for---biological, serological,-biophysical,-cytological-and-pathological-tests,-but-also facilities--for--the--chemical--or-other-examination-of-materials-from water,-air-or-other-substances.~~

~~13.--"Person"--means--any--individual,--association,--partnership, firm,-joint-stock-company,-trust,-estate,-political-subdivision,--public--or-private-corporation,-state-or-federal-governmental-department, agency-or-instrumentality,-or-any-other-legal-entity-which--is--recognized-by-law-as-the-subject-of-rights-and-duties.~~

~~14.--"Public-swimming-pool"-means-an-artificial-structure,-and-its appurtenances,--which-contains-water-more-than-two-(2)-feet-deep-which is-used-or-intended-to-be-used-for-swimming-or--recreational--bathing, and--which--is--for-the-use-of-any-segment-of-the-public-pursuant-to-a general-invitation-but-not-an-invitation-to--a--specific--occasion--or occasions.~~

~~15.--"Public--water--supply"-means-all-mains,-pipes-and-structures through-which-water-is-obtained-and-distributed-to-the-public,-including-wells-and-well-structures,-intakes-and--cribs,--pumping--stations, treatment-plants,-reservoirs,-storage-tanks-and-appurtenances,-collectively-or-severally,-actually-used-or-intended-for-use-for-the-purpose of--furnishing--water-for-drinking-or-general-domestic-use-in-incorporated-municipalities;-or-unincorporated-communities-where-ten-(10)--or more--separate--premises-or-households-are-being-served-or-intended-to be-served;-or-any-other-supply-which-serves-water-to--the--public--and which--the-department-of-health-and-welfare-declares-to-have-potential health-significance.~~

(7) "Laboratory" means not only facilities for biological, serological, biophysical, cytological and pathological tests, but also facilities for the chemical or other examination of materials from water or other substances.

(8) "Medical waste combustor" means any device, incinerator, furnace, boiler or burner, and any and all appurtenances thereto, which burns or pyrolyzes medical waste consisting of human or animal tis-

sues, medical cultures, human blood or blood products, materials contaminated with human blood or tissues, used or unused surgical wastes, used or unused sharps, including hypodermic needles, suture needles, syringes and scalpel blades.

(9) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(10) "Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use in incorporated municipalities; or unincorporated communities where ten (10) or more separate premises or households are being served or intended to be served; or any other supply which serves water to the public and which the department declares to have potential health significance.

(11) "Solid waste" means garbage, refuse, radionuclides and other discarded solid materials, including solid waste materials resulting from industrial, commercial and agricultural operations and from community activities but does not include solid or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

(12) "Solid waste disposal" means the collection, storage, treatment, utilization, processing or final disposal of solid waste.

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

~~16.~~(14) "Substantive" means that which creates, defines or regulates the rights of any person or implements, interprets or prescribes law or policy, but does not include statements concerning only the internal management of the department and not affecting private rights or procedures available to the public.

~~17. "Nutrient" means any one (1) of the natural elements including, but not limited to, carbon, hydrogen, oxygen, nitrogen, potassium, phosphorus, magnesium, sulfur, calcium, sodium, iron, manganese, copper, zinc, molybdenum, vanadium, boron, chlorine, cobalt and silicon, that are essential to plant and animal growth.~~

~~18. "Medical waste combustor" means any device, incinerator, furnace, boiler or burner, and any and all appurtenances thereto, which burns or pyrolyzes medical waste consisting of human or animal tissues, medical cultures, human blood or blood products, materials contaminated with human blood or tissues, used or unused surgical wastes, used or unused sharps including hypodermic needles, suture needles, syringes and scalpel blades.~~

(15) "Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, esthetic or

other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(16) "Waters" means all accumulations of water, surface and underground, natural and artificial, public and private or parts thereof which are wholly or partially within, flow through or border upon this state except for private waters as defined in section 42-212, Idaho Code.

SECTION 6. That Section 39-104, Idaho Code, be, and the same is hereby amended to read as follows:

39-104. DEPARTMENT OF ~~HEALTH AND WELFARE~~ ENVIRONMENTAL QUALITY -- CREATION. ~~----ENVIRONMENTAL--PROTECTION--DIVISION------ADMINISTRATIVE REGIONS.~~ (1) There is created and established in the state government a department of ~~health and welfare~~ environmental quality 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 executive and administrative power of this department shall be vested in the director of the department who shall be appointed and serve at the pleasure of the governor, with the advice and consent of the senate.

(2) The department shall be organized ~~into an environmental--protection--division--and--into~~ in such ~~other~~ administrative ~~and general services~~ divisions or regions as may be necessary in order to efficiently administer the department. Each division shall be headed by an ~~division~~ administrator who shall be appointed by and serve at the pleasure of the director. ~~with the concurrence of the board.~~

(3) The INEEL coordinator-manager, r~~R~~egional administrators and ~~assistant~~ division administrators ~~in--the--environmental protection division~~ shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code.

(4) ~~In--order--to provide more effective and economical access to the state environmental, health, and social services by the people--of Idaho,--the governor is hereby authorized to establish substate administrative regions. In the designation of these regions--specific--consideration--shall--be given to the geographic and economic convenience of the citizens included therein. Each substate administrative--region shall--be--headed--by--a regional deputy who shall be appointed by and serve at the pleasure of the director--with--the--concurrence--of--the board~~ No provision of this title shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under section 3, article XV of the constitution of the state of Idaho and title 42, Idaho Code. Nothing in this title shall be construed to allow the department to establish a water right for minimum stream flows or a water right for minimum water levels in any lakes, reservoirs or impoundments. Minimum stream flows and minimum water levels may only be established pursuant to chapter 15, title 42, Idaho Code.

(5) Nothing in this title shall be construed to allow the department to establish or require minimum stream flows which would prevent any water from being diverted for irrigation purposes pursuant to existing water rights, or to establish or require minimum water levels in any lakes, reservoirs or impoundments in which any water is stored

for irrigation purposes which would adversely affect existing water rights or contracts with the federal government.

SECTION 7. That Section 39-104A, Idaho Code, be, and the same is hereby amended to read as follows:

39-104A. AUTHORITY TO MAKE RULES REGULATING LARGE SWINE AND POULTRY FEEDING OPERATIONS. (1) The state of Idaho is experiencing the development of large swine and poultry feeding operations which are inadequately controlled through existing state regulatory mechanisms. If not properly regulated, these facilities pose a threat to the state's surface and ground water resources. Due to existing rulemaking authority, the department ~~of health and welfare, division~~ of environmental quality, is in the best position of all state agencies to modify its present rules and to make new rules to develop an adequate regulatory framework for large swine and poultry feeding operations.

(2) The department of ~~health and welfare~~ environmental quality is authorized to modify its existing administrative rules and to make new rules regulating large swine and poultry feeding operations, as they shall be defined by the department. The department is authorized to work with the Idaho department of agriculture in the development of such rules.

SECTION 8. That Section 39-105, Idaho Code, be, and the same is hereby amended to read as follows:

39-105. POWERS AND DUTIES OF THE DIRECTOR. The director shall have the following powers and duties:

(1~~.~~) All of the rights, powers and duties ~~of the department of public health, the department of health, the board of health, and the air pollution control commission, are hereby transferred to the director of the department of health and welfare, provided, however, that rulemaking and hearing functions relating to environmental protection, public health and licensure and certification standards shall be vested in the board of health and welfare~~ regarding environmental protection functions vested in the department of health and welfare, and its director, administered by the division of environmental quality, including, but not limited to, those provided by chapters 1, 4, 30, 36, 44, 58, 62, 64, 65, 66, 70, 71, 72 and 74, title 39, Idaho Code. The director shall have all such powers and duties as described in this section as may have been or could have been exercised by his predecessors in law, ~~including the authority to adopt, promulgate, and enforce rules and regulations in those circumstances when the authority to adopt, promulgate, and enforce such rules and regulations is not vested in the board of health and welfare,~~ and shall be the successor in law to all contractual obligations entered into by ~~his~~ predecessors in law. All ~~rulemaking proceedings and~~ hearings of the director shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(2~~.~~) The director shall, pursuant and subject to the provisions of the Idaho Code, and the provisions of this act, formulate and recommend to the board, rules~~, regulations, codes and standards,~~ as may be necessary to deal with problems related to ~~personal health,~~ water

pollution, air pollution, ~~visual--pollution,--noise--abatement,~~ solid waste disposal, and licensure and certification requirements pertinent thereto, which shall, upon adoption by the board, have the force of the law relating to any purpose which may be necessary and feasible for enforcing the provisions of this act, including, but not limited to, the prevention, control or abatement of environmental pollution or degradation including radionuclides and ~~the-maintenance-and-protection of-personal~~ risks to public health related to any of the powers and duties described in this section. Any such ~~regulation-or-standard~~ rule may be of general application throughout the state or may be limited as to times, places, circumstances or conditions in order to make due allowance for variations therein.

(3~~.~~) The director, under the rules~~,-regulations,-codes-or-standards~~ adopted by the board, shall have the general supervision of the promotion and protection of the ~~life,-health,-mental-health-and~~ environment ~~of-the-people~~ of this state. The powers and duties of the director shall include, but not be limited to, the following:

(a~~.~~) The issuance of licenses and permits as prescribed by law and by the rules ~~and-regulations~~ of the board promulgated hereunder. For each air quality operating permit issued under title V of the federal clean air act and its implementing regulations, the director shall, consistent with the federal clean air act and its implementing regulations, expressly include a provision stating that compliance with the conditions of the permit shall be deemed compliance with the applicable requirements of the federal clean air act and the title V implementing regulations. The director may develop and issue general permits covering numerous similar sources, as authorized by 40 CFR 70.6(d) as may be amended, and as appropriate.

~~b.--The-supervision-and-administration--of--laboratories--and--the supervision--and-administration-of-standards-of-tests-for-environmental-pollution,-chemical-analyses-and-communicable-diseases.-The director-may-require--that--laboratories--operated--by--any--city, county,--institution,--person,--firm--or-corporation-for-health-or environmental-purposes-conform-to-standards-set-by-the-board.~~

~~c.--The-supervision-and-administration-of-a-mental-health-program, which-shall-include-services-for-the-evaluation,--screening,--custody-and-treatment-of-the-mentally-ill-and-those-persons-suffering from-a-mental-defect,-or-mental-defects.~~

~~d.--The--enforcement--of--minimum--standards-of-health,-safety-and sanitation-for-all-public-swimming-pools-within-the-state.~~

~~e.~~(b) The enforcement of ~~standards,~~ rules ~~and-regulations,~~ relating to public water supplies and to administer the drinking water loan ~~account~~ fund pursuant to chapter 76, title 39, Idaho Code, including making loans to eligible public drinking water systems as defined in the federal safe drinking water act as amended, and to comply with all requirements of the act, 42 U.S.C. 300f, et seq. and regulations promulgated pursuant to the act. This includes, but is not limited to, the adoption and implementation of an operator certification program; the development of and implementation of a capacity development strategy to ensure public drinking water systems have the technical, managerial and financial capability to comply with the national primary drinking water

regulations; and the enhancement of protection of source waters for public drinking water systems.

~~f.--The--supervision--and--administration--of-the-various-schools, hospitals-and-institutions-that-were--the--responsibility--of--the board-of-health-at-the-time-this-act-went-into-effect.~~

~~g.--The--supervision--and--administration-of-services-dealing-with the-problems-of-alcoholism-including,-but-not-limited-to,-the-care and-rehabilitation-of-persons-suffering-from-alcoholism.~~

~~h.~~(c) The establishment of liaison with other governmental departments, agencies and boards in order to effectively assist other governmental entities with the planning for the control of or abatement of environmental ~~and-health-problems~~ pollution. All of the rules~~,-regulations-and-standards~~ adopted by the board hereunder shall apply to state institutions.

~~i.--The-supervision-and-administration--of--an--emergency--medical service--program--including,--but--not-limited-to,-assisting-other governmental-agencies-and-local-governmental-units,--in--providing first-aid-emergency-medical-services-and-for-transportation-of-the sick-and-injured.~~

~~j.~~(d) The supervision and administration of a system to safeguard air quality and for limiting and controlling the emission of air contaminants.

~~k.~~(e) The supervision and administration of a system to safeguard the quality of the waters of this state including, but not limited to, the enforcement of ~~standards~~ rules relating to the discharge of effluent into the waters of this state and the storage, handling and transportation of solids, liquids, and gases which may cause or contribute to water pollution. For purposes of complying with the clean water act, the director may provide an exemption from additional reductions for those nonpoint sources that meet the applicable reductions set forth in an approved TMDL as defined in chapter 36, title 39, Idaho Code.

~~l.~~(f) The supervision and administration of administrative units whose responsibility shall be to assist and encourage counties, cities, other governmental units, and industries in the control of and/or abatement of environmental ~~and-health-problems~~ pollution.

~~m.~~(g) The administration of solid waste disposal site and design review in accordance with the provisions of chapter 74, title 39, Idaho Code, and chapter 4, title 39, Idaho Code, and in particular as follows:

(i~~.~~) The issuance of a solid waste disposal site certificate in the manner provided in chapter 74, title 39, Idaho Code.

(ii~~.~~) Provide review and approval regarding the design of solid waste disposal facilities and ground water monitoring systems and approval of all applications for flexible standards as provided in 40 CFR 258, in accordance with the provisions of chapter 74, title 39, Idaho Code.

(iii~~.~~) Cooperating and coordinating with operational monitoring of solid waste disposal sites by district health departments pursuant to authority established in chapters 4 and 74, title 39, Idaho Code.

(iv~~.~~) The authority granted to the director pursuant to pro-

visions of this subsection shall be effective upon enactment of chapter 74, title 39, Idaho Code, by the legislature.

(v~~.~~) The authority to develop and propose ~~regulations~~ rules as necessary to supplement details of compliance with the solid waste facilities act and applicable federal regulations, provided that such regulations shall not conflict with the provisions of this act nor shall such regulations be more strict than the requirements established in federal law or in the solid waste facilities act.

~~n.~~(h) The enforcement of all laws, rules, regulations, codes and standards relating to environmental protection and health.

~~o.--The-formulation-and-adoption-of-a-comprehensive-state-nutrient management--plan--for--the-surface-waters-of-the-state-of-Idaho-in consultation-with-the-appropriate-state-or-federal-agencies,-local units-of-government,-and-with-the-public-involvement--as--provided for--under--the--administrative-procedure-act.-The--director-shall recommend-by-March-1,-1990,-to-the-board-for-adoption,--rules--and regulations--setting-forth-procedures-for-development-of-the-plan, including-mechanisms-to-keep-the--public--informed--and--encourage public-participation-in-plan-development.~~

~~The--plan-shall-be-developed-on-a-hydrologic-basin-unit-basis with-a-lake-system-emphasis.-The-panhandle-hydrologic--basin--plan shall-be-completed-no-later-than-July-1,-1995.-The-remaining-basin plans--shall-be-completed-no-later-than-January-1,-1995.-Each-plan shall-identify-nutrient-sources;-the-dynamics-of-nutrient-removal, use,-and-dispersal;-and-preventative--or--remedial--actions--where feasible-and-necessary-to-protect-the-surface-waters-of-the-state. The--director-shall-formulate-and-recommend-to-the-board-for-adoption-rules-and-regulations-as-necessary-to-implement-the-plan.-The plan-shall-be-used-by-the-department-and-other--appropriate--agencies--including--soil--conservation--districts,-public-health-districts-and-local-units-of-government-in-developing---programs--for nutrient--management.--State--and--local-units-of-government-shall exercise-their-police-powers-in-compliance-with-the--comprehensive state-nutrient-management-plan-of-this-act.-Local-nutrient-management-programs-adopted-by-any-local-unit-of-government-prior-to-the completion--of-the-state-comprehensive-nutrient-management-plan-or a-hydrologic-basin-plan-shall-be-consistent-with-the-criteria--for inclusion--in--the-comprehensive-state-nutrient-management-plan-as enumerated-in-this-subsection,-as-evidenced-by-findings-of-fact-by the-local-units-of-government-and-confirmed--by--the--division--of environmental--quality--and--the--local-health-district-board.-The director-shall-recommend-by-March-1,-1990,-to-the-board-for--adoption,--rules--and--regulations-for-procedures-to-determine-consistency.~~

~~p.--The-formulation-of-a-water-quality-management-plan-for--Priest lake-in-conjunction-with-a-planning-team-from-the-Priest-lake-area whose--membership-shall-be-appointed-by-the-board-and-consist-of-a fair-representation-of-the-various-land--managers,--and--user--and interest--groups--of--the-lake-and-its-Idaho-watershed.-The-stated goal-of-the-plan-shall-be-to-maintain-the-existing--water--quality of--Priest--lake-while-continuing-existing-nonpoint-source-activities-in-the-watershed-and-providing-for-project-specific-best-man-~~

~~agement-practices-when-necessary.-The-plan-shall--include--comprehensive--characterization-of-lake-water-quality-through-completion of-a-baseline-monitoring-program-to-be-conducted-by-the-department and-shall-consider-existing-economics-and-nonpoint-source-activity dependent-industries-of-the-Priest-Lake-area.--The--planning--team shall--conduct--public-hearings-and-encourage-public-participation in-the-plan-development-including-opportunity--for--public--review and--input.--Technical--assistance-to-the-planning-team-with-state nonpoint-source-management-programs-in-forest-practices,-road-construction-and-maintenance,-agriculture-and-mining--shall--be--provided-by-the-department.-Technical-assistance-to-the-planning-team on--area--planning,--zoning-and-sanitary-regulations-shall-be-provided-by-the-clean-lakes-council.-The-plan-shall-be--submitted--to the--board--for--its--approval-at-the-end-of-a-three-(3)-year-plan development-period.-Upon-review-and-acceptance-by-the--board,--the plan-shall-be-submitted-to-the-legislature-for-amendment,-adoption or--rejection.--If--adopted--by-the-legislature,-the-plan-shall-be enacted-by-passage-of-a-statute-at-the-regular-legislative-session when-it-receives-the-plan-and-shall-have-the-force-and--effect--of law.--Existing--forest-practices,-agricultural-and-mining-nonpoint source-management-programs-are-considered-to-be-adequate--to--protect-water-quality-during-the-plan-development-period.~~

~~q.~~(i) The adoption and implementation of a public wastewater operator certification program to ensure the operators of public wastewater treatment facilities have the technical expertise and certification to comply with federal regulations and state rules dealing with wastewater; and the enhancement and protection of source waters of the state pursuant to rules of the board.

(4~~.~~) The director, when so designated by the governor, shall have the power to apply for, receive on behalf of the state, and utilize any federal aid, grants, gifts, gratuities, or moneys made available through the federal government including, but not limited to, the federal water pollution control act, for use in or by the state of Idaho in relation to health and environmental protection.

(5~~.~~) The director shall have the power to enter into and make contracts and agreements with any public agencies or municipal corporation for facilities, land, and equipment when such use will have a beneficial~~,~~ or recreational~~,-or-therapeutic~~ effect or be in the best interest in carrying out the duties imposed upon the department.

The director shall also have the power to enter into contracts for the expenditure of state matching funds for local purposes. This subsection will constitute the authority for public agencies or municipal corporations to enter into such contracts and expend money for the purposes delineated in such contracts.

(6~~.~~) The director is authorized to adopt an official seal to be used on appropriate occasions, in connection with the functions of the department or the board, and such seal shall be judicially noticed. Copies of any books, records, papers and other documents in the department shall be admitted in evidence equally with the originals thereof when authenticated under such seal.

SECTION 9. That Section 39-106, Idaho Code, be, and the same is hereby amended to read as follows:

39-106. DIRECTOR -- ADDITIONAL POWERS AND DUTIES -- TRANSFER AND CONTINUATION OF RULES AND OTHER PROCEEDINGS. (1~~.~~) The director shall exercise the following powers and duties in addition to all other powers and duties inherent in the position:

(a~~.~~) Prescribe such ~~rules and regulations~~ policies and procedures as may be necessary for the administration of the department, the conduct and duties of the employees, the orderly and efficient management of department business, and the custody, use and preservation of department records, papers, books and property belonging to the state.

(b~~.~~) Employ such personnel as may be deemed necessary, prescribe their duties and fix their compensation within the limits provided by the state personnel system law.

(c~~.~~) Administer oaths for all purposes required in the discharge of his duties.

(d~~.~~) Prescribe the qualifications of all personnel of the department on a nonpartisan merit basis, in accordance with the Idaho personnel system law, provided, however, that the administrators in charge of any division of the department~~, and the administrators in charge of the state veterans homes, state hospital north, state hospital south, and Idaho state school and hospital~~ shall serve at the pleasure of the director.

(e~~.~~) Create such units, sections and subdivisions as are or may be necessary for the proper and efficient functioning of the department.

~~2. All of the executive and administrative duties, powers and functions transferred to the administrator of the department of environmental and community services by chapter 87, Laws of 1973, are hereby transferred to the director of the department of health and welfare, who shall be the successor in law to all contractual obligations entered into by his predecessors in law.~~

~~3.~~(2) ~~All rights and title to property transferred to and vested in the department of environmental and community services by chapter 87, Laws of 1973, are hereby transferred to and vested in the department of health and welfare~~ All books, records, papers, documents, property, real and personal, unexpended appropriations and pending business in any way pertaining to the rights, powers and duties regarding environmental protection functions vested in the department of health and welfare and its director, administered by the division of environmental quality, are transferred to and vested in the department and its director. The department established by this act is empowered to acquire, by purchase or exchange, any property which in the judgment of the department is ~~not~~ needful for the operation of the facilities and programs for which it is responsible and to dispose of, by sale or exchange, any property which in the judgment of the department is not needful for the operation of the same.

~~4.~~(3) All ~~codes,~~ rules, ~~regulations,~~ standards, plans, licenses, permits~~, and certificates~~ consent orders, compliance schedules, certification, and other agreements pertaining to environmental protection functions administered by the division of environmental quality heretofore adopted or issued by the ~~board of environmental and community services, or the department of environmental and community services, pursuant to chapter 87, Laws of 1973,~~ department of health and welfare

and its director are transferred to the department of environmental quality and shall remain in full force and effect until superseded. ~~by rules,-regulations,-standards,-plans,-licenses,-permits--and--certificates--duly--adopted--or--issued--under-the-provisions-of-this-act~~ The terms "department" and "director" in such documents shall mean the department of environmental quality and its director, until such documents are amended.

(4) The department of environmental quality and its director shall be the successor to all rights, powers and duties of the department of health and welfare and its director regarding all rulemaking proceedings, administrative proceedings, contested cases, civil actions, contracts, delegations, authorizations and other matters pertaining to environmental protection functions.

SECTION 10. That Section 39-107, Idaho Code, be, and the same is hereby amended to read as follows:

39-107. BOARD -- COMPOSITION -- OFFICERS -- COMPENSATION -- POWERS -- SUBPOENA -- DEPOSITIONS -- REVIEW -- RULES.

(1~~.~~) (a) The board of ~~health-and--welfare~~ environmental quality shall consist of seven (7) members who shall be appointed by the governor, with the advice and consent of the senate. The members ~~may-be-removed-by~~ shall serve at the pleasure of the governor. ~~for cause.~~ Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector, and shall be appointed to assure appropriate geographic representation of the state of Idaho. Not more than four (4) members of the board shall be from any one (1) political party. ~~All~~ Two (2) members of the board shall be chosen with due regard to their knowledge and interest in ~~environmental--protection--and--health~~ solid waste; two (2) members shall be chosen for their knowledge of and interest in air quality; two (2) members shall be chosen for their knowledge of and interest in water quality; and one (1) member shall be chosen with due regard for his knowledge of and interest in air, water and solid waste issues.

(b) The members of the board of environmental quality shall be appointed for a term of four (4) years. In appointing members whose terms begin in 2000, the governor shall designate three (3) members to be appointed for a term of three (3) years, two (2) members appointed for a term of four (4) years, and two (2) members appointed for a term of two (2) years. Successors to the members appointed for a term of less than four (4) years shall be appointed for a term of four (4) years thereafter.

(2~~.~~) ~~The-members-of-the-board-of-environmental-and-community-services,--serving--on--the--effective-date-of-this-act-shall-continue-in office-as-members-of-the-board-of-health-and-welfare,-subject--to--the provisions-of-this-act.-Four-(4)-members-of-the-board-of-environmental and--community--services--shall-be-designated-by-the-governor-to-serve terms-on-the-board-of-health-and-welfare-expiring-on-the-first-Tuesday following-the-first-Monday-of-January,-1975.-The-remaining--three--(3) members--of--the--board--of-environmental-and-community-services-shall serve-terms-on-the-board-of-health-and-welfare-expiring-on--the--first Tuesday--following--the-first-Monday-of-January,-1977.-Thereafter,-all~~

~~members of the board of health and welfare shall serve four (4) year terms.~~

~~3.~~ The board annually shall elect a chairman, a ~~vice-chairman~~ vice chairman, and a secretary, and shall hold such meetings as may be necessary for the orderly conduct of its business, and such meetings shall be held from time to time on seventy-two (72) hours' notice of the chairman or a majority of the members. Five (5) members shall be necessary to constitute a quorum at any regular or special meeting and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided in section 59-509(h), Idaho Code.

~~4.~~(3) The board, 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 board 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 board, 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 board. The court, upon the petition of the board, 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 has not attended and testified or produced said papers before the board. 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 board and regularly served, the court shall thereupon order that said witness appear before the board 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.

~~5.~~(4) The director, his designee, or any party to the action may, in an investigation or hearing before the board, cause the deposition or interrogatory of witnesses or parties residing within or without the state, to be taken in the manner prescribed by law for like depositions and interrogatories in civil actions in the district court of this state, and to that end may compel the attendance of said witnesses and production of books, documents, papers and accounts.

~~6.~~(5) Any person aggrieved by an action or inaction of the department ~~of health and welfare~~ shall be afforded an opportunity for a fair hearing upon request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and the rules promulgated thereunder. In those cases where the board has been granted the authority to hold such a hearing pursuant to a provision of the Idaho Code, the hearing may be conducted by the board at a regular or special meeting, or the board may designate hearing officers, who shall have the power and authority to conduct hearings in the name of the board at any time and

place. In any hearing, a member of the board or hearing officer designated by it, shall have the power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter in the hearing.

~~7.~~(6) Any person adversely affected by a final determination of the board, may secure judicial review by filing a petition for review as prescribed under the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal.

~~8.~~(7) The board, by the affirmative vote of four (4) of its members, may adopt, amend or repeal the rules, codes, and standards of the department, that are necessary and feasible in order to carry out the purposes and provisions of this act and to enforce the laws of this state.

The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the environment ~~or the health~~ of the state.

~~9.~~(8) All ~~rule-making~~ rulemaking proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

~~10. All codes, rules and standards heretofore adopted by the department of public health, the board of health, and the air pollution control commission and board of environmental and community services, shall remain in full force and effect until superseded by rules and standards duly adopted by the board or until the same is rejected, amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code.~~

~~11. All of the powers and duties, rule making and hearing functions transferred to the board of environmental and community services in chapter 87, laws of 1973, are hereby transferred to the board of health and welfare.~~

(9) The board shall adopt contested case rules that are consistent with the rules adopted by the attorney general under section 67-5206(4), Idaho Code, the provisions of this act and other statutory authority of the department.

(10) All rules, permits and other actions heretofore adopted, issued or taken by the board of health and welfare pertaining to the environmental protection functions administered by the division of environmental quality shall remain in full force and effect until superseded.

(11) The board of environmental quality shall be the successor to all rights, powers and duties of the board of health and welfare regarding all rulemaking proceedings, administrative proceedings, contested cases, civil actions, contracts, delegations, authority and other matters pertaining to environmental protection functions administered by the division of environmental quality.

(12) Upon creation of the board of environmental quality, all pending business before the board of health and welfare relating to

environmental protection functions administered by the division of environmental quality shall be transferred to and determined by the board of environmental quality.

SECTION 11. That Section 39-107a, Idaho Code, be, and the same is hereby amended to read as follows:

39-107~~a~~A. REAL PROPERTY IN BUNKER HILL CLEANUP SITE. Notwithstanding any other provision of law to the contrary, the department ~~of health--and--welfare~~ may accept transfer from the United States of any real property or interest in real property acquired by the United States for remediation purposes concerning the Bunker Hill Superfund Site pursuant to 42 U.S.C. section 9604(j). The state of Idaho shall incur no liability nor be subject to any claims related to the existence, release or threatened release of any hazardous substance or contaminant or pollutant on, or from, any such real property. Any such real property which has a public use or commercial value and which is not useful or usable by the department ~~of health and welfare~~ shall be subject to sections 58-331 through 58-335, Idaho Code, except that any receipts from the disposal of such property shall be deposited in the Bunker Hill Cleanup Trust Fund established by the Trust Fund Declaration of the state of Idaho dated May 2, 1994 (Attachment N, Consent Decree, United States of America v. Asarco, Inc. No. CV-94-0206-N-HLR (D. Idaho)) for the purpose of funding institutional control or operation and maintenance activities regarding the site.

SECTION 12. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-107B, Idaho Code, and to read as follows:

39-107B. DEPARTMENT OF ENVIRONMENTAL QUALITY FUND. (1) There is hereby created a fund in the state treasury to be known as the department of environmental quality fund and all moneys deposited therein shall be available to be appropriated to the department of environmental quality for purposes for which the department was established.

(2) All federal grants, fees for services, permitting fees, other program income and transfers from other funds subject to administration by the director of the department of environmental quality shall be placed in the fund provided that the statewide accounting and reporting system must provide for identification of the balance of each funding source within the fund.

(3) The state controller shall make transfers to the fund from the general fund and any other funds appropriated to the department of environmental quality as requested by the director of the department and approved by the board of examiners.

SECTION 13. That Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 39-107C, Idaho Code, and to read as follows:

39-107C. ENVIRONMENTAL PROTECTION TRUST FUND ESTABLISHED. The

director of the department of environmental quality may receive on behalf of the department any moneys or real or personal property donated, bequeathed, devised or conditionally granted to the department. Moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in a special fund to be known as the environmental protection trust fund which is hereby established, reserved, set aside, appropriated and made available until expended and used and administered to carry out the terms and conditions of such donation, bequest, devise or grant. Pending such expenditure or use, surplus moneys in the environmental protection trust fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the environmental protection trust fund.

SECTION 14. That Section 39-3628, Idaho Code, be, and the same is hereby amended to read as follows:

39-3628. WATER POLLUTION CONTROL ~~ACCOUNT~~ FUND ESTABLISHED. There is hereby created and established in the state treasury a separate ~~account~~ fund to be known as the water pollution control ~~account~~ fund. The ~~account~~ fund shall have paid into it:

1. The moneys provided for in section ~~14-425~~ 63-3638, Idaho Code, that are paid over to the state treasurer shall be deposited to the credit of the water pollution control ~~account~~ fund, and not to the credit of the state general ~~account~~ fund;

2. All donations and grants from any source which may be used for the provisions of this act;

3. Any other funds which may hereafter be provided by law.

SECTION 15. 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~~ FUND -- PURPOSE OF CHAPTER. Moneys in the water pollution control ~~account~~ fund 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.~~(1) 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 drinking water system and sewage--treatment--plant operating personnel.~~

~~5.~~(2) To provide payments for contracts entered into pursuant to this chapter.

~~6.~~(3) To provide funds to capitalize the wastewater facility loan account established in section 39-3629, Idaho Code, including the required matching share of federal capitalization funds.

~~7.~~(4) 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.

(5) Pending such expenditure or use, surplus moneys in the water pollution control fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the water pollution control fund.

SECTION 16. That Section 39-108, Idaho Code, be, and the same is hereby amended to read as follows:

39-108. INVESTIGATION -- INSPECTION -- RIGHT OF ENTRY -- VIOLATION -- ENFORCEMENT -- PENALTY -- INJUNCTIONS. (1~~.~~) The director shall cause investigations to be made ~~upon the request of the board or~~ upon receipt of information concerning an alleged violation of this act or of any rule, ~~regulation,~~ permit or order promulgated thereunder, and may cause to be made such other investigations as the director shall deem advisable.

(2~~.~~) For the purpose of enforcing any provision of this chapter or any rule authorized in this chapter, the director or the director's designee shall have the authority to:

(a~~.~~) Conduct a program of continuing surveillance and of regular or periodic inspection of actual or potential ~~health~~ environmental hazards, air contamination sources, water pollution sources, ~~noise sources,~~ and of solid waste disposal sites;

(b~~.~~) Enter at all reasonable times upon any private or public property, upon presentation of appropriate credentials, for the purpose of inspecting or investigating to ascertain possible violations of this act or of rules, ~~regulations,~~ permits or orders adopted and promulgated by the director or the board;

(c~~.~~) All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and section 17, article I, of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or occupier or exigent circumstances such as a public health or environmental emergency;

(d~~.~~) Any district court in and for the county in which the subject property is located is authorized to issue a search warrant to the director upon a showing of (i) probable cause to suspect a violation, or (ii) the existence of a reasonable program of inspection. Any search warrant issued under the authority of this chapter shall be limited in scope to the specific purposes for which it is issued and shall state with specificity the manner and the scope of the search authorized.

(3~~.~~) Whenever the director determines that any person is in violation of any provision of this act or any rule, ~~regulation,~~ permit or order issued or promulgated pursuant to this act, the director may commence either of the following:

(a~~.~~) Administrative Enforcement Action.

(i~~.~~) Notice. The director may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the act, rule, regulation, permit or order which has been violated, and shall state the amount of civil penalty claimed for each violation. 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 receipt of the notice of violation by the person to whom it is directed.

(ii~~.~~) Scheduling compliance conference. 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 date of 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 paragraph (b~~.~~) of this subsection.

(iii~~.~~) Compliance conference. 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 damage caused by the alleged violation and assuring future compliance.

(iv~~.~~) Consent order. 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.

(v~~.~~) Effect of consent order. A 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 in this chapter.

(vi~~.~~) Failure to reach consent order. If the parties cannot reach agreement on 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 as per ~~subsection--a.ii.~~ paragraph (a)(ii) of this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection (b~~.~~) of this section.

(b~~.~~) Civil enforcement action. The director may initiate a civil enforcement action through the attorney general as provided in section 39-109, Idaho Code. 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 violated any provision of this act or any rule, ~~regulation,~~ permit or order which has become effective pursuant to this act. Such action may be brought to compel compliance with any provision of this act or with any rule, ~~regulation,~~ permit or order promulgated hereunder and for any relief or remedies authorized in this act. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

(4~~.~~) No civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, ~~regulation,~~ permit or order issued or promulgated pursuant to this chapter, more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation.

(5~~.~~) Monetary penalties.

(a) Any person determined in a civil enforcement action to have violated any provision of this act or any rule, ~~regulation,~~ permit or order promulgated pursuant to this act shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) per violation or one thousand dollars ($1,000) for each day of a continuing violation, whichever is greater or ten thousand dollars ($10,000) for each separate air violation and day of continuing air violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this act shall be paid into the general fund of the state. Parties to an administrative enforcement action may agree to a civil penalty as provided in this subsection.

(b) The imposition or computation of monetary penalties may take into account the seriousness of the violation, good faith efforts to comply with the law, and an enforceable commitment by the person against whom the penalty is directed to implement a supplemental environmental project. For purposes of this section, "supplemental environmental project" means a project which the person is not otherwise required to perform and which prevents pollution, reduces the amount of pollutants reaching the environment, contributes to public awareness of environmental matters, or enhances the quality of the environment. In evaluating a particular supplemental environmental project proposal, preference may be given to those projects with an environmental benefit which relates to the violation or the objectives of the underlying statute which was violated or which enhances the quality of the environment in the general geographic location where the violation occurred.

(6~~.~~) In addition to such civil penalties, any person who has been determined to have violated the provisions of this act or the rules, ~~regulations,~~ permits or orders promulgated thereunder, shall be liable for any expense incurred by the state in enforcing the act, or in enforcing or terminating any nuisance, source of environmental degradation, cause of sickness, or health hazard.

(7~~.~~) No action taken pursuant to the provisions of this act or of any other environmental protection ~~or health~~ law shall relieve any

person from any civil action and damages that may exist for injury or damage resulting from any violation of this act or of the rules, ~~regulations,~~ permits and orders promulgated thereunder.

(8~~.~~) In addition to, and notwithstanding other provisions of this act, in circumstances of emergency creating conditions of imminent and substantial danger to the public health or environment, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any discharge, emission or other activity in violation of provisions of this act or rules, ~~regulations,~~ permits and orders promulgated thereunder. In such action the court may issue an ex parte restraining order.

SECTION 17. That Section 39-109, Idaho Code, be, and the same is hereby amended to read as follows:

39-109. COMMENCEMENT OF CIVIL ENFORCEMENT ACTIONS -- CRIMINAL ACTIONS AUTHORIZED -- DUTIES OF ATTORNEY GENERAL. Upon request of ~~the board or~~ the director, it shall be the duty of the attorney general to institute and prosecute civil enforcement actions or injunctive actions as provided in section 39-108, Idaho Code, and to prosecute actions or proceedings for the enforcement of any criminal provisions of this chapter. In addition, when deemed by the director to be necessary, the director may retain or employ private counsel. 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.

SECTION 18. That Section 39-110, Idaho Code, be, and the same is hereby amended to read as follows:

39-110. REGISTRATION OF PERSONS ENGAGED IN OPERATIONS OR CONSTRUCTION WHERE AIR POLLUTION IS A FACTOR -- REPORTS. The director ~~or board~~ may require the registration of persons engaged in operations which may result in air pollution, and of persons causing, permitting or allowing construction of any facility or new equipment capable of emitting air contaminants into the atmosphere, or designed to eliminate or reduce emissions into the atmosphere, and the filing of reports by them with the department relating to locations, size of outlet, height of outlet, rate and period of emission and composition of effluent, and such other information as the director ~~or board~~ shall prescribe relative to air pollution.

SECTION 19. That Section 39-111, Idaho Code, be, and the same is hereby amended to read as follows:

39-111. AVAILABILITY OF RECORDS. Any records or other information furnished to the board, 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 20. That Section 39-112, Idaho Code, be, and the same is hereby amended to read as follows:

39-112. EMERGENCY -- ORDER -- HEARING -- MODIFICATION, AFFIRMANCE, OR SETTING ASIDE. (1) Any other provision of law to the contrary notwithstanding, if the ~~board~~ director finds that a generalized condition of air pollution exists and that it creates an imminent and substantial endangerment to the public health or welfare constituting an emergency requiring immediate action to protect human health or safety, the ~~board~~ director, with the concurrence of the governor as to the existence of such an emergency shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a time and place, not later than twenty-four (24) hours thereafter, for a hearing to be held before the ~~board~~ director. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the ~~board~~ director shall affirm, modify or set aside its order.

(2) In the absence of a generalized condition of air pollution of the type referred to in subsection (1) of this section, if the ~~board~~ director finds that emissions from the operation of one (1) or more air contaminant sources is causing imminent and substantial danger to human health or safety ~~it~~ the director may bring suit through the attorney general in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such civil action, the director may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately without regard to other provisions of this act. In such event, the requirements for hearing and affirmance, modification or setting aside of an order set forth in subsection (1) of this section shall apply. For purposes of subsections (1) and (2) of this section, imminent and substantial endangerment or danger shall be interpreted no more broadly than these words are interpreted under section 303 of the clean air act, 42 USC 7603.

(3) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

SECTION 21. That Section 39-113, Idaho Code, be, and the same is hereby amended to read as follows:

39-113. ~~RIGHTS--OF-TRANSFERRED~~ TRANSFER OF EMPLOYEES. ~~UNDER-GROUP PLANS-UNAFFECTED. The-provisions-of-this--act~~ All employees of the division of environmental quality and the INEEL oversight program of the department of health and welfare are transferred to the department of environmental quality. Such transfer shall in no manner affect ~~their~~ the rights or privileges of any transferred employee ~~transferred~~ under the public employees retirement system (chapter 13, title 59, Idaho Code), the group insurance plan (chapter 12, title 59, Idaho Code), or personnel system (chapter 53, title 67, Idaho Code). Additionally, when the department of health and welfare is used in terms

of environmental protection, it shall mean the department of environmental quality.

SECTION 22. That Section 39-114, Idaho Code, be, and the same is hereby repealed.

SECTION 23. That Section 39-115, Idaho Code, be, and the same is hereby amended to read as follows:

39-115. POLLUTION SOURCE PERMITS.

(1) (a) The director shall have the authority to issue pollution source permits in compliance with ~~the regulations~~ rules established ~~by the board of health and welfare~~ hereunder.

(b) The ~~board~~ director shall develop and recommend to the board for adoption through rulemaking, criteria ~~through rule making by November 15, 1993,~~ to determine insignificant activities and such sources or modification with emissions at or below the ~~deminimis~~ de minimis level which shall not require either a permit to construct or a permit to operate; provided however, that a registration of the activities or sources may be required.

(2) The director shall have the authority to sue in competent courts to enjoin any threatened or continuing:

(a) Violations of pollution source permits or conditions thereof without the necessity of a prior revocation of the permit; or

(b) Construction of an industrial or commercial air pollution source without a permit required under this chapter or ~~regulations adopted by the board~~ rules adopted hereunder.

(3) The department is authorized to charge and collect a fee for processing applications for industrial or commercial air pollution source permits in accordance with a fee schedule established by the board pursuant to this chapter. For fees charged for operating permits under title V of the federal clean air act amendments of 1990, the department shall not charge a fee on any hazardous air pollutant other than those listed under section 112 of the federal clean air act. The fee schedule shall be structured to provide an incentive for emission reduction.

(4) The director may issue air emission source permits to construct a facility to incinerate any waste or waste item contaminated with polychlorinated biphenyls (PCBs) only if the director finds:

(a) The facility will not be sited in complex valley terrain where the valley floor is less than five (5) miles wide and the valley walls rise more than one thousand (1,000) feet;

(b) The facility has complied with local planning and zoning requirements;

(c) There has been an opportunity for public participation; and

(d) The facility will employ best available technology and instrumentation.

Subsection (4) of this section shall not apply to incineration activities existing on or before January 1, 1987.

SECTION 24. That Section 39-116, Idaho Code, be, and the same is hereby amended to read as follows:

39-116. COMPLIANCE SCHEDULES. The director shall have the authority to ~~prepare for board approval~~ issue compliance schedule orders to any person who is the source of any health hazard, air contaminant, water pollution~~,~~ or solid waste ~~or noise~~ for which regulatory standards have been established, including regulatory standards then in effect or to become effective at a future date or at future successive dates. The purpose of any compliance schedule order shall be to identify and establish appropriate acts and time schedules for interim actions by those persons who are or who will be affected by regulatory standards, such acts and schedules being designed to assure timely compliance by those affected by the regulatory standards. Prior to the issuance of a compliance schedule order, t~~T~~he director shall solicit the cooperation of the person to whom the compliance schedule order will be directed ~~in the selection of the~~ by providing the person notice that identifies with reasonable specificity the applicable statutes and rules, the events or occurrences that necessitate the order, and the proposed terms of ~~such~~ the order and that informs the person that a conference with the director to discuss the proposed terms of the order shall be provided if requested within fifteen (15) days of receipt of the notice. If requested, the director shall confer with the person and shall solicit the person's cooperation in the selection of the terms of the order. The compliance schedule order may be issued at any time after the conference, if one is requested, and the expiration of sixty (60) days following the receipt of the notice. Any compliance schedule order ~~when affirmed by the board shall become a final order~~ be enforceable in the same manner as any order entered pursuant to section 39-108, Idaho Code, except the order may be challenged by an administrative appeal to the board as provided in section 39-107(5), Idaho Code. The order shall be effective and enforceable during an administrative appeal, unless the board or its designated hearing officer issues a stay of the order.

SECTION 25. That Section 39-118, Idaho Code, be, and the same is hereby amended to read as follows:

39-118. REVIEW OF PLANS. (1~~.~~) Except as provided for dairy systems pursuant to section 37-401, Idaho Code, all plans and specifications for the construction of new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities, public water supply systems or public water treatment systems or for modification or expansion to existing sewage treatment plants or systems, waste treatment or disposal facilities, public water supply systems or public water treatment systems, shall be submitted to and approved by the ~~department of health and welfare~~ director before construction may begin, and all construction shall be in compliance therewith. No deviation shall be made from the approved plans and specifications without the prior approval of the ~~department~~ director. Within thirty (30) days of the completion of construction, alteration, or modification of any new sewage systems, sewage treatment plants or systems, other waste treatment or disposal facilities, public water supply systems or public water treatment systems, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed must be submitted to the ~~department of health and welfare~~

director. If construction does not deviate from the original plans previously submitted for approval, a statement to that effect shall be filed with the ~~department~~ director.

(2~~.~~) All plans and specifications submitted to satisfy the requirements of this section shall conform in style and quality to regularly accepted engineering standards. Except with respect to plans and specifications for facilities addressed in subsection (3~~.~~) of this section, and confined animal feeding operations, the board may require that certain types of plans and specifications must be certified by registered professional engineers. If the ~~department~~ director determines that any particular facility or category of facilities will produce no significant impact on the environment or on the public health, the ~~department~~ director shall be authorized to waive the submittal or approval requirement for that facility or category of facilities.

(3~~.~~) All plans and specifications for the construction, modification, expansion, or alteration of waste treatment or disposal facilities for aquaculture facilities licensed by the department of agriculture for both commercial fish propagation facilities as defined in section 22-4601, Idaho Code, and sport fish propagation facilities whether private or operated or licensed by the department of fish and game and other aquaculture facilities as defined in the Idaho waste management guidelines for aquaculture operations, shall be submitted to and approved by the ~~department of health and welfare~~ director of the department of environmental quality before construction may begin and all construction shall be in compliance therewith. The ~~department~~ director shall review plans and specifications within forty-five (45) days of submittal and notify the owner or responsible party of approval or disapproval. In the event of disapproval the ~~department~~ director shall provide reasons for disapproval in writing to the owner or responsible party. Plans and specifications shall conform in style and quality to standard industry practices and guidelines developed pursuant to this subsection. The director shall establish industry guidelines or best management practices subcommittees composed of members of the department, specific regulatory agencies for the industry, general public, and persons involved in the industry to develop and update guidelines or best management practices as needed. Within thirty (30) days of the completion of the construction, modification, expansion or alteration of facilities subject to this subsection, the owner or responsible party shall submit a statement to the ~~department~~ director that the construction has been completed and is in substantial compliance with the plans and specifications as submitted and approved. The ~~department~~ director shall conduct an inspection within sixty (60) days of the date of submission of the statement and shall inform the owner or responsible party of its approval of the construction or in the event of nonapproval, the reasons for nonapproval.

SECTION 26. That Section 39-118D, Idaho Code, be, and the same is hereby amended to read as follows:

39-118D. IDAHO AIR QUALITY PERMITTING ~~ACCOUNT~~ FUND. (1) All moneys received from fees collected from the pollution sources requiring permitting under title V of the federal clean air act amendments of 1990 shall be forwarded to the ~~division of environmental quality~~

~~of the~~ department of ~~health--and--welfare~~ environmental quality and shall be paid into the Idaho air quality permitting ~~account~~ fund which is hereby created in the office of the state treasurer.

(2) Such moneys and all interest earned thereon shall be kept in the Idaho air quality permitting ~~account~~ fund and shall be expended for the technical, legal and administrative support necessary for implementing the operating permit program required under title V of the federal clean air act amendments of 1990.

(3) All salaries, costs and expenses incurred by the ~~division~~ department of environmental quality in performing the duties and the exercise of its powers in carrying out the operating permit program required under title V of the federal clean air act amendments of 1990 shall be paid out of the air quality permitting ~~account~~ fund.

SECTION 27. That Section 39-119, Idaho Code, be, and the same is hereby amended to read as follows:

39-119. COLLECTION OF FEES FOR SERVICES. The department of ~~health and--welfare~~ environmental quality is hereby authorized to charge and collect reasonable fees, established by standards formulated by the ~~board of health and welfare~~ director and approved by the board through rulemaking, for any service rendered by the department. ~~The fee may be determined by a sliding scale according to income or available assets. The department is hereby authorized to require information concerning the total income and assets of each person receiving services in order to determine the amount of fee to be charged.~~

SECTION 28. That Section 39-120, Idaho Code, be, and the same is hereby amended to read as follows:

39-120. DEPARTMENT OF ~~HEALTH--AND WELFARE~~ ENVIRONMENTAL QUALITY PRIMARY ADMINISTRATIVE AGENCY -- AGENCY RESPONSIBILITIES. (1~~.~~) The department of ~~health and welfare~~ environmental quality is designated as the primary agency to coordinate and administer ground water quality protection programs for the state.

(2~~.~~) Recognizing that the department of water resources has the responsibility to maintain the natural resource geographic information system for the state and is the collector of baseline data for the state's water resources, that the department of ~~health and welfare~~ environmental quality has the responsibility for collecting and monitoring data for water quality management purposes and that the department of agriculture is responsible for regulating the use of pesticides and fertilizers and for licensing applicators, the department of ~~health and welfare~~ environmental quality, the department of water resources and the department of agriculture ~~in coordination with the ground water quality council~~ shall:

(a~~.~~) Develop a ground water monitoring plan, concurrently with the development of a ground water quality plan, for development and administration of a comprehensive ground water quality monitoring network, including point of use, point of contamination and problem assessment monitoring sites across the state and the assessment of ambient ground water quality utilizing, to the greatest degree possible, collection and coordination of existing

data sources.

~~b.--Prepare an annual report during the life of the council detailing the number and concentration of contaminants detected in ground water by location.~~

~~c.~~(b) Establish a system or systems within state departments and political subdivisions of the state for collecting, evaluating and disseminating ground water quality data and information.

~~d.~~(c) Develop and maintain a natural resource geographic information system and comprehensive water resource data system. The system shall be accessible to the public.

(3~~.~~) The responsible state departments or boards~~, after consultation with the ground water quality council,~~ should adopt rules which specify the general standards for determining actions necessary to prevent ground water contamination and cleanup actions necessary to meet the goals of the state.

(4~~.~~) The ~~board--of health and welfare~~ director of the department of environmental quality may ~~adopt, by rule, after--consultation--with the ground water quality council~~ develop and recommend for approval by the board through rulemaking, ambient ground water quality standards for contaminants for which the administrator of the United States environmental protection agency has established drinking water maximum contaminant levels. The ~~board,--after--consultation with the ground water quality council, may adopt by rule such~~ director may develop and recommend for approval by the board, through rulemaking, ground water quality standards for contaminants for which the administrator of the United States environmental protection agency has not established drinking water maximum contaminant levels. However, the existence of such standards, or the lack of them, should not be construed or utilized in derogation of the ground water quality protection goal and protection policies of the state.

(5~~.~~) The departments of ~~health and welfare~~ environmental quality, water resources and agriculture should take actions necessary to promote and assure public confidence and public awareness of ground water quality protection. In pursuing this goal, the departments and public health districts should make public the results of investigations concerning ground water quality subject to the restrictions contained in section 39-111, Idaho Code.

SECTION 29. That Section 39-121, Idaho Code, be, and the same is hereby amended to read as follows:

39-121. DEFINITIONS. As used in section 39-102, Idaho Code, and in sections 39-120 through 39-127, Idaho Code:

(1~~.~~) "Cleanup" means removal, treatment or isolation of a contaminant from ground water through the directed efforts of humans or the removal or treatment of a contaminant in ground water through management practice or the construction of barriers, trenches and other similar facilities for prevention of contamination, as well as the use of natural processes such as ground water recharge, natural decay and chemical or biological decomposition.

(2~~.~~) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance which does not occur naturally in ground water or which naturally occurs at

a lower concentration.

(3~~.~~) "Contamination" means the direct or indirect introduction into ground water of any contaminant caused in whole or in part by human activities.

(4~~.~~) ~~"Council" or "ground water quality council" means the ground water quality council created in section 39-122, Idaho Code.~~

~~5.~~ "Ground water" means any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.

(5) "Ground water quality plan" or "ground water quality protection plan" means the Idaho ground water quality plan adopted by the legislature in section 1, chapter 310, laws of 1992, and in section 1, chapter 273, laws of 1995.

SECTION 30. That Sections 39-122, 39-123, 39-124 and 39-125, Idaho Code, be, and the same are hereby repealed.

SECTION 31. That Section 39-126, Idaho Code, be, and the same is hereby amended to read as follows:

39-126. DUTIES OF STATE AND LOCAL UNITS OF GOVERNMENT. (1~~.~~) All state agencies shall incorporate the adopted ground water quality protection plan in the administration of their programs and shall have such additional authority to promulgate rules ~~and regulations~~ to protect ground water quality as necessary to administer such programs which shall be in conformity with the ground water quality protection plan. Cities, counties and other political subdivisions of the state shall incorporate the ground water quality protection plan in their programs and are also authorized and encouraged to implement ground water quality protection policies within their respective jurisdictions, provided that the implementation is consistent with and not preempted by the laws of the state, the ground water quality protection plan and any rules ~~or regulations~~ promulgated thereunder. All state agencies, cities, counties and other political subdivisions shall cooperate with ~~the ground water quality council,~~ the department of ~~health and welfare~~ environmental quality, the department of agriculture and the department of water resources in disseminating public information and education materials concerning the use and protection of ground water quality, in collecting ground water quality management data, and in conducting research on technologies to prevent or remedy contamination of ground water.

(2~~.~~) Notwithstanding any other provision of law to the contrary, except as provided in subsection (3) of this section, whenever a state agency, city, county or other political subdivision of the state issues a permit or license which deals with the environment, the entity issuing the permit or license shall take into account the effect the permitted or licensed activity will have on the ground water quality of the state and it may attach conditions to the permit or license in order to mitigate potential or actual adverse effects from the permitted or licensed activity on the ground water quality of the state. Nothing contained in this section shall authorize a state agency, city, county or other political subdivision of the state to issue or require a permit or license which it is not otherwise allowed

by law to issue or require.

(3~~.~~) Except as otherwise provided by the ground water quality protection plan, if a permit or license which deals with the environment is required to be obtained from a state agency and that agency considers the effect of the permitted or licensed activity on ground water quality, after notice to other units of government which may otherwise have regulatory authority over the activity which is the subject of the permit or license, a city, county or other political subdivision of the state shall not prohibit, limit or otherwise condition the rights of the permittee or licensee under the permit or license on account of the effect the permitted or licensed activity may have on ground water quality.

Nothing contained in this section shall be deemed to permit cities, counties or other political subdivisions of the state to regulate ground water quality with respect to any activity for which another statute or other statutes may have expressly or impliedly preempted such local ground water quality regulation.

SECTION 32. That Section 39-129, Idaho Code, be, and the same is hereby amended to read as follows:

39-129. APPLICABILITY -- DEFINITION OF LOCAL GOVERNMENT AND MANDATES -- AUTHORIZATION FOR LOCAL GOVERNMENT AGREEMENTS -- ADOPTION OF RULES -- ESTABLISHMENT OF SCHEDULES -- PRIORITY OF CONSIDERATIONS -- REPORT AND RECOMMENDATIONS. (1) The provisions of this section shall apply to local governments providing drinking water, municipal waste disposal, municipal sewage or waste water disposal or treatment, or air pollution abatement, which can demonstrate to the satisfaction of the department that increasing and cumulative regulatory requirements applicable to such services cannot be met in a timely and reasonable manner. The provisions of the section do not apply where prohibited by federal or state laws or regulations for the protection of human health and the environment.

(2) For purposes of this section the term "local government" means the government of a county or incorporated city, and the term "federal mandates" means those requirements arising from federal statutes or subsequent regulations administered by the United States environmental protection agency.

(3) The department is hereby authorized to enter into agreements with local governments. The agreement may include a binding schedule enforceable under this chapter for the improvement, modification, construction, or other actions, necessary in order for the local government to come into compliance as expeditiously as practicable with human health and environmental protection statutes and rules stemming from federal mandates.

(4) The department may propose, and the board adopt, rules necessary for the implementation of this section.

(5) In establishing any local government agreement schedule, the term of the agreement shall not exceed fifteen (15) years, although successive agreements may be entered into. All agreements must be signed by the director or his designee and the mayor of the city or county commissioners of the county, as appropriate. All agreements are enforceable as orders under the provisions of this chapter.

(6) Agreements and schedules entered into under this act shall take into account, in descending priority the:

(a) Protection of public health;

(b) Protection of the environment;

(c) Current tax structure and rates as compared to other local governments~~.~~;

(d) Ability of the local government to pay for costs of compliance;

(e) Current fiscal obligations of the local government;

(f) Other factors as determined by the department or the board.

~~(7)--The department is directed to conduct a study in--cooperation with local governments, with emphasis on smaller cities, of cumulative public--health and environmental mandates imposed by the United States environmental protection agency. The department shall provide a--written--and--oral--report--to the 1995 regular session of the legislature describing methods and results of the study,--along--with--recommendations--as--to--how cumulative public health and environmental mandates may be implemented so as to most efficiently and--practically--protect human health and the environment within the capabilities of local government.--The emphasis of the study shall be to investigate and report on:~~

~~(a)--The fiscal impacts of cumulative mandates;~~

~~(b)--The relative public health and environmental protection--priorities;~~

~~(c)--The--optimum content and structure of local government agreements;~~

~~(d)--The methods, current and proposed, available to local government for meeting the requirements of federal mandates--most--efficiently taking into account local public health, environmental and fiscal considerations.~~

SECTION 33. That Section 39-414, Idaho Code, be, and the same is hereby amended to read as follows:

39-414. POWERS AND DUTIES OF DISTRICT BOARD. The district board of health shall have and may exercise the following powers and duties:

(1) To administer and enforce all state and district health laws, regulations, and standards.

(2) To do all things required for the preservation and protection of the public health and preventive health, and such other things delegated by the director of the state department of health and welfare or the director of the department of environmental quality and this shall be authority for the director(s) to so delegate.

(3) To determine the location of its main office and to determine the location, if any, of branch offices.

(4) To enter into contracts with any other governmental or public agency whereby the district board agrees to render services to or for such agency in exchange for a charge reasonably calculated to cover the cost of rendering such service. This authority is to be limited to services voluntarily rendered and voluntarily received and shall not apply to services required by statute, rule, and regulations, or standards promulgated pursuant to this act or chapter 1, title 39, Idaho Code.

(5) All moneys or payment received or collected by gift, grant, devise, or any other way shall be deposited to the respective division or subaccount of the public health district in the public health district fund authorized by section 39-422, Idaho Code.

(6) To establish a fiscal control policy required by the state controller.

(7) To cooperate with the state board ~~and~~ of health and welfare, the department of health and welfare, the board of environmental quality and the department of environmental quality.

(8) To enter into contracts with other governmental agencies, and this act hereby authorizes such other agencies to enter into contracts with the health district, as may be deemed necessary to fulfill the duties imposed upon the district in providing for the health of the citizens within the district.

(9) To purchase, exchange or sell real property and construct, rent, or lease such buildings as may be required for the accomplishment of the duties imposed upon the district and to further obtain such other personal property as may be necessary to its functions.

(10) To accept, receive and utilize any gifts, grants, or funds and personal and real property that may be donated to it for the fulfillment of the purposes outlined in this act.

(11) To establish a charge whereby the board agrees to render services to or for entities other than governmental or public agencies for an amount reasonably calculated to cover the cost of rendering such service.

(12) To enter into a lease of real or personal property as lessor or lessee, or other transaction with the Idaho health facilities authority for a term not to exceed ninety-nine (99) years upon a determination by the district board that the real or personal property to be leased is necessary for the purposes of the district, and to pledge nontax revenues of the district to secure the district's obligations under such leases.

(13) To administer and certify solid waste disposal site operations, closure, and post closure procedures established by statute or regulation in accordance with provisions of chapter 74, title 39, Idaho Code, in a manner equivalent to the site certification process set forth in section 39-7408, Idaho Code.

(14) To select a board member to serve as trustee on the board of trustees of the Idaho district boards of health.

SECTION 34. That Section 39-417, Idaho Code, be, and the same is hereby amended to read as follows:

39-417. HEARINGS BY DISTRICT BOARD -- OATHS -- WITNESSES -- SUBPOENAS. (1) Any person, association, public or private agency, corporation, or the district director alleging a violation of this act, the rules ~~and regulations~~ promulgated thereunder, or any matter within the jurisdiction of the district board, or any alleged violator thereof, may, pursuant to the provisions of chapter 52, title 67, Idaho Code, and the rules ~~and--regulations~~ promulgated thereunder by the state board of health and welfare or the board of environmental quality, seek a hearing before the district board and/or such other relief or remedy as is provided or available.

(2) The hearings herein provided may be conducted by the district board or by its designated agent and in either case the district board or its agent shall have the same powers and authority set out in subsection (~~4~~3) of section 39-107, Idaho Code. The provisions of this section shall not apply to the internal administrative affairs of the district board or department nor to its subordinate sections and units.

SECTION 35. That Section 39-419, Idaho Code, be, and the same is hereby amended to read as follows:

39-419. VIOLATION OF PUBLIC HEALTH LAWS -- MISDEMEANOR -- CIVIL LIABILITY FOR EXPENSE. (1) It shall be unlawful for any person, association, or corporation, and the officers thereof to ~~wilfully~~ willfully violate, disobey, or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, rule, regulation, or ordinance issued pursuant thereto; or

(2) Any person, association, or corporation, or the officers thereof, violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars ($300), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment. In addition to fine and imprisonment, any person, association or corporation, or the officers thereof, found to be in violation of this act or the rules ~~and regulations~~ promulgated thereunder shall be liable for any expense incurred by the district board of health in enforcing this act, or in removing or terminating any nuisance, source of filth, cause of sickness, or health hazard. Conviction under the penalty provisions of this act or any other health law or rules ~~and regulations~~ promulgated thereunder shall not relieve any person from any civil action in damages that may exist for any injury resulting from any violation of the public health laws or rules ~~and--regulations~~ promulgated by the district board of health.

(3) A violator of any law~~,~~ or rule ~~or--regulation~~ within the jurisdiction of the district shall be liable in an amount not in excess of the limits prescribed in ~~subsection 5.--of~~ section 39-108, Idaho Code. The district board may seek recovery by commencing an action in the district court of the county wherein the violation occurred. Amounts recovered shall be deposited as required by the provisions of section 39-414(5), Idaho Code.

SECTION 36. That Section 42-202B, Idaho Code, be, and the same is hereby amended to read as follows:

42-202B. DEFINITIONS. Whenever used in this chapter, the term:

(1) "Consumptive use" means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use does not include any water that falls as precipitation directly on the place of use unless the precipitation is captured, controlled and used under an appurtenant water

right.

(2) "Municipality" means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution.

(3) "Municipal provider" means:

(a) ~~a~~A municipality that provides water for municipal purposes to its residents and other users within its service area;

(b) ~~a~~Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or

(c) ~~a~~A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(1~~5~~0), Idaho Code.

(4) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

(5) "Planning horizon" refers to the length of time that the department determines is reasonable for a municipal provider to hold water rights to meet reasonably anticipated future needs. The length of the planning horizon may vary according to the needs of the particular municipal provider.

(6) "Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans.

(7) "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

SECTION 37. That Section 57-1701, Idaho Code, be, and the same is hereby amended to read as follows:

57-1701. CREATION OF CENTRAL CANCER REGISTRY FUND -- PURPOSE.

There is hereby created and established in the state treasury a fund to be known as the "central cancer registry fund" to which shall be deposited the revenues derived from the tax imposed in section 63-2506, Idaho Code. All moneys now or hereafter in the central cancer registry fund are hereby dedicated for the purpose of contracting for and obtaining the services of a continuous registry of all cancer patients in the state of Idaho and maintaining cooperative exchange of information with other states providing similar cancer registry. The ~~state board~~ department of health and welfare~~,--created--in--section 39-107,--Idaho--Code,~~ is charged with the administration of this fund for the purposes specified herein. The amount of money credited to the central cancer registry fund from the tax imposed in section 63-2506, Idaho Code, shall not exceed the distribution provided in section 63-2520(b)(3), Idaho Code, and the current fiscal year's appropriation, and any moneys in excess thereof derived from this tax shall be credited to the general fund. All claims against the fund shall be examined, audited and allowed in the manner now or hereafter provided by law for claims against the state of Idaho.

SECTION 38. That Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 10, Title 56, Idaho Code, and to read as follows:

CHAPTER 10
DEPARTMENT OF HEALTH AND WELFARE

56-1001. DEFINITIONS. Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Board" means the board of health and welfare as created in section 56-1005, Idaho Code.

(2) "Department" means the department of health and welfare.

(3) "Director" means the director of the department of health and welfare.

(4) "Laboratory" means not only facilities for biological, serological, biophysical, cytological and pathological tests, but also facilities for the chemical or other examination of materials from water, air or other substances.

(5) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties.

(6) "Public swimming pool" means an artificial structure, and its appurtenances, which contains water more than two (2) feet deep which is used or intended to be used for swimming or recreational bathing, and which is for the use of any segment of the public pursuant to a general invitation but not an invitation to a specific occasion or occasions.

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

(8) "Substantive" means that which creates, defines or regulates the rights of any person or implements, interprets or prescribes law or policy, but does not include statements concerning only the inter-

nal management of the department and not affecting private rights or procedures available to the public.

56-1002. DEPARTMENT OF HEALTH AND WELFARE -- CREATION -- ADMINISTRATIVE REGIONS. (1) There is created and established in the state government a department of health and welfare 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 executive and administrative power of this department shall be vested in the director of the department who shall be appointed by and serve at the pleasure of the governor, with the advice and consent of the senate.

(2) The department shall be organized into such administrative and general services divisions as may be necessary in order to efficiently administer the department. Each division shall be headed by a division administrator who shall be appointed by and serve at the pleasure of the director with the concurrence of the board.

(3) In order to provide more effective and economical access to the state health and social services by the people of Idaho, the governor is hereby authorized to establish substate administrative regions. In the designation of these regions specific consideration shall be given to the geographic and economic convenience of the citizens included therein. Each substate administrative region shall be headed by a regional director who shall be appointed by and serve at the pleasure of the director with the concurrence of the board.

56-1003. POWERS AND DUTIES OF THE DIRECTOR. The director shall have the following powers and duties:

(1) All of the powers and duties of the department of public health, the department of health, the board of health and all nonenvironmental protection duties of the department of health and welfare are hereby vested to the director of the department of health and welfare. Provided however, that rulemaking and hearing functions relating to public health and licensure and certification standards shall be vested in the board of health and welfare. The director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law, including the authority to adopt, promulgate, and enforce rules in those circumstances when the authority to adopt, promulgate, and enforce such rules is not vested in the board of health and welfare, and shall be the successor in law to all contractual obligations entered into by predecessors in law. All rulemaking proceedings and hearings of the director shall be governed by the provisions of chapter 52, title 67, Idaho Code.

(2) The director shall, pursuant and subject to the provisions of the Idaho Code, and the provisions of this chapter, formulate and recommend to the board rules, codes and standards, as may be necessary to deal with problems related to personal health, and licensure and certification requirements pertinent thereto, which shall, upon adoption by the board, have the force of law relating to any purpose which may be necessary and feasible for enforcing the provisions of this chapter including, but not limited to, the maintenance and protection of personal health. Any such rule or standard may be of general application throughout the state or may be limited as to times, places, circum-

stances or conditions in order to make due allowance for variations therein.

(3) The director, under the rules, codes or standards adopted by him, shall have the general supervision of the promotion and protection of the life, health and mental health of the people of this state. The powers and duties of the director shall include, but not be limited to, the following:

(a) The issuance of licenses and permits as prescribed by law and by the rules of the board;

(b) The supervision and administration of laboratories and the supervision and administration of standards of tests for environmental pollution, chemical analyses and communicable diseases. The director may require that laboratories operated by any city, county, institution, person, firm or corporation for health or environmental purposes conform to standards set by the board of health and welfare and the board of environmental quality;

(c) The supervision and administration of a mental health program, which shall include services for the evaluation, screening, custody and treatment of the mentally ill and those persons suffering from a mental defect, or mental defects;

(d) The enforcement of minimum standards of health, safety and sanitation for all public swimming pools within the state;

(e) The supervision and administration of the various schools, hospitals and institutions that were the responsibility of the board of health;

(f) The supervision and administration of services dealing with the problems of alcoholism including, but not limited to, the care and rehabilitation of persons suffering from alcoholism;

(g) The establishment of liaison with other governmental departments, agencies and boards in order to effectively assist other governmental entities with the planning for the control of or abatement of health problems. All of the rules and standards adopted by the board shall apply to state institutions;

(h) The supervision and administration of an emergency medical service program including, but not limited to, assisting other governmental agencies and local governmental units, in providing first aid emergency medical services and for transportation of the sick and injured;

(i) The supervision and administration of administrative units whose responsibility shall be to assist and encourage counties, cities, other governmental units, and industries in the control of and/or abatement of health problems;

(j) The enforcement of all laws, rules, codes and standards relating to health.

(4) The director, when so designated by the governor, shall have the power to apply for, receive on behalf of the state, and utilize any federal aid, grants, gifts, gratuities, or moneys made available through the federal government.

(5) The director shall have the power to enter into and make contracts and agreements with any public agencies or municipal corporations for facilities, land, and equipment when such use will have a beneficial, recreational, or therapeutic effect or be in the best interest in carrying out the duties imposed upon the department.

The director shall also have the power to enter into contracts for the expenditure of state matching funds for local purposes. This subsection will constitute the authority for public agencies or municipal corporations to enter into such contracts and expend money for the purposes delineated in such contracts.

(6) The director is authorized to adopt an official seal to be used on appropriate occasions, in connection with the functions of the department or the board, and such seal shall be judicially noticed. Copies of any books, records, papers and other documents in the department shall be admitted in evidence equally with the originals thereof when authenticated under such seal.

56-1004. DIRECTOR -- ADDITIONAL POWERS AND DUTIES. (1) The director shall exercise the following powers and duties in addition to all other powers and duties inherent in the position:

(a) Prescribe such rules as may be necessary for the administration of the department, the conduct and duties of the employees, the orderly and efficient management of department business, and the custody, use and preservation of department records, papers, books and property belonging to the state;

(b) Employ such personnel as may be deemed necessary, prescribe their duties and fix their compensation within the limits provided by the state personnel system law;

(c) Administer oaths for all purposes required in the discharge of his duties;

(d) Prescribe the qualifications of all personnel of the department on a nonpartisan merit basis, in accordance with the Idaho personnel system law, provided however, that the administrators in charge of any division of the department, and the administrators in charge of the state veterans homes, state hospital north, state hospital south, and Idaho state school and hospital shall serve at the pleasure of the director;

(e) Create such units, sections and subdivisions as are or may be necessary for the proper and efficient functioning of the department.

(2) The department is empowered to acquire, by purchase, lease or exchange, any property which in the judgment of the department is needful for the operation of the facilities and programs for which it is responsible and to dispose of, by sale, lease or exchange, any property which in the judgment of the department is not needful for the operation of the same.

56-1005. BOARD -- COMPOSITION -- OFFICERS -- COMPENSATION -- POWERS -- SUBPOENA -- DEPOSITIONS -- REVIEW -- RULES. (1) The board of health and welfare shall consist of seven (7) members who shall be appointed by the governor, with the advice and consent of the senate. The members may be removed by the governor for cause. Each member of the board shall be a citizen of the United States, a resident of the state of Idaho, and a qualified elector. Not more than four (4) members of the board shall be from any one (1) political party. All members of the board shall be chosen with due regard to their knowledge and interest in health and social services.

(2) The members of the board of health and welfare, serving on

the effective date of this act shall continue in office as members of the board of health and welfare. All members of the board of health and welfare shall serve four (4) year terms.

(3) The board annually shall elect a chairman, a vice chairman, and a secretary, and shall hold such meetings as may be necessary for the orderly conduct of its business, and such meetings shall be held from time to time on seventy-two (72) hours' notice of the chairman or a majority of the members. Five (5) members shall be necessary to constitute a quorum at any regular or special meeting and the action of the majority of members present shall be the action of the board. The members of the board shall be compensated as provided in section 59-509(h), Idaho Code.

(4) The board, 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 board 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 board, 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 board. The court, upon the petition of the board, 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 has not attended and testified or produced said papers before the board. 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 board and regularly served, the court shall thereupon order that said witness appear before the board 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.

(5) The director, his designee, or any party to the action may, in an investigation or hearing before the board, cause the deposition or interrogatory of witnesses or parties residing within or without the state, to be taken in the manner prescribed by law for like depositions and interrogatories in civil actions in the district court of this state, and to that end may compel the attendance of said witnesses and production of books, documents, papers and accounts.

(6) Any person aggrieved by an action or inaction of the department of health and welfare shall be afforded an opportunity for a fair hearing upon request therefor in writing pursuant to chapter 52, title 67, Idaho Code, and the rules promulgated thereunder. In those cases where the board has been granted the authority to hold such a hearing pursuant to a provision of the Idaho Code, the hearing may be conducted by the board at a regular or special meeting, or the board may designate hearing officers, who shall have the power and authority to

conduct hearings in the name of the board at any time and place. In any hearing, a member of the board or hearing officer designated by it, shall have the power to administer oaths, examine witnesses, and issue in the name of the board subpoenas requiring the testimony of witnesses and the production of evidence relevant to any matter in the hearing.

(7) Any person adversely affected by a final determination of the board, may secure judicial review by filing a petition for review as prescribed under the provisions of chapter 52, title 67, Idaho Code. The petition for review shall be served upon the chairman of the board, the director of the department, and upon the attorney general of the state of Idaho. Such service shall be jurisdictional and the provisions of this section shall be the exclusive procedure for appeal.

(8) The board, by the affirmative vote of four (4) of its members, may adopt, amend or repeal the rules, codes, and standards of the department, that are necessary and feasible in order to carry out the purposes and provisions of this act and to enforce the laws of this state.

The rules and orders so adopted and established shall have the force and effect of law and may deal with any matters deemed necessary and feasible for protecting the health of the state.

(9) All rulemaking proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code.

56-1006. TITLE SUPERSEDED. Except with respect to environmental protection functions, wherever the words "board of health" appear in the Idaho Code, they shall mean the board of health and welfare, and wherever the words "administrator of health" appear in the Idaho Code, they shall mean the director of the department of health and welfare, and wherever the words "department of health" appear in the Idaho Code, they shall mean the department of health and welfare.

56-1007. COLLECTION OF FEES FOR SERVICES. The department of health and welfare is hereby authorized to charge and collect reasonable fees, established by rule, for any service rendered by the department. The fee may be determined by a sliding scale according to income or available assets. The department is hereby authorized to require information concerning the total income and assets of each person receiving services in order to determine the amount of the fee to be charged.

56-1008. CRIMINAL VIOLATION -- PENALTY. Any person who willfully or negligently violates any of the provisions of the public health laws or the terms of any lawful notice, order, permit, standard, or rule issued pursuant thereto, shall be guilty of a misdemeanor.

SECTION 39. (1) This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.

(2) Notwithstanding any other provisions of Chapter 52, Title 67, Idaho Code, the Administrative Rules Coordinator shall redesignate all

references to the Division of Environmental Quality which appear in the master rule database maintained by the coordinator, to the Department of Environmental Quality without further republication or promulgation, to comply with the provisions of this act. Until such time as a republication of a rule occurs, any reference in a rule to the Division of Environmental Quality shall mean the Department of Environmental Quality.

Approved March 31, 2000.

CHAPTER 133
(S.B. No. 1394)

AN ACT

RELATING TO THE FREE EXERCISE OF RELIGION; PROVIDING LEGISLATIVE INTENT; AMENDING TITLE 73, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 4, TITLE 73, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE THAT THE FREE EXERCISE OF RELIGION IS PROTECTED, TO PROVIDE APPLICABILITY AND TO PROVIDE SEVERABILITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. LEGISLATIVE INTENT. The Legislature finds that:

(1) The Constitution of the State of Idaho recognizes the free exercise of religion.

(2) Laws that are facially neutral toward religion, as well as laws intended to interfere with religious exercise, may burden religious exercise.

(3) Governments should not substantially burden religious exercise without compelling justification.

(4) This state has independent authority to protect the free exercise of religion by principles that are separate from, complementary to and more expansive than the first amendment of the United States Constitution.

(5) Under its police power, the Legislature may establish statutory protections that codify and supplement rights guaranteed by the Constitution of the State of Idaho.

(6) The compelling interest test, as set forth in the federal cases of Wisconsin v. Yoder, (1972) and Sherbert v. Verner, 374 U.S. 398, (1963) is a workable test for striking sensible balances between religious liberty and competing government interests.

SECTION 2. That Title 73, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 4, Title 73, Idaho Code, and to read as follows:

CHAPTER 4
FREE EXERCISE OF RELIGION PROTECTED

73-401. DEFINITIONS. As used in this chapter unless the context otherwise requires:

(1) "Demonstrates" means meets the burdens of going forward with evidence, and persuasion under the standard of clear and convincing evidence.

(2) "Exercise of religion" means the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

(3) "Government" includes this state and any agency or political subdivision of this state.

(4) "Political subdivision" includes any county, city, school district, taxing district, municipal corporation, or agency of a county, city, school district, or municipal corporation.

(5) "Substantially burden" means to inhibit or curtail religiously motivated practices.

73-402. FREE EXERCISE OF RELIGION PROTECTED. (1) Free exercise of religion is a fundamental right that applies in this state, even if laws, rules or other government actions are facially neutral.

(2) Except as provided in subsection (3) of this section, government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability.

(3) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both:

(a) Essential to further a compelling governmental interest;

(b) The least restrictive means of furthering that compelling governmental interest.

(4) A person whose religious exercise is burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. A party who prevails in any action to enforce this chapter against a government shall recover attorney's fees and costs.

(5) In this section, the term "substantially burden" is intended solely to ensure that this chapter is not triggered by trivial, technical or de minimis infractions.

73-403. APPLICABILITY. (1) This chapter applies to all state laws and local ordinances and the implementation of those laws and ordinances, whether statutory or otherwise, and whether enacted or adopted before, on or after the effective date of this chapter.

(2) State laws that are enacted or adopted on or after the effective date of this chapter are subject to this chapter unless the law explicitly excludes application by reference to this chapter.

(3) This chapter shall not be construed to authorize any government to burden any religious belief.

73-404. SEVERABILITY. 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 that can be given effect without the invalid provision or application and to this end the provisions of this act are severable.

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 31, 2000.

CHAPTER 134
(H.B. No. 804)

AN ACT

RELATING TO THE FREE EXERCISE OF RELIGION; AMENDING SECTION 3, AS ADDED BY SENATE BILL NO. 1394, ENACTED BY THE SECOND REGULAR SESSION OF THE FIFTY-FIFTH IDAHO LEGISLATURE, TO PROVIDE A REVISED EFFECTIVE DATE.

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

SECTION 1. That Section 3, as added by Senate Bill No. 1394, enacted by the Second Regular Session of the Fifty-fifth Idaho Legislature, be, and the same is hereby amended to read as follows:

SECTION 3. ~~An--emergency--existing--therefor,-which-emergency-is hereby-declared-to-exist,-t~~This act shall be in full force and effect on and after ~~its-passage-and-approval~~ February 1, 2001.

Approved March 31, 2000.

CHAPTER 135
(H.B. No. 530)

AN ACT

RELATING TO THE HOUSING OF STATE PRISONERS; AMENDING SECTION 20-237A, IDAHO CODE, TO INCREASE THE PER DAY COST FOR HOUSING SENTENCED STATE PRISONERS AND TO PROVIDE FOR LEGISLATIVE REVIEW REGARDING THE COSTS OF HOUSING STATE PRISONERS IN COUNTY JAILS BEGINNING IN 2004.

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

SECTION 1. That Section 20-237A, Idaho Code, be, and the same is hereby amended to read as follows:

20-237A. FUNDING PER DIEM COSTS OF STATE PRISONERS HOUSED IN COUNTY JAILS, RELATED ADDITIONAL EXPENSES AND MANNER OF PAYMENT. (a) The board of correction shall pay each county for housing prisoners convicted, sentenced and committed to the custody of the state board of correction, beginning on the day after receipt by the director of notice that a person is in custody, as provided in section 20-237, Idaho Code.

(b) The state board of correction shall pay counties housing state sentenced prisoners a minimum rate of ~~thirty-five~~ forty dollars ($35~~40~~.00) per day, per inmate. Nothing stated herein will prohibit the state board of correction from entering into a contract with a county pursuant to section 20-241, Idaho Code.

(c) In addition to payment of per diem costs as above provided, the state board of correction shall pay for all ordinary and necessary medical and dental expenses of state prisoners housed in county jails.

(d) As between themselves, the state board of correction and each of the counties will be responsible for their pro rata share of any property damages or personal injuries arising from the housing of state sentenced prisoners, which is attributable to their respective negligence or otherwise wrongful conduct. This provision shall not alter or affect any immunities or exceptions to governmental liability the state or counties may possess as to private persons pursuant to the Idaho tort claims act, sections 6-901, et seq., Idaho Code.

(e) The legislature shall appropriate sufficient funds annually to the department of correction to make all payments to counties as required in this section.

(f) The county sheriffs shall bill the department of correction at least every sixty (60) days. The department of correction shall pay such bills within sixty (60) days of their receipt.

(g) The germane committees of the legislature shall review the costs of housing inmates in county jails every three (3) years beginning in 2004.

Approved April 3, 2000.

CHAPTER 136
(S.B. No. 1523, As Amended in the House)

AN ACT

RELATING TO DOMESTIC VIOLENCE; AMENDING SECTION 39-6303, IDAHO CODE, TO INCLUDE DOMESTIC VIOLENCE AGAINST A MINOR CHILD BY A PERSON WITH WHOM THE MINOR CHILD IS HAVING A DATING RELATIONSHIP WITHIN THE PURVIEW OF THE SECTION AND TO DEFINE "DATING RELATIONSHIP"; AMENDING SECTION 39-6304, IDAHO CODE, TO SPECIFY THAT A CUSTODIAL OR NONCUSTODIAL PARENT OR GUARDIAN OF THE MINOR CHILD MAY FILE A PETITION FOR A PROTECTIVE ORDER ON BEHALF OF THE MINOR CHILD AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1602, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING LEGISLATIVE INTENT.

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

SECTION 1. That Section 39-6303, Idaho Code, be, and the same is hereby amended to read as follows:

39-6303. DEFINITIONS. (1) "Domestic violence" means the physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member, or of a minor child by a person with whom

the minor child has had or is having a dating relationship.

(2) "Dating relationship," for the purposes of this chapter, is defined as a social relationship of a romantic nature. Factors that the court may consider in making this determination include:

(a) The nature of the relationship;

(b) The length of time the relationship has existed;

(c) The frequency of interaction between the parties; and

(d) The time since termination of the relationship, if applicable.

(3) "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who reside or have resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(~~3~~4) "Family dwelling" is any premises in which the petitioner resides.

(~~4~~5) "Judicial day" means any day upon which court business may be transacted as provided in sections 1-1606 and 1-1607, Idaho Code.

(~~5~~6) "Protection order" means any order issued for the purpose of preventing violent or threatening acts or acts of harassment against, or contact or communication with, or physical proximity to, another person, where the order was issued:

(a) Pursuant to this chapter;

(b) In another jurisdiction pursuant to a provision similar to section 39-6306, Idaho Code; or

(c) In any criminal or civil action, as a temporary or final order (other than a support or child custody order), and where the order was issued in a response to a criminal complaint, petition or motion filed by or on behalf of a person seeking protection, and issued after giving notice and an opportunity to respond to the person being restrained.

SECTION 2. That Section 39-6304, Idaho Code, be, and the same is hereby amended to read as follows:

39-6304. ACTION FOR PROTECTION. (1) There shall exist an action known as a "petition for a protection order" in cases of domestic violence.

(2) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the magistrates division of the district court, alleging that the person or a family or household member, whether an adult or a child, is the victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter. A custodial or noncustodial parent or guardian may file a petition on behalf of a minor child who is the victim of domestic violence.

(3) A person's right to petition for relief under this chapter shall not be affected by that person's having left the residence or household to avoid abuse.

(4) The petition shall disclose the existence of any custody or any marital annulment, dissolution or separation proceedings pending between the parties, the existence of any other custody order affecting the children of the parties, and the existence of child protection or adoption proceedings affecting the children of any party.

(5) When the petitioner requests custody of any child, the petition shall disclose:

(a) The county and state where the child has resided for six (6) months immediately prior to the filing of the petition;

(b) The party or other responsible person with whom the child is presently residing; and

(c) The party or other responsible person with whom the child has resided for six (6) months immediately prior to the filing of the petition.

(6) A petition shall be filed in the county of the respondent's residence, the petitioner's residence, or where the petitioner is temporarily residing.

SECTION 3. That Section 16-1602, Idaho Code, be, and the same is hereby amended to read as follows:

16-1602. DEFINITIONS. For purposes of this chapter:

(a) "Abused" means any case in which a child has been the victim of:

(1) Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence; or

(2) Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child's health or welfare or mental injury to the child.

(b) "Abandoned" means the failure of the parent to maintain a normal parental relationship with his child~~,~~ including, but not limited to, reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment.

(c) "Adjudicatory hearing" means a hearing to determine the truth of the allegations in the petition filed under this chapter.

(d) "Authorized agency" means the department, a local agency, a person, an organization, corporation, benevolent society or association licensed or approved by the department or the court to receive children for control, care, maintenance or placement.

(e) "Child" means an individual who is under the age of eighteen (18) years.

(f) "Child advocate coordinator" means a person or entity receiving moneys from the grant administrator for the purpose of carrying out any of the duties as set forth in section 16-1630, Idaho Code.

(g) "Circumstances of the child" includes, but is not limited to, the joint legal custody or joint physical custody of the child.

(h) "Commit" means to transfer legal and physical custody.

(i) "Court" means district court or magistrate's division thereof, or if the context requires, a magistrate or judge thereof.

(j) "Custodian" means a person, other than a parent or legal guardian, to whom legal or joint legal custody of the child has been given by court order or who is acting in loco parentis.

(k) "Department" means the department of health and welfare and its authorized representatives.

(l) "Disposition hearing" means a hearing to determine whether the best interests of the child require protective supervision or vesting legal custody of the child in an authorized agency.

(m) "Family or household member" shall have the same meaning as in section 39-6303(~~2~~3), Idaho Code.

(n) "Grant administrator" means any such organization or agency as may be designated by the supreme court from time to time to administer funds from the guardian ad litem account in accordance with the provisions of this chapter.

(o) "Guardian ad litem" means a person appointed by the court pursuant to a guardian ad litem volunteer program to act as special advocate for a child under this chapter.

(p) "Guardian ad litem program" means the program to recruit, train and coordinate volunteer persons to serve as guardians ad litem for abused, neglected or abandoned children.

(q) "Law enforcement agency" means a city police department, the prosecuting attorney of any county, state law enforcement officers, or the office of a sheriff of any county.

(r) "Legal custody" means a relationship created by order of the court, which vests in a custodian the following duties and rights:

(1) To have physical custody and control of the child, and to determine where and with whom the child shall live.

(2) To supply the child with food, clothing, shelter and incidental necessities.

(3) To provide the child with care, education and discipline.

(4) To authorize ordinary medical, dental, psychiatric, psychological, or other remedial care and treatment for the child, including care and treatment in a facility with a program of services for children; and to authorize surgery if the surgery is deemed by two (2) physicians licensed to practice in this state to be necessary for the child.

(5) Where the parents share legal custody, the custodian may be vested with the custody previously held by either or both parents.

(s) "Mental injury" means a substantial impairment in the intellectual or psychological ability of a child to function within a normal range of performance and/or behavior, for short or long terms.

(t) "Neglected" means a child:

(1) Who is without proper parental care and control, or subsistence, education, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; provided, however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment, shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but further provided this subsection shall not prevent the court from acting pursuant to section 16-1616, Idaho Code; or

(2) Whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity; or

(3) Who has been placed for care or adoption in violation of law.

(u) "Protective order" means an order created by the court granting relief as delineated in section 39-6306, Idaho Code, and shall be for a period not to exceed three (3) months unless otherwise stated herein. Failure to comply with the order shall be a misdemeanor.

(v) "Protective supervision" means a legal status created by court order in neglect and abuse cases whereby the child is permitted to remain in his home under supervision by the department.

(w) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parents after the transfer of legal custody~~;~~ including, but not necessarily limited to, the right of visitation, consent to adoption, the right to determine religious affiliation, the right to family counseling when beneficial, and the responsibility for support.

(x) "Shelter care" means places designated by the department for temporary care of children pending court disposition or placement.

SECTION 4. In enacting this legislation it is the intent of the Legislature to recognize the rights of parents to provide protection for their minor children. No other intent is expressed or implied.

Approved April 3, 2000.

CHAPTER 137
(H.B. No. 393)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1366, IDAHO CODE, TO REPLACE AN OBSOLETE CITATION TO THE JOB TRAINING PARTNERSHIP ACT WITH THE CORRECT CITATION TO THE WORKFORCE INVESTMENT ACT, TO CLARIFY THAT SUBSECTION TWELVE ONLY APPLIES TO CLAIMANTS WHO WILLFULLY MADE A FALSE STATEMENT OR WILLFULLY FAILED TO REPORT A MATERIAL FACT IN ORDER TO OBTAIN BENEFITS AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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:

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

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

(3) The claimant shall have met the minimum wage requirements in his base period as provided in section 72-1367, Idaho Code.

(4) During the whole of any week with respect to which he claims benefits or credit to his waiting period, the claimant was able to work, available for suitable work, and seeking work; provided, however, that no claimant shall be considered ineligible 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 during such illness or disability, the claimant does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of the claimant's weekly benefit amount; or (ii) the claimant, 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.

(5) 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.

(6) 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 and accept work at a lower rate of pay.

(7) In determining whether or not work is suitable for an individual, the degree of risk involved to his health, safety, morals, 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 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:

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

(b) If the wages, hours, or other conditions of the work offered are below those prevailing for similar work in the locality of the work offered;

(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.

(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 (4) and (6) of this section, if:

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

(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.

(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 fol-

lowing criteria:

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

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

(9) No claimant who is otherwise eligible shall be denied benefits under subsection (5) of this section for leaving employment to attend job training pursuant to subsection (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.

(10) A 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:

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

(b) The claimant does not belong to a grade or class of workers with members employed at the premises at which the labor dispute occurs, who are participating in or directly interested in the dispute.

(11) A 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 benefits under an unemployment 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 insurance law of the United States.

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

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

(14) A claimant who has been found ineligible for benefits under the provisions of subsection (5), (6), (7) or (9) of this section 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.

(15) Benefits based on service in employment defined in sections 72-1349A and 72-1352(3), Idaho Code, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this act.

(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 shall be deemed to be in such capacity.

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

(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.

(16) No claimant is eligible to receive benefits in two (2) successive benefit years unless, after the beginning of the first benefit year during which he received benefits, he performed service and earned an amount equal to not less than six (6) times the weekly benefit amount established during the first benefit year.

(17) (a) Benefits 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 who performs such services in the first academic year (or term) and has a contract to perform services in any such capacity for any educational institution in the second academic year or term, or has been given reasonable assurance that such a contract will be offered.

(b) Benefits 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 the individual performs such services in the first school year or term, and there is a contract or reasonable assurance that the individual will perform such services in the second school year or term. If benefits are denied to any individual under this subparagraph and the individual was not offered an opportunity to perform such services for the educational institution for the second academic year or term, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this clause.

(c) With respect to any services described in paragraphs (a) and (b) 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 the individual performed the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance the individual will perform such services in the period immediately following such vacation period or holiday recess.

(d) With respect to any services described in paragraphs (a) and (b) of this subsection, benefits shall not be payable on the basis of services in any capacities specified in paragraphs (a), (b) and (c) 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 entity which is established and operated exclusively for the purpose of providing such services to one (1) or more educational institutions.

(18) Benefits shall not be payable on the basis of services which substantially consist of participating in sports or athletic events or training or preparing to participate, for any week which commences during the period between two (2) successive sport seasons (or similar periods) if the individual performed services in the first season (or similar period) and there is a reasonable assurance that the individual will perform such services in the later of such season (or similar period).

(19) (a) Benefits shall not be payable on the basis of services performed by an alien unless the alien 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 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 immigration and nationality act).

(b) Any data or information required of individuals applying for benefits to determine eligibility under this subsection shall be uniformly required from all applicants for benefits.

(c) A decision to deny benefits under this subsection must be based on a preponderance of the evidence.

(20) An 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 must participate in those reemployment services unless:

(a) The individual has completed such services; or

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

(21) (a) A claimant:

(i) Who has been assigned to work for one (1) or more customers of a staffing service; and

(ii) Who, at the time of hire by the staffing service, signed a written notice informing him that completion or termination of an assignment for a customer would not, of

itself, terminate the employment relationship with the staffing service;

will not be considered unemployed upon completion or termination of an assignment until such time as he contacts the staffing service to determine if further suitable work is available. If the claimant:

(A) Contacts the staffing service and refuses a suitable work assignment that is offered to him at that time, he will be considered to have voluntarily quit that employment; or

(B) Contacts the staffing service and the service does not have a suitable work assignment for him, he will be considered unemployed due to a lack of work; or

(C) Accepts new employment without first contacting the staffing service for additional work, he will be considered to have voluntarily quit employment with the staffing service.

(b) For the purposes of this subsection, the term "staffing service" means any person who assigns individuals to work for its customers and includes, but is not limited to, professional employers, as defined in chapter 24, title 44, Idaho Code, and the employers of temporary employees as defined in section 44-2403(7), Idaho Code.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 138
(H.B. No. 423)

AN ACT

RELATING TO THE COMMISSIONERS ON UNIFORM LAWS; AMENDING SECTION 67-1701, IDAHO CODE, TO PROVIDE FOR AN ADDITIONAL COMMISSIONER; PROVIDING FOR THE FIRST TERM OF THE ADDITIONAL COMMISSIONER; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-1701, Idaho Code, be, and the same is hereby amended to read as follows:

67-1701. APPOINTMENT OF COMMISSIONERS -- QUALIFICATIONS -- VACANCIES. The governor shall appoint ~~three~~ four (~~3~~4) commissioners, each of whom shall be a member of the bar of this state, in good standing, who shall constitute and be known as the commission on uniform state laws, and upon the death, resignation or refusal to serve of any of the commissioners so appointed, the governor shall make an appointment to fill the vacancy so caused, such new appointment to be for the unexpired balance of the term of the original appointee. The commis-

sion shall be within the office of the secretary of state.

SECTION 2. The first term of the additional commissioner shall expire on September 30, 2001, coincident with the expiration of the terms of the existing commissioners.

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 April 3, 2000.

CHAPTER 139
(H.B. No. 424, As Amended)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-502, IDAHO CODE, TO REDEFINE "JUVENILE OFFENDER" TO INCLUDE A JUVENILE CONFINED BY THE DEPARTMENT IN A COMMUNITY-BASED FACILITY, TO REVISE THE DEFINITION OF "SECURE FACILITY" AND TO ADD A DEFINITION OF "STAFF SECURE FACILITY"; AMENDING SECTION 20-504, IDAHO CODE, TO AUTHORIZE PLACEMENT OF OFFENDERS COMMITTED TO THE DEPARTMENT IN COMMUNITY-BASED PROGRAMS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 20-502, Idaho Code, be, and the same is hereby amended to read as follows:

20-502. DEFINITIONS. When used in this chapter, unless the context otherwise requires:

(1) "Adult" means a person eighteen (18) years of age or older.

(2) "Commit" means to transfer legal custody.

(3) "Community-based program" means an in-home confinement program or a nonsecure or staff secure residential or nonresidential program operated to supervise and provide competency development to juvenile offenders in the least restrictive setting, consistent with public safety, operated by the state or under contract with the state or by the county.

(4) "Court" means any district court within the state of Idaho, or magistrate's division thereof.

(5) "Department" means the state department of juvenile corrections.

(6) "Detention" means the temporary placement of juveniles who require secure custody for their own or the community's protection in physically restricting facilities.

(7) "Detention center" means a facility established pursuant to sections 20-517 and 20-518, Idaho Code.

(8) "Director" means the director of the department of juvenile corrections.

(9) "Diversion" means the utilization of local community

resources, churches, counseling for the juvenile and/or family, substance abuse counseling, informal probation, community service work, voluntary restitution, or any other available service or program as an alternative to the filing of a petition with the juvenile court.

(10) "Judge" means a district judge or a magistrate.

(11) "Juvenile" means a person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of this chapter.

(12) "Juvenile corrections center" means any state-operated secure facility wherever located.

(13) "Juvenile offender" means a person under the age of eighteen (18), committed by the court to the custody, care and jurisdiction of the department for confinement in a secure or community-based facility following adjudication for a delinquent act which would constitute a felony or misdemeanor if committed by an adult.

(14) "Legal custody" means the relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care.

(15) "Legal guardian" means a person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender.

(16) "Observation and assessment program" means any state-operated or purchased service program responsible for temporary custody of juvenile offenders for observation and assessment.

(17) "Secure facility" means any architecturally secure state-operated facility or facility operated under contract with the state which provides twenty-four (24) hour supervision and confinement for juvenile offenders committed to the custody of the department.

(18) "Staff secure facility" means a residential facility with awake staff twenty-four (24) hours a day, seven (7) days a week for intensive supervision of juveniles.

(19) "Work program" means a public service work project which employs juvenile offenders at a reasonable wage for the purpose of reimbursing victims of the juvenile offender's delinquent behavior.

SECTION 2. That Section 20-504, Idaho Code, be, and the same is hereby amended to read as follows:

20-504. DUTIES OF THE DEPARTMENT OF JUVENILE CORRECTIONS. (1) The department shall have jurisdiction over all juveniles committed to it pursuant to chapter 5, title 20, Idaho Code.

(2) The department is responsible for all juvenile offenders committed to it by the courts of this state for confinement. The department shall also establish minimum standards for detention, care and certification of approved detention facilities based upon such standards.

(3) The department shall establish and administer all secure residential facilities including all state juvenile corrections centers.

(4) The department shall make all decisions regarding placement of juvenile offenders committed to it in the most appropriate program for supervision and treatment.

(5) The department shall establish an observation and assessment process for juvenile offenders committed to it by a court.

(6) The department shall establish liaison services with the counties.

(7) The department may establish and operate work programs designed to employ juvenile offenders in public service work projects for the purpose of reimbursing victims of the juvenile offender's delinquent behavior.

(8) The department is hereby authorized and may place juveniles committed to it pursuant to this chapter in a community-based program, on a ranch, in a forestry camp or similar facility for care and for work, if possible; provided, that the person, agency or association operating the facility has been approved and has otherwise complied with all applicable state and local laws. A juvenile placed in a forestry camp or similar facility may be required to work on fire prevention, forestation and reforestation, recreational works, forest roads and on other works on or off the grounds of such facility and may be paid wages.

(9) The department shall establish minimum standards for the operation of all private residential and nonresidential facilities and programs which provide services to juvenile offenders. The standards shall be no more stringent than standards imposed for facilities operated by the department or for detention facilities operated by counties.

(10) The department shall assist counties in establishing meaningful programs for juveniles who either have been found to come under the purview of this chapter or who have had their case informally diverted pursuant to section 20-511, Idaho Code, and who have not been committed to the legal custody of the department.

(11) The department shall have authority to adopt such administrative rules pursuant to the procedures provided in chapter 52, title 67, Idaho Code, as are deemed necessary or appropriate for the functioning of the department and the implementation and administration of this act.

(12) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with a private association or organization or other public agency or organization for the inspection and licensure of detention facilities.

(13) Subject to any competitive bidding requirements otherwise provided by law, the department shall have authority to enter into contracts with private providers or local governmental agencies for the confinement or other permanent or temporary placement of juveniles committed to its custody.

(14) The department shall have authority to apply for, receive and expend federal funds, subject to appropriation by the legislature. The department shall have authority to establish guidelines for and administer the distribution of state block grant funds to counties for

the employment and training of county probation officers, the establishment of secure and nonsecure residential or nonresidential facilities and programs for juvenile offenders. The department may require that a county provide matching funds as a condition of receiving a block grant. The department, by rule, in cooperation with the courts and the counties, shall establish uniform standards, criteria and operating procedures for county juvenile probation services, as well as qualifications for and standards for the training of juvenile probation officers.

(15) All of the powers and duties imposed upon or granted to the director of the department of health and welfare or the board of health and welfare pursuant to chapter 18, title 16, Idaho Code, are hereby transferred to the director of the department of juvenile corrections. The director shall have all such powers and duties as may have been or could have been exercised by his predecessors in law with respect to chapter 18, title 16, Idaho Code, and shall be the successor in law to all contractual obligations entered into by his predecessor in law.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 140
(H.B. No. 430)

AN ACT

RELATING TO THE PURE SEED LAW; AMENDING SECTION 22-434, IDAHO CODE, TO CLARIFY THAT LICENSES ARE REQUIRED FOR SEED DEALERS WHO CONDITION OR LABEL OR SELL SEED AND TO PROVIDE THAT ANY PERSON SELLING SEED WHO HAS TOTAL ANNUAL GROSS SEED SALES NOT EXCEEDING FIVE HUNDRED DOLLARS IS EXEMPT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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~~,~~ <u>or</u> labels ~~and~~ <u>or</u> sells, for the use of others any seed, shall obtain a license from the department authorizing him to condition~~,~~ <u>or</u> label ~~and~~ <u>or</u> sell 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. 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. Any person selling seed who has total annual gross seed sales not exceeding five hundred dollars ($500) is 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.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 141
(H.B. No. 431)

AN ACT

RELATING TO SEED POTATOES; AMENDING SECTION 22-501, IDAHO CODE, TO DEFINE THE TERM "DISTRIBUTE"; AMENDING SECTION 22-503, IDAHO CODE, TO CLARIFY THAT ONLY CERTIFIED SEED POTATOES SHALL BE OFFERED FOR SALE, SOLD OR DELIVERED UNDER CONTRACT OR DISTRIBUTED INTO OR WITHIN THE STATE OF IDAHO; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 22-501, Idaho Code, be, and the same is hereby amended to read as follows:

22-501. DEFINITIONS. When used in this chapter:

(1) "Department" means the department of agriculture of the state of Idaho.

(2) "Certified potatoes" means potatoes certified according to chapter 15, title 22, Idaho Code, the seed and plant certification act or a similar act of another state or country.

(3) "Director" means the director of the Idaho department of agriculture.

(4) "Distribute" means to offer for sale, sell, barter or otherwise supply potatoes or to supply, furnish or otherwise provide potatoes to a person.

(5) "Person" means any individual, partnership, corporation, firm, association or agent.

(~~5~~6) "Potatoes" means potatoes (Solanum tuberosum) that may be sold for or used as seed potatoes.

SECTION 2. That Section 22-503, Idaho Code, be, and the same is hereby amended to read as follows:

22-503. POTATOES FOR PLANTING. (1) All potatoes offered for sale,

sold or delivered under contract or distributed into or within the state of Idaho for planting in the state of Idaho by any person from any state, territory, or country shall be certified and shall be accompanied by a certificate of inspection including the description of the grade, the findings of all inspections of each lot of seed, noting the name and amount of disease observed, and generation of the potatoes and shall show that the potatoes were packed, sealed, and tagged under the certification standards of the state, territory, or country in which they were produced. The potatoes may not have a disease content that exceeds the standard for the last generation of certified seed potatoes according to the Idaho rules of certification as authorized under chapter 15, title 22, Idaho Code. Potatoes imported from any other state, country, or territory shall be certified and also be in compliance with other applicable rules of the department pertaining to potatoes.

(2) Idaho growers shall be allowed to plant uncertified potatoes grown by them provided that they are no more than two (2) generations from their own certified parent seed potatoes. After January 1, 1997, Idaho growers shall only be allowed to plant uncertified potatoes grown by them provided that they are no more than one (1) generation from their own certified parent seed potatoes. Uncertified potatoes planted by Idaho growers as provided for under this section must comply with all testing and any other conditions as set forth under this chapter and any rules promulgated pursuant to this chapter.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 142
(H.B. No. 433)

AN ACT

RELATING TO THE IDAHO PESTICIDES AND CHEMIGATION LAW; AMENDING SECTION 22-3406, IDAHO CODE, TO PROVIDE FOR THE SALE OF RESTRICTED USE PESTICIDES TO AN UNLICENSED PERSON WHEN THE RESTRICTED USE PESTICIDE IS TO BE APPLIED BY A LICENSED APPLICATOR; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 22-3406, Idaho Code, be, and the same is hereby amended to read as follows:

22-3406. PESTICIDE DEALERS. No person shall act as a pesticide dealer without first obtaining a pesticide dealer's license issued by the department.

(1) Licensing:

(a) Application for a pesticide dealer's license shall be on a form prescribed by the department and shall be accompanied by a

fee as prescribed by rule; and

(b) an applicant who sells restricted-use pesticides must pass the department's examination in order to demonstrate his knowledge of how to use and handle pesticides in areas relevant to the operation he intends to undertake; and

(c) such application shall be due as prescribed by rule; and

(d) a license shall be required for each location, outlet, or warehouse from which such pesticides are distributed; and

(e) for an applicant selling restricted-use pesticides an examination fee will be charged as prescribed by rule and an additional examination fee of five dollars ($5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date.

(2) Records and Reports:

(a) Restricted-use pesticides or devices: The director shall require a pesticide dealer to keep accurate sale and distribution records of restricted-use pesticides or devices as prescribed by rule;

(i) The director may also require a pesticide dealer to maintain other records and furnish reports for restricted-use pesticides or devices he determines necessary to implement the provisions of this act; and

(ii) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and

(iii) The dealer shall be required to post total sales of each restricted-use pesticide by county and shall not include detailed customer sales records or customer invoice records. This report shall be furnished to the director no more than two (2) times per year as prescribed by rule.

(b) General use pesticides: The director shall require a pesticide dealer to keep accurate sale and distribution records as prescribed by rule of general use pesticides except those exempted in subsection (4) of this section.

(i) Records shall be maintained for three (3) years and be available for inspection and reproduction by the director at all reasonable times; and

(ii) The dealer shall be required to report total sales of each general use pesticide by county and shall not include detailed customer sales records or customer invoice records. This report shall be furnished to the director no more than two (2) times per year as prescribed by rule; and

(iii) The director may require dealers to furnish other reports of these records in the case of emergency as provided by rule.

(3) Pesticide dealers shall sell restricted-use pesticides (RUP) only to licensed professional and private applicators, and dealers; however, pesticide dealers may sell an RUP to an unlicensed person provided the application of the RUP is made by a licensed professional applicator or licensed private applicator.

(4) Exemptions:

(a) A manufacturer's representative or wholesale distributor shall be exempt from subsection (1) of this section provided such

representative or distributor does not have a warehouse in Idaho that pesticides are sold, stored or distributed from; and

(b) federal, state and other governmental agencies are exempt from the examination and licensing fees of this section; and

(c) the director may exempt a pesticide from the provisions of subsection (1) or (2) of this section by rule if it is determined that licensing or recordkeeping is not necessary for selling the pesticide.

(5) A user of a pesticide, without obtaining a pesticide dealer's license, may for the exclusive purpose of keeping it from becoming a waste, distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 143
(H.B. No. 434)

AN ACT

RELATING TO DEALERS IN FARM PRODUCE; AMENDING SECTION 22-1304, IDAHO CODE, TO INCREASE THE BONDING REQUIREMENT FOR PERSONS LICENSED AS A BROKER, DEALER OR COMMISSION MERCHANT DEALING IN FARM PRODUCE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 22-1304, Idaho Code, be, and the same is hereby amended to read as follows:

22-1304. BOND -- CERTIFICATE OF DEPOSIT IN LIEU OF BOND. All applications for licenses to act as broker, dealer or commission merchant dealing in farm produce as each of said terms are defined in section 22-1301, Idaho Code, shall be accompanied by a good and sufficient bond in the penal sum of not less than ~~ten~~ fifty thousand dollars ($~~10~~50,000), and upon a form to be approved by the attorney general of the state of Idaho, and executed by the applicant as principal and by a surety company authorized to do business in the state of Idaho as surety. Said bond shall be for the benefit of any and all consignors or sellers having any cause of action against the broker, dealer and/or commission merchant giving such bond, and arising out of a breach of contract either express or implied of such broker, dealer or commission merchant with a consignor or seller or with consignors as broker, dealer or commission merchant and consignor or consignors or for any fraud practiced by such broker, dealer or commission merchant for the violation of the rights of any person whether a consignor, seller, or otherwise. The bond herein required to be given shall be conditioned upon the applicant conducting and transacting his business honestly and without fraud of any kind or nature and will

comply with the provisions of this act and of the laws of the state of Idaho. Any person injured by dishonesty, fraud and violation of the provisions of this act or for violation of his contract as such commission merchant, dealer or broker to any person and while engaged in such business shall have a right of action on said bond for his damages not exceeding the amount of said bond.

Any person required to submit a bond to the department in accordance with this chapter, may at his option give to the department a certificate of deposit payable to the director as trustee in lieu of the bond required herein. The principal amount of the certificate shall be the same as that required for a surety bond pursuant to this chapter. Accrued interest upon the certificate of deposit shall be payable to the purchaser of the certificate. The certificate shall remain on file with the department until it is released, cancelled or discharged by the director. The provisions of this chapter that apply to a bond required pursuant to this chapter apply to each certificate of deposit given in lieu of such bond.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 144
(H.B. No. 435)

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-101, IDAHO CODE, TO PROVIDE THAT FOR THE PURPOSES OF INTERNATIONAL TRADE, THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE MAY USE THE TITLE OF SECRETARY OF THE DEPARTMENT AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 22-101, Idaho Code, be, and the same is hereby amended to read as follows:

22-101. DEPARTMENT CREATED -- APPOINTMENT OF DIRECTOR -- RULES. ~~AND--REGULATIONS.~~ (1) There is hereby created the department of agriculture. The governor shall appoint a director of the department of agriculture, subject to the provisions of section 67-2404, Idaho Code. The director of the department of agriculture shall exercise all of the powers and duties necessary to carry out the proper administration of the department of agriculture. The department of agriculture 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.

(2) The director shall be a person who is qualified by training, knowledge and demonstrated ability or experience in agricultural pursuits and their management.

(3) The director is empowered to prescribe rules ~~and--regulations~~

pursuant to law for the governance of the department.

(4) For the purposes of international trade, the director may use the title of secretary of the department.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 145
(H.B. No. 439)

AN ACT

RELATING TO AUTHORITY TO DESIGNATE DETENTION OFFICERS AS PEACE OFFICERS; AMENDING CHAPTER 6, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-603, IDAHO CODE, TO PROVIDE THAT THE COUNTY SHERIFF CAN DESIGNATE DETENTION OFFICERS TO ACT AS PEACE OFFICERS IN CERTAIN CIRCUMSTANCES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 6, Title 20, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 20-603, Idaho Code, and to read as follows:

20-603. AUTHORITY TO DESIGNATE DETENTION OFFICERS TO ACT AS PEACE OFFICERS. All detention officers employed by the county sheriff who receive peace officer certification from the Idaho peace officer standards and training council shall have the authority given by statute to peace officers of the state of Idaho. The county sheriff shall have the authority to designate detention officers to act as peace officers when engaged in transportation of prisoners or apprehension and arrest of prisoners who have escaped, or apprehension and arrest of persons who are suspected of having violated the terms and conditions of their probation, or arrest of a person pursuant to court order or arrest warrant.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 146
(H.B. No. 454)

AN ACT

RELATING TO NO CONTACT ORDERS; AMENDING SECTION 18-920, IDAHO CODE, TO ADD BEING CHARGED WITH ASSAULT TO COMMIT A SERIOUS FELONY TO

THE LIST OF CHARGED OFFENSES FOR WHICH A NO CONTACT ORDER MAY BE ISSUED; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-920, Idaho Code, be, and the same is hereby amended to read as follows:

18-920. VIOLATION OF NO CONTACT ORDER. (1) When a person is charged with an offense under section 18-901, 18-903, 18-905, 18-907, 18-909, 18-911, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905~~,~~ or 39-6312, Idaho Code, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.

(2) A violation of a no contact order is committed when:

(a) A person has been charged under any offense defined in subsection (1) of this section; and

(b) A no contact order has been issued, either by a court or by an Idaho criminal rule; and

(c) The person charged has had contact with the stated person in violation of an order.

(3) A violation of a no contact order is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year, or both. No bond shall be set for this violation until the person charged is brought before the court which will set bond. Further, any such violation may result in the increase, revocation or modification of the bond set in the underlying charge for which the no contact order was imposed.

(4) A peace officer may arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a no contact order issued under this section if the person restrained had notice of the order.

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 April 3, 2000.

CHAPTER 147
(H.B. No. 456, As Amended)

AN ACT

RELATING TO TRESPASS; AMENDING SECTION 18-7008, IDAHO CODE, TO PROVIDE THAT A PERSON COMMITS TRESPASS IF THE PERSON, WITHOUT PERMISSION OR INVITATION, RETURNS AND ENTERS UPON REAL PROPERTY WITHIN A YEAR AFTER BEING NOTIFIED TO DEPART FROM THE PROPERTY AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-7008, Idaho Code, be, and the same is hereby amended to read as follows:

18-7008. TRESPASS -- ACTS CONSTITUTING. A. Every person who willfully commits any trespass, by either:

1. Cutting down, destroying or injuring any kind of wood or timber belonging to another, standing or growing upon the lands of another; or

2. Carrying away any kind of wood or timber lying on such lands; or

3. Maliciously injuring or severing from the freehold of another, anything attached thereto, or the produce thereof; or

4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, stone; or

5. Digging, taking, or carrying away from any land in any of the cities of the state, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil or stone; or

6. Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open, or using the corral or corrals of another without the permission of the owner; or

7. Willfully covering up or encumbering in any manner, the land or city lot of another, without written permission from the owner or custodian thereof; or

8. Every person, except under landlord-tenant relationship, who, being first notified in writing, or verbally by the owner or authorized agent of the owner of real property, to immediately depart from the same and who refuses ~~so~~ to so depart, or who, without permission or invitation, returns and enters said property within a year, after being so notified; or

9. Entering without permission of the owner or the owner's agent, upon the real property of another person which real property is posted with "No Trespassing" signs, is posted with a minimum of one hundred (100) square inches of fluorescent orange paint except that when metal fence posts are used, the entire post must be painted fluorescent orange, or other notices of like meaning, spaced at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet along such real property; provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this section if said signs, paint or notices are posted at such points of access; or

10. Entering the property of another and, being unprovoked, intentionally and without the consent of the animal's owner, kills or injures a domestic animal not his own:

Is guilty of a misdemeanor.

B. Every person who while committing any trespass, intentionally and without consent ~~on~~ of the animal's owner kills or injures a domes-

tic animal of another, not including upland game birds or birds of any species not protected by law, shall be guilty of a misdemeanor. In addition to any other sentence of jail or a criminal fine imposed, a court may, for violation of this subsection or subsection A.10. of this section, impose a civil penalty in an amount up to double the value of the animal or for injuries sustained and payable to the owner of the animal.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 148
(H.B. No. 463)

AN ACT

RELATING TO TRADE PRACTICES; REPEALING CHAPTERS 1 AND 3, TITLE 48, IDAHO CODE; REPEALING SECTION 18-5201, IDAHO CODE; AMENDING TITLE 48, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 1, TITLE 48, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS, PURPOSE, INTERPRETATION AND SCOPE OF THE ACT, TO PROVIDE DEFINITIONS, TO PROHIBIT UNREASONABLE RESTRAINTS OF TRADE, TO PROHIBIT MONOPOLIZATIONS AND ATTEMPTS TO MONOPOLIZE, TO PROHIBIT ACQUISITIONS THAT SUBSTANTIALLY LESSEN COMPETITION, TO EXEMPT CERTAIN ACTIVITIES, TO PROVIDE FOR CIVIL ACTIONS AND SETTLEMENTS BY THE ATTORNEY GENERAL, TO PROVIDE FOR CIVIL INVESTIGATIONS, TO PROHIBIT THE FAILURE TO OBEY A CIVIL INVESTIGATIVE DEMAND OR SUBPOENA, TO PROHIBIT VIOLATION OF COURT ORDERS AND CONSENT DECREES AND TO PROVIDE PENALTIES, TO AUTHORIZE ADDITIONAL RELIEF BY THE DISTRICT COURT, TO PROVIDE FOR PRIVATE CAUSES OF ACTION, TO PROVIDE FOR AWARDS TO THE ATTORNEY GENERAL AND USE OF MONEYS, TO PROVIDE A STATUTE OF LIMITATIONS, TO PROVIDE THAT AN ACTION IS NOT BARRED BECAUSE IT AFFECTS INTERSTATE OR FOREIGN COMMERCE, TO PROVIDE FOR SERVICE OF NOTICE AND TO PROVIDE FOR VENUE; AMENDING SECTION 18-7803, IDAHO CODE, TO DELETE A REFERENCE TO MONOPOLIES AND COMBINATIONS AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapters 1 and 3, Title 48, Idaho Code, be, and the same are hereby repealed.

SECTION 2. That Section 18-5201, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Title 48, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 1, Title 48, Idaho Code, and to read as follows:

CHAPTER 1
IDAHO COMPETITION ACT

48-101. SHORT TITLE. This act shall be known and may be cited as the "Idaho Competition Act."

48-102. LEGISLATIVE FINDINGS, PURPOSE, INTERPRETATION AND SCOPE OF CHAPTER. (1) The Idaho legislature finds that fair competition is fundamental to the free market system. The unrestrained interaction of competitive forces will yield the best allocation of Idaho's economic resources, the lowest prices, the highest quality, and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic and social institutions.

(2) The purpose of this chapter is to maintain and promote economic competition in Idaho commerce, to provide the benefits of that competition to consumers and businesses in the state, and to establish efficient and economical procedures to accomplish these purposes and policies.

(3) The provisions of this chapter shall be construed in harmony with federal judicial interpretations of comparable federal antitrust statutes and consistent with this chapter's purposes, as set forth in subsection (2) of this section.

(4) This chapter applies to conduct proscribed herein that affects Idaho commerce.

48-103. DEFINITIONS. As used in this act:

(1) "Idaho commerce" means any economic activity occurring wholly or partly within the state of Idaho, or which affects economic activity within the state of Idaho.

(2) "Person" means any natural person, corporation, partnership, trust, association, or any other legal or commercial entity.

48-104. UNREASONABLE RESTRAINT OF TRADE OR COMMERCE. A contract, combination, or conspiracy between two (2) or more persons in unreasonable restraint of Idaho commerce is unlawful.

48-105. MONOPOLIES. It is unlawful to monopolize, attempt to monopolize, or combine or conspire to monopolize any line of Idaho commerce.

48-106. ACQUISITIONS THAT SUBSTANTIALLY LESSEN COMPETITION. (1) It is unlawful for a person to acquire, directly or indirectly, the whole or any part of the stock, share capital, or other equity interest or the whole or any part of the assets of, another person engaged in Idaho commerce, where the effect of such acquisition may be substantially to lessen competition or to tend to create a monopoly of any line of Idaho commerce.

(2) This section shall not apply to persons purchasing the stock or other equity interest of another person solely for investment and not using those assets by voting or otherwise to bring about, or attempt to bring about, the substantial lessening of competition. Nothing contained in this section shall prevent a person engaged in

Idaho commerce from causing the formation of subsidiary corporations or other business organizations, or from owning and holding all or a part of the stock or equity interest of such subsidiary corporations or other business organizations.

48-107. EXEMPT ACTIVITIES. (1) No provision of this chapter shall be construed to prohibit:

(a) Activities that are exempt from the operation of the federal antitrust laws.

(b) Activities required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.

(c) Activities of a municipality or its officers or employees acting in an official capacity, to the extent that those activities are authorized or directed by state law.

(d) The existence of, or membership in, organizations instituted for the purpose of mutual help and not having capital stock or conducted for profit; nor shall the provisions of this act forbid or restrain individual members of such organizations from lawfully carrying out legitimate objectives of the organization.

(e) Activities of any labor organization, individual members of the labor organization, or group of labor organizations, of any employer or group of employers, or of any groups of employees, if these activities are directed predominantly to labor objectives which are permitted under the laws of this state or of the United States.

(2) Persons engaged in the production of agricultural products may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling and marketing the products of these persons, to the extent permitted under the laws of this state or of the United States. These associations may have marketing agencies in common and such associations and their members may make the necessary contracts and agreements to effect such purposes. However, such associations must conform to the requirements of chapter 26, title 22, Idaho Code.

48-108. CIVIL ACTIONS AND SETTLEMENTS BY THE ATTORNEY GENERAL. (1) Whenever the attorney general has reason to believe that any person is engaging, has engaged, or is about to engage in any act or practice declared unlawful by this chapter, the attorney general may bring an action in the name of the state against that person:

(a) To obtain a declaratory judgment that the act or practice violates the provisions of this chapter;

(b) To enjoin any act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, without bond, upon the giving of appropriate notice;

(c) To recover on behalf of the state and its agencies actual damages or restitution;

(d) To recover civil penalties of up to fifty thousand dollars ($50,000) per violation of section 48-104 or 48-105, Idaho Code, or any injunction, judgment or consent order issued or entered

into pursuant to this chapter and reasonable expenses, investigative costs and attorney's fees; and

(e) To obtain an order requiring divestiture of any assets:

(i) Acquired in violation of section 48-106, Idaho Code, to the extent determined necessary by the district court to avoid the creation of a monopoly or any likely substantial lessening of competition resulting from such transaction found violative of section 48-106, Idaho Code; or

(ii) To restore competition in any line of Idaho commerce which has been eliminated by a violation of section 48-105, Idaho Code.

(2) The attorney general also may bring a civil action in the name of the state, as parens patriae on behalf of persons residing in this state, to secure monetary relief as provided under this chapter for injury directly or indirectly sustained by those persons because of any violation of section 48-104 or 48-105, Idaho Code, in accordance with the following provisions:

(a) The district court shall award the attorney general as monetary relief the total damages sustained for violations of section 48-104 or 48-105, Idaho Code, and the cost of suit, including a reasonable attorney's fee. The court shall increase any damage recovery to an amount not in excess of three (3) times the damages sustained if the court finds that the violation at issue constituted a per se violation of section 48-104, Idaho Code, or an intentional violation of section 48-105, Idaho Code. The court shall exclude from the amount of monetary relief awarded in such action any amount which duplicates amounts which have been awarded for the same injury already or which are allocable to persons who have excluded their claims pursuant to subsection (2)(c) of this section.

(b) In any action brought under this section, the attorney general shall, at such times, in such manner, and with such content as the district court may direct, cause notice of the parens patriae action to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person, the court shall direct the attorney general to give such notice as may be required by due process of law.

(c) Any person on whose behalf an action is brought under this section may elect to exclude from such adjudication the portion of the attorney general's claim for monetary relief attributable to him by filing notice of such election with the court within the time period specified in the notice of such action given to the persons to be benefited by the action. Any person failing to give such notice shall be barred during the pendency of such action from commencing an action in his or her own name for the injury alleged in such action and the final judgment in such action shall be res judicata as to any claim which could be brought by such person under this act based on the facts alleged or proven in such action.

(d) All damages shall be distributed in such a manner that will afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(3) In lieu of instigating or continuing an action or proceeding,

or to conclude an investigation commenced or contemplated under section 48-109, Idaho Code, the attorney general may accept a consent decree with respect to any act or practice alleged to be a violation of this chapter. The consent decree may include a stipulation for the payment of civil penalties, the attorney general's reasonable expenses, investigative costs and attorney's fees, an agreement to pay damages or to allow for restitution of money, property or other things received in connection with a violation of this chapter, and agreed to injunctive provisions. Before any consent decree entered into pursuant to this section is effective, it must be approved by the district court and an entry made in the district court in the manner required for making an entry of judgment. If the consent decree submitted to the court is to settle an action brought under subsection (2) of this section, notice of the proposed settlement shall be given in such manner as the court directs. Once court approval is received, any breach of the conditions of the consent decree shall be treated as a violation of a court order, and shall be subject to all penalties provided by law for violation of court orders, including the penalties set forth in section 48-111, Idaho Code.

(4) The attorney general may proceed under any antitrust laws in the federal courts on behalf of this state or any of its political subdivisions or agencies.

48-109. CIVIL INVESTIGATIONS. (1) Whenever the attorney general has reason to believe that a person is engaging or has engaged in any act or practice declared unlawful by this chapter, he may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to a civil investigation, a written civil investigative demand requiring that person to appear and give oral testimony, under oath, concerning documentary material or information, or to produce relevant documentary material or physical evidence for examination, at a reasonable time and place as may be stated in the investigative demand, or to furnish any combination thereof, concerning the conduct of any Idaho commerce that is the subject matter of the investigation. The return date of a civil investigative demand shall be not less than thirty (30) days after service of the demand.

(2) To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general may also issue subpoenas to any person and conduct hearings in aid of any investigation or inquiry.

(3) (a) The scope of any civil investigative demand or subpoena shall be consistent with the scope of discovery as provided for by rule 26(b)(1), Idaho rules of civil procedure.

(b) Any person who is not the subject of investigation shall be reimbursed the reasonable expenses of complying with a civil investigative demand or subpoena.

(4) At any time before the return date specified in a civil investigative demand, or within thirty (30) days after the demand has been served, whichever period is later, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court of the county where the person

served with the demand resides or has his principal place of business or in the district court in Ada county.

(5) Any person who in good faith complies with a subpoena or investigative demand issued under this section shall be immune from criminal or civil liability for such compliance, so long as such person has complied with any express contractual obligation to notify a third party of the civil investigative demand or subpoena.

(6) Except as provided in subsection (7) of this section, any procedure, testimony taken, or material produced under this section shall be kept confidential by the attorney general before bringing an action against a person under this chapter for the violation under investigation unless confidentiality is waived by the person whose testimony is disclosed, or is waived by the person who produced to the attorney general or his designee the material being disclosed, or the disclosure is authorized by court order.

(7) The attorney general or his designee may disclose the testimony or material to a person who has a need to know such information and is employed by this state, the United States, or any other state, if, before disclosure, the receiving official agrees in writing to comply with the confidentiality provisions of this section and the attorney general or his designee has determined prior to making such disclosure that disclosure to the receiving person is reasonably necessary to permit proper enforcement of the antitrust laws of the United States or any state.

(8) The attorney general or his designee may exclude from the place of any examination under this section any person, except the person being examined and that person's counsel.

48-110. FAILURE TO OBEY CIVIL INVESTIGATIVE DEMAND OR SUBPOENA. (1) If any person fails or refuses to obey any subpoena or civil investigative demand issued by the attorney general, the attorney general may, after notice, apply to the district court and, after a hearing, request an order ordering the person to comply with the subpoena or civil investigative demand issued by the attorney general.

(2) The court shall award the prevailing party reasonable expenses and attorney's fees incurred in obtaining or resisting an order under this section if the court finds that the attorney general's request for an order under this section or a person's resistance to obeying any subpoena or investigative demand, was without a reasonable basis in fact or law.

(3) Disobedience of any order entered under the provisions of this section shall be treated as a violation of a court order, and subject the offending person to all penalties provided by law for violations of court orders, including the payment of civil penalties of not more than ten thousand dollars ($10,000).

48-111. VIOLATION OF COURT ORDERS AND CONSENT DECREES -- PENALTIES. Any person who violates the terms of a consent order entered into pursuant to section 48-108, Idaho Code, or any other judgment or final order entered into under the provisions of this chapter, shall forfeit and pay a civil penalty of not more than fifty thousand dollars ($50,000) for each violation, the amount of the penalty to be determined by the district court issuing the judgment or order, or

approving the consent decree.

48-112. ADDITIONAL RELIEF OF DISTRICT COURT AUTHORIZED. When the state prevails in any action brought under section 48-108, Idaho Code, the court shall award reasonable costs and attorney's fees to the attorney general. In addition, the court may:

(1) Make orders or judgments as necessary to prevent the use or employment by a person of any act or practice declared unlawful by this act;

(2) Make orders or judgments as necessary to compensate persons for damages sustained or to provide for restitution to persons of money, property or other things received from persons in connection with a violation of this chapter;

(3) Appoint a receiver to oversee assets or order sequestration of assets whenever it appears that the defendant threatens or is about to remove, conceal or dispose of property to the damage of persons to whom restoration would be made under this section and assess the expenses of a master, receiver or escrow agent against the defendant; and

(4) Grant other appropriate relief.

48-113. PRIVATE CAUSES OF ACTION. (1) Any person injured directly or threatened with direct injury by reason of anything prohibited by this chapter, may bring an action for injunctive relief, damages, and, as determined by the court, reasonable costs and attorney's fees. The court shall exclude from the amount of monetary relief awarded to a plaintiff under this section any amount which duplicates amounts allocable to any other actual or potential plaintiff including, without limitation, potential claims by the attorney general on behalf of indirect purchasers for the same conduct or injury.

(2) If the district court finds that the violation at issue constituted a per se violation of section 48-104, Idaho Code, or an intentional violation of section 48-105, Idaho Code, it shall increase the recovery to an amount not in excess of three (3) times the damages sustained.

48-114. AWARDS TO THE ATTORNEY GENERAL -- USE OF MONEYS. All costs and fees recovered by the attorney general under the terms of this chapter shall be remitted to the consumer protection account. Such costs and fees deposited into the consumer protection account under this chapter shall be treated as interaccount receipts and may be expended pursuant to interaccount appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter. All penalties recovered under section 48-108(1)(d), 48-110 or 48-111, Idaho Code, or actual damages or restitution recovered under section 48-108(1)(c), Idaho Code, shall be remitted to the general fund.

48-115. STATUTE OF LIMITATIONS. (1) Any action brought by the attorney general pursuant to this chapter is barred if it is not commenced within four (4) years after the cause of action accrues.

(2) Any other action brought pursuant to this chapter is barred if it is not commenced within four (4) years after the cause of action

accrues, or within one (1) year after the conclusion of an action brought by the state pursuant to this chapter based in whole or in part on any matter complained of in the subsequent action, whichever is the latter.

(3) The foregoing statute of limitations shall be tolled during any period when the defendant in any action fraudulently concealed the events upon which the cause of action is based.

48-116. ACTION NOT BARRED BECAUSE IT AFFECTS INTERSTATE OR FOREIGN COMMERCE. No action under this chapter shall be barred on the ground that the activity or conduct complained of in any way affects or involves interstate or foreign commerce.

48-117. SERVICE OF NOTICE. Service of any notice, civil investigative demand, or subpoena under this chapter shall be made personally within this state, but if personal service cannot be obtained, substituted service may be made by mailing service by registered or certified mail to the last known place of business, residence, or abode of the person within or without this state.

48-118. VENUE. Any action, application, or motion brought by the attorney general against a person under this chapter may be filed in the district court of the county in which the person resides or has his principal place of business, or with consent of the parties, may be brought in the district court of Ada county. If the person does not reside in or have a principal place of business in this state, the pleading may be brought in any district court in this state.

SECTION 4. That Section 18-7803, Idaho Code, be, and the same is hereby amended to read as follows:

18-7803. DEFINITIONS. As used in this chapter, (a) "Racketeering" means any act which is chargeable or indictable under the following sections of the Idaho Code or which are equivalent acts chargeable or indictable as equivalent crimes under the laws of any other jurisdiction:

(1) Homicide (section 18-4001, Idaho Code);

(2) Robbery, burglary, theft, forgery, counterfeiting, and related crimes (sections 18-1401, 18-1405, 18-2403, 18-2407, 18-3123, 18-3124, 18-3125, 18-3601, 18-3602, 18-3603, 18-3605, 18-3606, 18-3607, 18-3609, 18-3610, 18-3614, 18-3615, 18-3618, 18-4630, 18-6501~~,~~ and 49-518, Idaho Code);

(3) Kidnapping (section 18-4501, Idaho Code);

(4) Prostitution (sections 18-5601, 18-5602, 18-5603, 18-5604, 18-5605, 18-5606, 18-5608~~,~~ and 18-5609, Idaho Code);

(5) Arson (sections 18-801, 18-802, 18-803, 18-804~~,~~ and 18-805, Idaho Code);

(6) Assault (sections 18-908 and 18-4015, Idaho Code);

(7) Lotteries and gambling (sections 18-3801, 18-3802, 18-3809, 18-4902, 18-4903, 18-4904, 18-4905, 18-4906~~,~~ and 18-4908, Idaho Code);

(8) Indecency and obscenity (sections 18-1515, 18-1518, 18-4103, 18-4103A, 18-4104, 18-4105, 18-4105A~~,~~ and 18-4107, Idaho Code);

(9) Poisoning (sections 18-4014 and 18-5501, Idaho Code);
(10) Fraudulent practices, false pretenses, insurance fraud, financial transaction card crimes and fraud generally (sections 18-2403, 18-2706, 18-3002, 18-3101, 18-3124, 18-3125, 18-3126, 18-6713, 41-293, 41-294~~,~~ and 41-1306, Idaho Code);
(11) Alcoholic beverages (sections 23-602, 23-606, 23-610, 23-703, 23-905, 23-914, 23-928, 23-934 and 23-938, Idaho Code);
(12) Cigarette taxes (sections 63-2505 and 63-2512(b), Idaho Code);
(13) Securities (sections 30-1403, 30-1403A, 30-1404, 30-1405, 30-1406, 30-1438~~,~~ and 30-1439, Idaho Code);
(14) Horseracing (section 54-2512, Idaho Code);
(15) Interest and usurious practices (sections 28-45-401 and 28-45-402, Idaho Code);
(16) Corporations (sections 18-1901, 18-1902, 18-1903, 18-1904, 18-1905, 18-1906~~,~~ and 30-1510, Idaho Code);
(17) Perjury (sections 18-5401 and 18-5410, Idaho Code);
(18) Bribery and corrupt influence (sections 18-1352 and 18-1353, Idaho Code);
(19) ~~Monopolies and combinations (section 18-5201, Idaho Code);~~
~~(20)~~ Controlled substances (sections 37-2732(a), (b), (c), (e) and (f), 37-2732B, 37-2734 and 37-2734B, Idaho Code);
(2~~1~~0) Motor vehicles (sections 49-228, 49-231, 49-232 and 49-518, Idaho Code).

(b) "Person" means any individual or entity capable of holding a legal or beneficial interest in property;

(c) "Enterprise" means any sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or any group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities; and

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.

SECTION 5. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 149
(H.B. No. 466)

AN ACT

RELATING TO COLLECTION OF DELINQUENT TAXES; AMENDING SECTION 63-3059, IDAHO CODE, TO PROVIDE PROTECTION FOR THIRD PARTIES WHO PAY OVER ASSETS IN OBEDIENCE TO A TAX WARRANT, TO CLARIFY THE LIABILITY OF

PERSONS WHO FAIL TO COMPLY WITH A TAX WARRANT AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-3059, Idaho Code, be, and the same is hereby amended to read as follows:

63-3059. LEVY OR DISTRAINT WARRANT. (1) In case of neglect or refusal to pay taxes or deficiencies as hereinabove provided, the state tax commission may levy, or, by warrant issued under its own hand, authorize its agents or employees or a sheriff~~, constable,~~ or deputy, to levy upon, seize and sell all property, except such as is exempt by the preceding section, belonging to such person, for the payment of the amount due or for the enforcement of any lien authorized and filed pursuant to this ~~act~~ chapter.

(2) Any person in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made who, upon demand by the state tax commission or by a sheriff or deputy, surrenders such property or rights to property, or discharges such obligation, to the state tax commission shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment.

(3) Any person who fails or refuses to surrender any property or rights to property, subject to levy, shall be liable to the state of Idaho in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate established under section 63-3045, Idaho Code, from the date of such levy.

(4) Any amount, other than costs, recovered under this section shall be credited against the tax liability for the collection of which such levy was made.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 150
(H.B. No. 469)

AN ACT

RELATING TO VICTIMS OF CRIMES; AMENDING CHAPTER 2, TITLE 5, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 5-247, IDAHO CODE, TO PROVIDE FOR A TOLLING OF THE LIMITATIONS ON ACTIONS FOR VICTIMS OF CRIMES AND TO DEFINE THE TERM "FULL SATISFACTION OF THE SENTENCE IMPOSED"; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 2, Title 5, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 5-247, Idaho Code, and to read as follows:

5-247. VICTIMS OF CRIMES. (1) For the purpose of any civil action or proceeding brought by a victim of a crime against an offender who committed the crime, for any losses incurred by the victim, which loss was proximately caused by the crime, the limitation periods prescribed by this chapter shall be tolled until one (1) year after the offender has been released from any sentence of incarceration served for that crime and in full satisfaction of the sentence imposed.

(2) For purposes of this section "full satisfaction of the sentence imposed" means the full-term release date from incarceration for the crime committed against the victim or the full-term release date from incarceration for any other crime for which the offender is serving time concurrently with, or consecutively to, time served for the crime against the victim, whichever is later.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 151
(H.B. No. 471)

AN ACT

RELATING TO ESCAPE OF PRISONERS; AMENDING SECTION 18-2505, IDAHO CODE, TO PROVIDE THAT ESCAPE SHALL BE DEEMED TO INCLUDE ABANDONMENT OF A JOB SITE OR WORK ASSIGNMENT WITHOUT THE PERMISSION OF AN EMPLOYMENT SUPERVISOR OR OFFICER AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-2505, Idaho Code, be, and the same is hereby amended to read as follows:

18-2505. ESCAPE BY ONE CHARGED WITH, CONVICTED OF, OR ON PROBATION FOR A FELONY -- ESCAPE BY JUVENILE. (1) Every prisoner charged with, convicted of, or on probation for a felony who is confined in any jail or prison including the state penitentiary or any private prison, or who while outside the walls of such jail or prison in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such jail or prison, who escapes or attempts to escape from such officer or person, or from such jail or prison, or from such factory, farm or other place without the walls of such jail or prison, shall be guilty of a felony, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged. Escape shall be

deemed to include abandonment of a job site or work assignment without the permission of an employment supervisor or officer.

(2) Any person under the age of eighteen (18) years charged with, found to have committed, or on probation for an offense which would be a felony if committed by an adult who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of any officer or person shall be subject to proceedings under chapter 5, title 20, Idaho Code, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to sections 20-508 or 20-509, Idaho Code, the juvenile shall be guilty of a felony for a violation of this section and shall be subject to adult criminal proceedings.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 152
(H.B. No. 475)

AN ACT

RELATING TO THE SECRETARY OF STATE; REPEALING SECTION 67-916, IDAHO CODE; TRANSFERRING MONEYS IN THE COMMERCIAL AFFAIRS ADMINISTRATIVE FUND TO THE GENERAL FUND; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-916, Idaho Code, be, and the same is hereby repealed.

SECTION 2. All moneys in the Commercial Affairs Administrative Fund (fund number 0235) shall be transferred to the General Fund on July 1, 2000.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 153
(H.B. No. 478, As Amended)

AN ACT

RELATING TO POLITICAL CAMPAIGNS; AMENDING CHAPTER 66, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6629, IDAHO CODE, TO PROVIDE THAT PERSUASIVE POLLS CONCERNING A CANDIDATE MUST IDENTIFY THE PERSON OR ENTITY PAYING FOR THE POLL, TO PROVIDE PROCEDURES,

TO DEFINE A TERM AND TO PROVIDE PENALTIES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 66, 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 67-6629, Idaho Code, and to read as follows:

67-6629. PERSUASIVE POLL CONCERNING CANDIDATE MUST IDENTIFY PERSON OR ENTITY PAYING FOR POLL. (1) If a person, candidate, political party or political committee requests or compensates a person to:

(a) Conduct or cause to be conducted a persuasive poll by telephone concerning a candidate; or

(b) Produce automated or computerized messages by telephone to conduct a persuasive poll concerning a candidate.

The person conducting the poll shall, at the end of the poll, disclose the name and telephone number of the person, candidate, political party or political committee that requested or compensated the person for the poll.

(2) As used in this section, "persuasive poll" means the canvassing of persons, by means other than an established method of scientific sampling, by asking questions or other information concerning a candidate which is designed to provide information that is negative or derogatory about the candidate or his family. The term does not include a poll that is conducted only to measure the public's opinion about or reaction to an issue, fact or theme.

(3) A violation of the provisions of this section shall be punished as provided in section 67-6625, Idaho Code.

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

Approved April 3, 2000.

CHAPTER 154
(H.B. No. 483, As Amended)

AN ACT

RELATING TO THE CIRCUIT BREAKER PROPERTY TAX RELIEF; AMENDING SECTION 63-701, IDAHO CODE, TO PROVIDE THAT "INCOME" DOES NOT INCLUDE LUMP SUM DEATH BENEFITS MADE BY THE SOCIAL SECURITY ADMINISTRATION PURSUANT TO 42 U.S.C. SECTION 402(i); DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year in which the claim was filed a claimant must be an owner of a homestead and be:

(a) Not less than sixty-five (65) years old; or

(b) A fatherless or motherless child under the age of eighteen (18) years of age; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States veterans administration; or

(f) A person as specified in 42 USC 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant and used as the primary dwelling place of the claimant and occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. Homestead does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and any person or persons who live in the same dwelling, and share its furnishings, facilities, accommodations or expenses. The term includes any person owing a duty of support to the applicant pursuant to section 32-1002, Idaho Code, unless the person qualifies as a "nonhousehold member" pursuant to subsection (6) of this section. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (9)(b) of this section.

(4) "Household income" means all income received by all persons of a household in a calendar year while members of the household.

(5) "Income" means the sum of federal adjusted gross income as defined in the internal revenue code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income, alimony, support money, income from inheritances, nontaxable strike benefits, the nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act, state unemployment insurance laws, and veterans disability pensions and compensation, excluding rollovers as provided in section 402 or

403 of the internal revenue code), nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities, worker's compensation and the gross amount of loss of earnings insurance. It does not include capital gains, gifts from nongovernmental sources or inheritances. To the extent not reimbursed, cost of medical care as defined in section 213(d) of the internal revenue code, incurred by the household may be deducted from income. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse, provided however, that the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant does not file a federal tax return the claimant's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant filed a federal tax return.

(6) "Nonhousehold member" means any nonspouse who lives in the claimant's dwelling for the purpose of providing protective oversight, caregiving, or personal care services to the claimant, or who is receiving disability benefits pursuant to subsection (1)(d) or (e) of this section, or who is over age sixty-five (65) and lives in the claimant's dwelling and receives protective oversight, caregiving or personal care services provided by the claimant.

(7) "Occupied" means actual use and possession.

(8) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who as grantor created a revocable or irrevocable trust and named himself as beneficiary of that trust, or who is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation which holds title in fee simple or holds a certificate of motor vehicle title and who has retained or been granted a life estate. "Owner" shall not include any person that otherwise occupies property as beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered ownership for determining qualification for property tax reduction benefits, however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property is held by a person who has died without timely filing a claim for property

tax reduction, the estate shall be the "owner."

(9) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and:

(i) At least six (6) months during the prior year; or

(ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or

(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(16), Idaho Code, or a dwelling other than the one (1) upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

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, 2000.

Approved April 3, 2000.

CHAPTER 155
(H.B. No. 490)

AN ACT

RELATING TO MOTOR FUEL TAXES; AMENDING SECTION 63-2406, IDAHO CODE, TO CLARIFY THAT DISTRIBUTORS ARE REQUIRED TO PAY AND REMIT TAX TO THE COMMISSION; AMENDING SECTION 63-2416, IDAHO CODE, TO CLARIFY THE EXEMPTION FROM SPECIAL FUELS TAX FOR GOVERNMENT ENTITIES, TO DELETE OUTDATED LANGUAGE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-2418, IDAHO CODE, TO DELETE REFERENCE TO A REPEALED

LAW AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-2442A, IDAHO CODE, TO CLARIFY THE AUTHORITY OF THE STATE TAX COMMISSION TO COORDINATE TAX AGREEMENTS WITH JURISDICTIONS OTHER THAN DOMESTIC STATES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 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 motor fuel received during the preceding calendar month; and

(b) 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~~ pay the tax imposed by this chapter who fails to ~~collect~~ pay 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 2. That Section 63-2416, Idaho Code, be, and the same is hereby amended to read as follows:

63-2416. TAX IMPOSED. (1) For the privilege of using the public highways, an excise tax is hereby imposed on all special fuels used for the operation or propulsion of any motor vehicle which is licensed or required to be licensed under the laws of this state or which is required to be licensed under the laws of another state and is operated on a highway in this state. The tax shall apply at the same rate as the tax imposed by section 63-2405, Idaho Code. The tax shall attach and be collected at the time special fuels are received, in the same manner as for gasoline under section 63-2403, Idaho Code, and is to be paid by the licensed distributor.

(2) The tax imposed in subsection (1) of this section does not apply to special fuels:

(a) Which have been dyed at a refinery or terminal; or

(b) Exported, other than in the supply tanks of motor vehicles, but only if:

(i) any tax due in the jurisdiction to which the special fuel is destined is paid; or

(ii) the purchaser is a licensed distributor in the jurisdiction to which the special fuel is destined; or

(c) Dispensed into a motor vehicle which uses gaseous special fuels and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code; or

(d) Which are gaseous special fuels, as defined in section 63-2401, Idaho Code, unless any part thereof is delivered into the fuel supply tank or tanks of a motor vehicle.

(3) If special fuels on which tax is not collected under subsection (1) of this section or fuel on which a claim for refund has been allowed under section 63-2423, Idaho Code, is used or consumed:

(a) In the operation or propulsion of a motor vehicle on a highway, except as permitted by subsection (1)(b) of section 63-2423, Idaho Code; or

(b) In a recreational vehicle~~,~~; or

(c) In noncommercial motor boats or in motor boats operated by a governmental entity~~,~~;

the tax shall be payable at the rate established in section 63-2405, Idaho Code, to the commission by the user or consumer of the fuels and shall be a debt owing to the state until it is paid.

~~(4) A floor stocks tax is hereby imposed upon every licensed special fuels dealer on all undyed diesel fuel at the rate imposed in subsection (1) of this section on each gallon of fuel in their possession or under their control on January 1, 1996. The tax shall be reported with the return due under this chapter for the month of January, 1996, in the manner required by the state tax commission. The tax due under this subsection shall be paid in full to the state tax commission on or before July 31, 1996.~~

SECTION 3. That Section 63-2418, Idaho Code, be, and the same is hereby amended to read as follows:

63-2418. DISTRIBUTION OF TAX REVENUES. The revenues received from the tax imposed by sections 63-2416, ~~and 63-2417,~~ Idaho Code, and any penalties, interest, or deficiency additions, or from the fees imposed by the commission under the provisions of section 63-2438, Idaho Code, shall be distributed as follows:

(1) An amount of money equal to the actual cost of collecting, administering and enforcing the special fuels tax provisions by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the special fuels tax requirements by the commission at the end of each fiscal year shall be distributed to the highway distribution account.

(2) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the ~~commision~~ commission to be paid under this chapter shall be paid from the state refund account, those moneys being hereby continuously appropriated.

(3) The balance remaining with the commission after distributing the amounts specified in subsections (1) and (2) of this section shall

be distributed to the highway distribution account, established in section 40-701, Idaho Code.

SECTION 4. That Section 63-2442A, Idaho Code, be, and the same is hereby amended to read as follows:

63-2442A. INTERNATIONAL FUEL TAX AGREEMENT AND OTHER AGREEMENTS BETWEEN ~~STATES~~ JURISDICTIONS. (1) The commission may enter into cooperative agreements with other ~~states~~ jurisdictions for exchange of information and auditing of distributors, dealers and users of motor fuels. The commission shall participate in the international fuel tax agreement as required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, including subsequent amendments to that agreement.

(2) Any person operating a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight which is (a) based in this state and (b) operated in this state and in any other jurisdiction which is a member of the international fuels tax agreement shall report and pay all fuel use taxes due to any IFTA member jurisdiction, together with any other charges due to any such jurisdiction which are reportable on the IFTA report, in the manner required by IFTA. If the provisions set forth in the international fuel tax agreement are in conflict with any provision of this chapter, the agreement provisions shall prevail. An agreement, arrangement, declaration or amendment thereto is not effective until stated, in writing, and filed with the commission.

(3) An agreement may provide for determining the base ~~state~~ jurisdiction for users, users records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuels taxes, penalties or interest to another jurisdiction, and other provisions as will facilitate the administration of the agreement.

(4) The commission may, as required by the terms of an agreement, forward to officers of another ~~state~~ jurisdiction any information in the commission's possession relative to the manufacture, receipts, sale, use, transportation, or shipment of motor fuels by any person. The commission may disclose to officers of another ~~state~~ jurisdiction, the location of officers, motor vehicles, and other real and personal property of users of motor fuels.

(5) An agreement may provide for each ~~state~~ jurisdiction to audit the records of persons based in the ~~state~~ jurisdiction, to determine if the motor fuels taxes due each ~~state~~ jurisdiction are properly reported and paid. Each ~~state~~ jurisdiction shall forward the findings of the audits performed on persons based in the ~~state~~ jurisdiction, to each ~~state~~ jurisdiction in which the person has taxable use of motor fuels. For persons not based in this state and who have taxable use of motor fuels in ~~this state~~ Idaho, the commission may serve the audit findings received from another ~~state~~ jurisdiction, in the form of an assessment, on the person as though an audit was conducted by the commission.

(6) The commission may enter into additional cooperative agree-

ments with other ~~states~~ jurisdictions for mutual enforcement of taxes on gasoline and special fuels not subject to collection pursuant to the international fuel tax agreement. Such agreements may provide for collection and enforcement of the motor fuels taxes of all signatory ~~states~~ jurisdictions pursuant to the law, rules, and regulations of the ~~state~~ jurisdiction in which a person liable for such taxes maintains his principal place of business. An agreement may provide for any or all of the following: determining the base ~~state~~ jurisdiction of persons liable for taxes, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, determining if bonding is required, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuels taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.

(7) Any agreement entered into pursuant to this section does not preclude the commission from auditing the records of any person covered by the provisions of this chapter.

(8) The legal remedies for any person served with an order or assessment under this section are as prescribed in this chapter.

(9) If the commission enters into any agreement under the authority of this section, and the provisions set forth in the agreement are in conflict with any rules promulgated by the commission, the agreement provisions prevail.

SECTION 5. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 156
(H.B. No. 513, As Amended in the Senate)

AN ACT

RELATING TO TAXATION OF LARGE-SIZE FOREST TRACTS; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 63-1705, IDAHO CODE, TO PROVIDE AN ALTERNATIVE METHOD OF DETERMINING MARKET VALUES FOR ASSESSMENT PURPOSES FOR LARGE-SIZE FOREST TRACTS FOR THE PERIOD JANUARY 1, 2000, THROUGH JANUARY 1, 2006, TO CREATE WITHIN THE STATE TAX COMMISSION THE COMMITTEE ON FOREST LAND TAXATION METHODOLOGIES, TO PROVIDE MEMBERSHIP, TO PROVIDE DUTIES, TO PROVIDE FOR A REPORT TO LEGISLATIVE COMMITTEES 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. LEGISLATIVE INTENT. The Legislature of the State of Idaho declares that the purposes of this act are to: (1) establish market values for large-size forest tracts for the period January 1, 2000, until January 1, 2006; (2) establish a Forest Lands Taxation Methodologies Committee within the Idaho State Tax Commission; (3)

require that the committee analyze and evaluate the income approach methodology currently contained in Section 63-1705, Idaho Code; (4) require the committee to analyze and evaluate alternative income approach methodologies and soil expectation value methodologies; (5) require the committee recommend to the First Regular Session of the Fifty-eighth Idaho Legislature whether the income approach methodology contained in Section 63-1705, Idaho Code, be retained or be replaced with another income methodology or with a soil expectation value methodology; (6) require the committee to commence its analysis and evaluation based upon the written testimony by the Idaho State Tax Commission, the Idaho Association of Counties and the Intermountain Forest Association provided to the House of Representatives Revenue and Taxation Committee during its consideration of this act.

SECTION 2. 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) Effective January 1, 2000, through January 1, 2006, t~~T~~he market value for assessment purposes shall be determined by the county assessor either under rules prescribed by the state tax commission or the market values contained in subsection (5) of this section, whichever is less. 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, 200~~1~~6, 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. 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) The following are the alternative market values for assessment purposes for the period January 1, 2000, until January 1, 2006. The rules prescribed by the state tax commission in effect on January 1, 2000, are applicable to these alternative market values.

Alternative Forest Land Values
($/Acre)

2000	Productivity Class		
Zone	Good	Medium	Poor
I	733	470	207
II	700	449	198
III	553	368	172
IV	379	252	117

2001	Productivity Class		
Zone	Good	Medium	Poor
I	676	434	191
II	646	415	183
III	511	339	159
IV	350	232	108

2002	Productivity Class		
Zone	Good	Medium	Poor
I	620	398	175
II	592	380	167
III	468	311	145
IV	321	213	99

2003	Productivity Class		
Zone	Good	Medium	Poor
I	564	361	159
II	539	346	152
III	426	283	132
IV	291	194	90

2004	Productivity Class		
Zone	Good	Medium	Poor
I	507	325	143
II	485	311	137
III	383	255	119
IV	262	174	81

2005	Productivity Class		
Zone	Good	Medium	Poor
I	451	289	127
II	431	277	122
III	341	226	106
IV	233	155	72

(6) 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.

(67) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by

applicable laws and rules.

(8) Effective January 1, 2004, there is created within the Idaho state tax commission the committee on forest land taxation methodologies. The membership of the committee shall be:

(a) A nonvoting chairman who shall be the member of the Idaho state tax commission assigned to property tax matters;

(b) Four (4) members selected from the membership of the intermountain forest association;

(c) One (1) member selected from the membership of the Idaho forest owners' association;

(d) Five (5) members selected from the membership of the Idaho association of counties; and

(e) The state superintendent of public instruction or his/her designee, in a nonvoting capacity.

The committee shall retain a forest economist selected by a majority of its members to advise the committee.

The costs of each committee member shall be borne by the respective member. The fees and costs of the forest economist shall be borne as determined by the committee.

The committee shall review forest land valuation in Idaho and consider replacement of the current income methodology found in this section by reviewing all income and soil expectation methodologies to determine forest land values.

The committee shall report to the house of representatives revenue and taxation and senate local government and taxation committees its findings and recommendations for legislation by no later than January 15, 2005.

During the first regular session of the fifty-eighth Idaho legislature the house of representatives revenue and taxation and senate local government and taxation committees, shall review the values and formula used to compute forest land values to determine if modification to this section is appropriate and necessary.

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, 2000.

Approved April 3, 2000.

CHAPTER 157
(H.B. No. 529)

AN ACT

RELATING TO TRUSTS; AMENDING PART 3, CHAPTER 7, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-7-308, IDAHO CODE, TO PROVIDE FOR REMOVAL OF A TRUSTEE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Part 3, 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 15-7-308, Idaho Code, and to read as follows:

15-7-308. REMOVAL OF TRUSTEE. (1) A trustee may be removed in accordance with the terms of the trust or by the court on its own initiative or on petition of a trustor, cotrustee or beneficiary.

(2) The court may remove a trustee or order other appropriate relief:

(a) If the trustee has committed a material breach of trust;

(b) If the trustee is unfit or unable to administer the trust;

(c) If lack of cooperation among cotrustees substantially impairs the administration of the trust;

(d) If the investment decisions of the trustee, although not constituting a breach of trust, have resulted in investment performance persistently and substantially below those of comparable trusts;

(e) If, because of changed circumstances, removal of the trustee would substantially further the trustor's purpose in creating the trust; or

(f) For other good cause shown.

(3) Pending a final decision on the petition to remove the trustee, the court may order such appropriate relief as may be necessary to protect the trust property or the interests of the beneficiaries.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 158
(H.B. No. 550)

AN ACT

RELATING TO REGULATION OF TELECOMMUNICATIONS; AMENDING SECTION 62-610F, IDAHO CODE, TO DELETE LANGUAGE PROVIDING REFERENCE TO THE FEDERAL COMMUNICATION'S COMMISSION IMPLEMENTATION DATE OF A NEW MECHANISM FOR DETERMINING HIGH-COST SUPPORT FOR NONRURAL CARRIERS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 62-610F, Idaho Code, be, and the same is hereby amended to read as follows:

62-610F. HIGH-COST SUPPORT -- ADMINISTRATION -- TRANSITION. (1) ~~No--later--than--six--(6)--months--after--the--federal--communications commission's--implementation--date--of--a--new--mechanism--for--determining high-cost-support-for-nonrural-carriers,-or-December-31,-2000,--which-~~

~~ever-occurs-first,-t~~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 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 April 3, 2000.

CHAPTER 159
(H.B. No. 555)

AN ACT

RELATING TO THE IDAHO PESTICIDES AND CHEMIGATION LAW; AMENDING SECTION 22-3404, IDAHO CODE, TO CLARIFY THAT THOSE PERSONS USING CHEMICALS IN AN IRRIGATION SYSTEM ARE NOT EXEMPTED FROM ANY LICENSING REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 22-3404, Idaho Code, be, and the same is hereby amended to read as follows:

22-3404. PESTICIDE AND CHEMIGATION APPLICATORS -- CLASSIFICATION LICENSING REQUIREMENTS. (1) The director may classify pesticide applicator licenses issued under this act. Such classifications may include, but are not limited to, professional and private applicators. Separate licensing requirements and testing procedures may be utilized for each classification.

(2) Professional Applicators -- no person shall act as a professional applicator without first obtaining a professional applicator's license issued by the department.

(a) Application for a license shall be on a form prescribed by the department and shall be accompanied by a fee as prescribed by rule; and

(b) on the application for a license to perform chemigation, the applicant must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for licensure, the department may require other information as it deems necessary; and

(c) an applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake, or proper equipment and methods for injecting chemicals through irrigation systems; and

(d) show proof of financial responsibility as prescribed by rule; and

(e) an examination fee will be charged as prescribed by rule and an additional examination fee of five dollars ($5.00) shall be charged when an exam is requested at other than a regularly scheduled examination date; and

(f) if at any time a licensed professional applicator fails to maintain the financial responsibility required by paragraph (d) of this subsection, his license shall be automatically suspended until the department receives verification that he is in compliance with paragraph (d) of this subsection.

(3) Private Applicator -- no person shall act as a private applicator without first obtaining a private applicator license issued by the department.

(a) Application for a license shall be on a form prescribed by the department; and

(b) on the application for a license to perform chemigation, the applicant must certify that the equipment and system he plans to use for chemigation meet department standards and that the owner and persons operating the equipment have read the Idaho rules for chemigation and that the owner intends to operate and maintain the chemigation system according to the rules. On the application for

licensure, the department may require other information as it deems necessary; and

(c) an applicant must be at least eighteen (18) years of age and must pass the department's examination in order to demonstrate his knowledge of how to apply, use and handle pesticides or chemicals in areas relevant to the operations he intends to undertake or proper equipment and methods for injecting chemicals through irrigation systems; and

(d) an applicant must pay a license fee as prescribed by rule.

(4) If the director finds an applicant qualified for a professional or private applicator's license; and if an applicant applying for a license to engage in the application of pesticides or chemicals has met all of the requirements of any applicable federal or state laws, regulations and rules, the director shall issue the license. The license or permit may restrict the applicant to the use of a certain type or types of equipment, pesticides or chemicals. If a license or permit is not issued as applied for, the department shall inform the applicant in writing of the reasons therefor.

(5) The director may by rule require professional applicators to maintain and furnish records forthwith pertaining to the application of pesticides and other relevant information as he may deem necessary.

(6) Licenses issued to dealers, professional and private applicators shall expire as designated by the director unless suspended or revoked as provided for in section 22-3409, Idaho Code.

(7) Exemptions:

(a) The following persons are exempt from subsections (2), (3) and (4) of this section <u>unless the person is applying chemicals through an irrigation system:</u>

1. Any person applying pesticides other than restricted-use pesticides for himself or on an exchange of service basis, and who does not publicly hold himself out as a professional applicator; and

2. any person using hand-powered equipment to apply pesticides other than restricted-use pesticides to lawns, or to ornamental trees and shrubs owned by such person, or as an incidental part of his business of taking care of yards for remuneration, and is not holding himself out as a professional applicator; and

3. any industry, governmental, University of Idaho research personnel and extension research personnel who apply pesticides other than restricted-use pesticides to experimental plots or to demonstrate the use of pesticides; and

4. any veterinarian who applies pesticides as an integral part of his business and does not publicly hold himself out as a professional applicator.

(b) Federal, state, and other governmental agencies are exempt from the licensing fees provision of subsections (2) and (3) of this section.

(c) Professional applicators who do not apply pesticides may receive an exemption from the proof of financial responsibility required in subsection (2)(d) of this section, upon submitting a completed form prescribed by the department.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 160
(H.B. No. 559, As Amended in the Senate)

AN ACT

RELATING TO THE SOIL CONSERVATION COMMISSION AND DISTRICTS; AMENDING SECTION 22-2716, IDAHO CODE, TO PROVIDE FURTHER LEGISLATIVE INTENT; AMENDING SECTION 22-2717, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-2718, IDAHO CODE, TO PROVIDE THAT THE SOIL CONSERVATION COMMISSION SHALL PROVIDE THE ESTABLISHMENT AND ENCOURAGEMENT OF THE IDAHO ONEPLAN AS A PRIMARY COMPUTER-BASED CONSERVATION PLANNING PROCESS FOR ALL NATURAL RESOURCE CONCERNS, TO PROVIDE THAT THE INFORMATION PROVIDED BY THOSE USING THE IDAHO ONEPLAN SHALL BE KEPT CONFIDENTIAL AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 22-2716, Idaho Code, be, and the same is hereby amended to read as follows:

22-2716. LEGISLATIVE DETERMINATIONS AND DECLARATION OF POLICY. It is hereby declared, as a matter of legislative determination:

A. The Condition. That the farm, ranch, range and forest lands of the state of Idaho are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm, ranch, range and forest lands of the state by wind and water; that the breaking of natural grass, plant, and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. The Consequences. That the consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams and ditches; the loss of fertile soil material in dust storms; the piling up of soil on

lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve which causes water shortages, intensifies periods of drought, and causes crop failures; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads; highways, railways, farm buildings, and other property from floods and from dust storms; and losses in hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

C. The Appropriate Corrective Methods. That to conserve soil resources and control and prevent soil erosion, and prevent floodwater and sediment damages, and further the conservation, development, utilization, and disposal of water it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and appropriate soil-conserving land-use practices including works of improvement for flood prevention and furthering the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodwaters, dikes, ponds, ditches and the like; the utilization of strip croppings, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of Policy. It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and promote the health, safety, and general welfare of the people of this state.

It is hereby further declared to be the policy of the legislature that the soil conservation commission provide support and service to soil conservation districts in the wise use and enhancement of soil, water and related resources.

E. Planning. The state also declares that the health, safety and general welfare of the people of this state can be greatly enhanced by

providing opportunities to landowners and land users enabled to readily understand and plan for local, state and federal natural resource requirements and opportunities through technological innovation and processes.

SECTION 2. That Section 22-2717, Idaho Code, be, and the same is hereby amended to read as follows:

22-2717. DEFINITIONS. Whenever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision(s) of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one (1) of the members of the governing body of a district elected or appointed in accordance with the provisions of this act.

(3) "Commission" or "state soil conservation commission" means the agency created in section 22-2718, Idaho Code.

(4) "Agriculture" or "department of agriculture" means an executive department of state government created in section 22-101, Idaho Code.

(5) "Petition" means a petition filed under the provisions of subsection A. of section 22-2719, Idaho Code, for the creation of a district.

(6) "Nominating petition" means a petition filed under the provisions of section 22-2721, Idaho Code, to nominate candidates for the office of supervisor of a soil conservation district.

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

(8) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(9) "United States" or "agencies of the United States" includes the United States of America, the natural resources conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(10) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivisions, agency, or instrumentality, corporate or otherwise, of either of them.

(11) "Landowner" includes any person, firm, or corporation who shall hold title to any lands lying within a district organized under the provisions of this act. A buyer on contract, who is the occupier of land, shall be construed as landowner.

(12) "Due notice" means notice published at least twice, with an interval of at least seven (7) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hear-

ing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjournment dates.

(13) "Qualified elector" means any person who is qualified to vote pursuant to the requirements of section 34-104, Idaho Code.

(14) "Idaho association of soil conservation districts (IASCD)" means an incorporated, nongovernmental entity representing all soil conservation districts in Idaho.

(15) "Idaho OnePlan" means a computer-based system for improving efficiency and effectiveness of natural resource planning by landowners and land users.

SECTION 3. That Section 22-2718, Idaho Code, be, and the same is hereby amended to read as follows:

22-2718. STATE SOIL CONSERVATION COMMISSION. A. There is hereby established and created in the department of agriculture of the state of Idaho the state soil conservation commission which shall in cooperation with the director of the department of agriculture perform all functions conferred upon it by this chapter. The soil conservation commission shall be a nonregulatory agency. The commission shall consist of five (5) members appointed by the governor, but no more than three (3) members shall be a member of the same political party. The term of office of each commission member shall be five (5) years; except that upon July 1, 1967, the governor shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years and one (1) member for a term of five (5) years. From and after the initial appointment the governor shall appoint a member of the commission to serve in office for a term of five (5) years commencing upon July 1 of that year. A vacancy which occurs in an unexpired term shall be filled for its remainder by the governor's appointment. Any commissioner may be removed during his term of office by the governor. Any commissioner so removed shall have notice of the same in writing, specifying the reasons for the removal. Each vacancy on the commission shall be filled by appointment by the governor. Such appointments shall be confirmed by the senate. The commission may invite the state conservationist of the United States department of agriculture natural resources conservation service, the president of the Idaho association of soil conservation districts and the dean of the ~~C~~college of ~~A~~agriculture of the ~~U~~university of Idaho or his designated representative to serve as nonvoting advisory members of the commission. The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules as may be necessary for the execution of its functions under this act.

B. The director of the department of agriculture shall appoint the administrator of the soil conservation commission from persons recommended by the soil conservation commission. The state soil conservation commission may employ such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The

commission may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one (1) or more of its members, or to one (1) or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations, and shall be furnished with the necessary supplies and equipment. Upon request of the commission, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall insofar as may be possible under available appropriation, and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the commission may request.

C. The commission shall designate its chairman, and may from time to time, change such designation. A majority of the commission shall constitute a quorum, and the concurrency of a majority in any matter within their duties shall be required for its determination. The chairman and members of the commission shall be compensated as provided by section 59-509(h), Idaho Code. The commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation commission, it shall have the following responsibilities:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the progress of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts in areas where their organization is desirable.

(6) To provide for the establishment and encouragement of the "Idaho OnePlan" as a primary computer-based conservation planning process for all natural resource concerns. Establishment and encouragement will be accomplished through an executive group and steering committee both containing private, state and federal representation. The information provided by those using the "Idaho OnePlan" shall be deemed to be trade secrets, production records or other proprietary information and shall be kept confidential

and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved April 3, 2000.

CHAPTER 161
(H.B. No. 579, As Amended in the Senate)

AN ACT
RELATING TO HOSPITALIZATION OF THE MENTALLY ILL; AMENDING SECTION 66-327, IDAHO CODE, TO REQUIRE THAT THE STATE SHALL ASSUME COSTS OF TREATMENT BEGINNING WITH THE DAY AFTER NOTICE THAT AN INDIVIDUAL HAS BEEN DISPOSITIONED TO THE CUSTODY OF THE STATE AND TO PROVIDE REQUIREMENTS GOVERNING THE TIME OF TRANSPORT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 66-327, Idaho Code, be, and the same is hereby amended to read as follows:

66-327. RESPONSIBILITY FOR COSTS OF COMMITMENT AND CARE OF PATIENTS. (a) All costs associated with the commitment proceedings, including usual and customary fees of designated examiners, transportation costs and all medical, psychiatric and hospital costs not included in subsection (b) of this section, shall be the responsibility of the person subject to judicial proceedings authorized by this chapter or such person's spouse, adult children, or, if indigent, the county of such person's residence after all personal, family and third party resources, including medical assistance provided under the state plan for medicaid as authorized by title XIX of the social security act, as amended, are considered. In proceedings authorized by this chapter, the court shall consider the indigency of persons subject to proceedings authorized by this chapter, in light of such person's income and resources, and if such person is able to pay all or part of such costs, the court shall order such person to pay all or any part of such costs. If the court determines such person is unable to pay all or any part of such costs, the court shall fix responsibility, in accordance with the provisions of chapter 35, title 31, Idaho Code, for payment of such costs on the county of such person's residence to the extent not paid by such person or not covered by third party resources, including medical assistance as aforesaid.

(b) The department of health and welfare shall assume responsibility for usual and customary treatment costs after the involuntary patient is dispositioned~~, transported to and admitted by the state facility~~ to the custody of the state of Idaho, beginning on the day after the director receives notice that a person has been committed into the custody of the department, until the involuntary patient is

discharged and after all personal, family and third party resources are considered in accordance with section 66-354, Idaho Code. The counties shall be responsible for mental health costs if the individual is not transported within twenty-four (24) hours of receiving written notice of admission availability to a state facility. For purposes of this section, "usual and customary treatment costs" shall include routine board, room and support services rendered at a facility of the department of health and welfare; routine physical, medical, psychological and psychiatric examination and testing; group and individual therapy, psychiatric treatment, medication and medical care which can be provided at a facility of the department of health and welfare. The term "usual and customary treatment costs" shall not include neurological evaluation, CAT scan, surgery, medical treatment, any other item or service not provided at a facility of the department of health and welfare, or witness fees and expenses for court appearances. For the purposes of this section, the notice to the department may be faxed or mailed.

SECTION 2. This act shall be in full force and effect on and after October 1, 2000.

Approved April 3, 2000.

CHAPTER 162
(H.B. No. 581)

AN ACT

RELATING TO URBAN RENEWAL; AMENDING SECTION 50-2906, IDAHO CODE, TO PROVIDE THAT THE ADMINISTRATIVE AUTHORITY OF BOTH THE LOCAL GOVERNING BODY AND URBAN RENEWAL AGENCY DOES NOT EXTEND BEYOND THE MUNICIPAL BOUNDARY OF THE AUTHORIZED MUNICIPALITY, TO PROVIDE CONSEQUENCES OF URBAN RENEWAL PLANS AND REVENUE ALLOCATION FINANCING PROVISIONS IF AN URBAN RENEWAL AREA OR REVENUE ALLOCATION AREA EXTENDS OUTSIDE THE MUNICIPAL BOUNDARY OF AN AUTHORIZED MUNICIPALITY AND A TRANSFER OF POWERS ORDINANCE HAS NOT BEEN ADOPTED BY THE COOPERATING COUNTY, TO REVISE NOTICE REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 50-2907, IDAHO CODE, TO PROVIDE FOR A COPY OF THE TRANSFER OF POWERS ORDINANCE ADOPTED BY THE COOPERATING COUNTY TO BE TRANSMITTED TO VARIOUS TAXING AGENCIES.

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

SECTION 1. That Section 50-2906, Idaho Code, be, and the same is hereby amended to read as follows:

50-2906. PUBLIC HEARING AND ORDINANCE REQUIRED. (1) To adopt a new urban renewal plan or create a competitively disadvantaged border community area containing a revenue allocation financing provision, the local governing body of an authorized municipality must enact an ordinance in accordance with chapter 9, title 50, Idaho Code, and sec-

tion 50-2008, Idaho Code. To modify an existing urban renewal plan, to add or change a revenue allocation, an authorized municipality must enact an ordinance in accordance with chapter 9, title 50, Idaho Code, and conduct a public hearing as provided in section 50-2008(c), Idaho Code. No urban renewal project, plan, competitively disadvantaged border community area or modification thereto, or revenue allocation financial provision shall be held ineffective for failure to comply with the requirements of this section if compliance with the section is substantial and in good faith and administrative authority of both the local governing body and urban renewal agency does not extend beyond the municipal boundary of the authorized municipality. Urban renewal plans and revenue allocation financing provisions may be held ineffective if an urban renewal area or revenue allocation area extends outside the municipal boundary of an authorized municipality and a transfer of powers ordinance has not been adopted by the cooperating county.

(2) A revenue allocation financing provision adopted in accordance with this chapter shall be effective retroactively to January 1 of the year in which the local governing body of the authorized municipality enacts such ordinance.

(3) The local governing body of an authorized municipality shall prepare a notice stating: (a) that an urban renewal plan or modification thereto or a competitively disadvantaged border community area has been proposed and is being considered for adoption, and that such plan or modification thereto contains a revenue allocation financing provision that will cause property taxes resulting from any increases in equalized assessed valuation in excess of the equalized assessed valuation as shown on the base assessment roll to be allocated to the agency for urban renewal and competitively disadvantaged border community area purposes; and (b) that an agreement on administration of a revenue allocation financing provision extending beyond the municipal boundary of the authorized municipality has been negotiated with the cooperating county having extraterritorial power and that the agreement has been formalized by a transfer of power ordinance adopted by that county; and (c) that a public hearing on such plan or modification will be held by the local governing body pursuant to section 50-2008(c), Idaho Code. The notice shall also state the time, date, and place of the hearing. At least thirty (30) days but not more than sixty (60) days prior to the date set for final reading of the ordinance, the local governing body shall publish the notice in a newspaper of general circulation and transmit the notice, together with a copy of the plan and recommendation of the urban renewal agency or the municipality which by ordinance created the competitively disadvantaged border community area, to the governing body of each taxing district which levies taxes upon any taxable property in the revenue allocation area and which would be affected by the revenue allocation financing provision of the urban renewal plan proposed to be approved by the local governing body.

SECTION 2. That Section 50-2907, Idaho Code, be, and the same is hereby amended to read as follows:

50-2907. TRANSMITTAL OF REVENUE ALLOCATION AREA DESCRIPTION AND

OTHER DOCUMENTS TO TAXING AGENCIES. (1) After the effective date of an ordinance enacted by the local governing body of an authorized municipality, the clerk of the authorized municipality shall transmit, to the county auditor and tax assessor of the county in which the revenue allocation area is located, to the affected taxing districts, and to the state tax commission, a copy of the ordinance enacted, a copy of the legal description of the boundaries of the revenue allocation area, and a map or plan indicating the boundaries of the revenue allocation area.

(2) For revenue allocation areas extending beyond the corporate municipal boundary of the authorized municipality, the copy of the ordinance enacted by the authorized municipality shall include, as an attachment, a copy of the transfer of powers ordinance adopted by the cooperating county under section 50-2906(3)(b), Idaho Code.

(3) Such documents shall be transmitted as promptly as practicable following the enactment of such ordinance.

Approved April 3, 2000.

CHAPTER 163
(H.B. No. 582)

AN ACT

RELATING TO THE TAX ON CIGARETTES AND TOBACCO PRODUCTS; AMENDING SECTION 63-2559, IDAHO CODE, TO PROVIDE THAT TAXES PAID ON TOBACCO PRODUCTS SOLD ON OR AFTER JANUARY 1, 2000, ON ACCOUNTS LATER FOUND TO BE WORTHLESS AND ACTUALLY CHARGED-OFF MAY BE CREDITED UPON A SUBSEQUENT PAYMENT OF THE TAX ON TOBACCO PRODUCTS OR, IF NO SUCH TAX IS DUE, REFUNDED AND IF ALL OR PART OF SUCH AN ACCOUNT IS THEREAFTER COLLECTED, THE TAX SHALL BE PAID BASED UPON THE PROPORTION OF THE AMOUNT COLLECTED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-2510, IDAHO CODE, TO PROVIDE THAT TAXES PAID ON CIGARETTES SOLD ON OR AFTER JANUARY 1, 2000, ON ACCOUNTS LATER FOUND TO BE WORTHLESS AND ACTUALLY CHARGED-OFF MAY BE CREDITED UPON A SUBSEQUENT PAYMENT OF THE TAX ON CIGARETTES OR, IF NO SUCH TAX IS DUE, REFUNDED AND IF ALL OR PART OF SUCH AN ACCOUNT IS THEREAFTER COLLECTED, THE TAX SHALL BE PAID BASED UPON THE PROPORTION OF THE AMOUNT COLLECTED AND TO MAKE A TECHNICAL CORRECTION; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-2559, Idaho Code, be, and the same is hereby amended to read as follows:

63-2559. WHEN CREDIT MAY BE OBTAINED FOR TAX PAID. (1) Where tobacco products upon which the tax imposed by this chapter has been reported and paid, are shipped or transported by the distributor to retailers without the state, to be sold by those retailers, or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor in

accordance with ~~regulations~~ rules prescribed by the commission.

(2) Taxes paid on tobacco products sold on or after January 1, 2000, on accounts later found to be worthless and actually charged-off may be credited upon a subsequent payment of the tax on tobacco products or, if no such tax is due, refunded. If all or part of such an account is thereafter collected, the tax shall be paid based upon the proportion of the amount collected.

SECTION 2. That Section 63-2510, Idaho Code, be, and the same is hereby amended to read as follows:

63-2510. PAYMENT OF TAX -- RETURNS -- ACCOUNTING FOR STAMPS. (1) The cigarette taxes imposed in section 63-2506, Idaho Code, are due from the person required under section 63-2508, Idaho Code, to affix stamps, and are payable to the state tax commission monthly, together with the return required in this section.

(2) Every person owing cigarette taxes and every wholesaler shall file a return with the state tax commission in such form as the commission shall prescribe. The return shall report all taxes due regarding cigarettes received during the month or other reporting period, approved by the state tax commission, to which the return relates. The return shall contain such other information as the state tax commission shall require, and shall be signed by the person required to file the return or by such person's duly authorized agent. The return shall be filed on or before the twentieth day of the month following the end of the taxable period to which the return relates.

(3) The amount allowed as compensation for affixing stamps under section 63-2509, Idaho Code, shall be separately stated on the return as a credit against taxes due on the return.

(4) In addition to reporting the tax due as provided in this section, the return shall provide an accounting of all cigarette stamps acquired, held, and affixed by the wholesaler. The return shall include:

(a) The number of stamps which were held at the beginning of the reporting period and were not affixed to packages;

(b) The number of stamps acquired during the reporting period;

(c) The number of stamps affixed to packages during the reporting period;

(d) The number of unaffixed stamps held at the end of the reporting period; and

(e) The number, if any, of stamps lost or destroyed. If stamps are lost or destroyed, a statement describing the circumstances giving rise to the loss or destruction shall accompany the return.

(5) In the event that any stamps obtained by a wholesaler are lost, destroyed, or otherwise unaccounted for, the wholesaler shall be liable for an amount of tax equal to the tax on the number of cigarettes to which such stamps would have been affixed, unless the wholesaler can establish, by clear and convincing evidence, that a specific number of stamps were actually destroyed or mutilated in such a manner as to render them unusable.

(6) In the event that a wholesaler or any other person in possession of unused cigarette stamps shall cease doing business as a wholesaler of cigarettes, such wholesaler or other person shall return all

unused stamps to the state tax commission or shall be liable for an amount of tax equal to the tax on the number of cigarettes to which such stamps would have been affixed.

(7) A wholesaler may claim a credit against taxes due on the tax return for taxes previously paid on cigarettes, which after stamps are affixed, become unmarketable and are returned to the manufacturer. When such return is verified in such manner as the state tax commission may, by ~~regulation~~ rule provide, the credit applies to the tax return for the month in which the verification occurs; except that, any amount of credit exceeding the tax due on the tax return may be carried forward to the succeeding tax return, in chronological order until exhausted.

(8) Taxes paid on cigarettes sold on or after January 1, 2000, on accounts later found to be worthless and actually charged-off may be credited upon a subsequent payment of the tax on cigarettes or, if no such tax is due, refunded. If all or part of such an account is thereafter collected, the tax shall be paid based upon the proportion of the amount collected.

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, 2000.

Approved April 3, 2000.

CHAPTER 164
(H.B. No. 590)

AN ACT

RELATING TO EXEMPTION FROM WORKER'S COMPENSATION COVERAGE; AMENDING SECTION 72-212, IDAHO CODE, TO PROVIDE THAT A PILOT OF AN AIRCRAFT WHILE ACTUALLY OPERATING THE AIRCRAFT FOR THE PURPOSE OF APPLYING FERTILIZERS OR PESTICIDES TO AGRICULTURAL CROPS SHALL BE EXEMPT FROM WORKER'S COMPENSATION COVERAGE IF THE EMPLOYER HAS BEEN ISSUED WRITTEN APPROVAL OF AN INSURANCE POLICY BY THE INDUSTRIAL COMMISSION AND THE PROOF OF COVERAGE FOR EACH PILOT HAS BEEN FILED WITH THE COMMISSION PRIOR TO THE PILOT ACTUALLY OPERATING THE AIRCRAFT, TO PROVIDE WHEN THE EXEMPTION IS EFFECTIVE AND TO PROVIDE THAT A POLICY OF INSURANCE SHALL BE APPROVED, AND THE PROOF OF COVERAGE FOR EACH PILOT INSURED UNDER THE POLICY SHALL BE FILED, EACH CALENDAR YEAR WITH THE INDUSTRIAL COMMISSION.

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

SECTION 1. That Section 72-212, Idaho Code, be, and the same is hereby amended to read as follows:

72-212. EXEMPTIONS FROM COVERAGE. None of the provisions of this law shall apply to the following employments unless coverage thereof is elected as provided in section 72-213, Idaho Code.

(1) Household domestic service.

(2) Casual employment.

(3) Employment of outworkers.

(4) Employment of members of an employer's family dwelling in his household.

(5) Employment of members of an employer's family not dwelling in his household if the employer is the owner of a sole proprietorship, provided the family member has filed with the commission a written declaration of his election for exemption from coverage. For the purposes of this subsection, "member of an employer's family" means a natural person or the spouse of a natural person who is related to the employer by blood, adoption or marriage within the first degree of consanguinity or a grandchild or the spouse of a grandchild.

(6) Employment which is not carried on by the employer for the sake of pecuniary gain.

(7) Employment as the owner of a sole proprietorship; employment of a working member of a partnership or a limited liability company; employment of an officer of a corporation who at all times during the period involved owns not less than ten percent (10%) of all of the issued and outstanding voting stock of the corporation and, if the corporation has directors, is also a director thereof.

(8) Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States.

(9) ~~Pilots of agricultural spraying or dusting planes.~~ Employment as a pilot of an aircraft, ~~used to apply fertilizers and pesticides to agricultural crops, when~~ while actually operating an aircraft for the purpose of applying fertilizers or pesticides to agricultural crops, shall be exempt from the provisions of the worker's compensation law, ~~if: the employer files with, and has written approval by, the~~ provided that:

(a) The industrial commission~~, prior to employing a pilot for the purpose of engaging in the application of pesticides to agricultural crops by aircraft, proof of coverage of an insurance~~ has issued to the agent submitting the policy, written approval of a policy of insurance that will provide ~~to the employed pilot of such aircraft while actually operating an aircraft,~~ benefits in an amount of not less than: twenty-five thousand dollars ($25,000) accidental death and dismemberment, ten thousand dollars ($10,000) medical expense payments, and five hundred dollars ($500) per month disability income for a minimum of forty-eight (48) months; and

(b) Once the policy has been approved by the industrial commission, proof of coverage for the specified pilot has been filed with the commission prior to the pilot actually operating an aircraft.

Provided however, the agent issuing the policy shall obtain approval of the policy of insurance, and proof of coverage for each pilot insured under the policy shall be filed with the commission, each calendar year. The exemption shall be effective on the date the commission receives proof of coverage for the specified pilot, but no earlier than the date written approval of the policy was issued by the commission.

(10) Associate real estate brokers and real estate salesmen. Ser-

vice performed 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.

(11) Volunteer ski patrollers.

(12) Officials of athletic contests involving secondary schools, as defined in section 33-119, Idaho Code.

Approved April 3, 2000.

CHAPTER 165
(H.B. No. 602)

AN ACT

RELATING TO THE DEPARTMENT OF HEALTH AND WELFARE; AMENDING CHAPTER 76, TITLE 39, IDAHO CODE, BY THE CREATION OF A NEW SECTION 39-7606, IDAHO CODE, TO CREATE THE PUBLIC WATER SYSTEM SUPERVISION FUND IN THE STATE TREASURY, TO PROVIDE FOR MONEYS IN THE FUND, TO PROVIDE FOR INVESTMENT OF IDLE OR SURPLUS MONEYS IN THE FUND, TO PROVIDE FOR THE RETURN OF INTEREST TO THE FUND AND TO PROVIDE FOR EXPENDITURES FROM THE FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 76, 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 39-7606, Idaho Code, and to read as follows:

39-7606. PUBLIC WATER SYSTEM SUPERVISION FUND. (1) There is hereby created in the state treasury the public water system supervision fund. Moneys in the fund shall consist of fees assessed pursuant to rules of the department on regulated public drinking water systems, federal funds which are received by the state to provide for the public water system supervision program, donations, state appropriations and any other moneys from whatever source.

(2) Idle or surplus moneys in the public water system supervision fund established by this section shall be invested by the state treasurer in the manner for idle state moneys in the state treasury as provided for in section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the fund. Moneys in the fund may be expended pursuant to appropriation.

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 April 3, 2000.

CHAPTER 166
(H.B. No. 604, As Amended in the Senate)

AN ACT

RELATING TO THE SOCIAL WORK ACT; AMENDING SECTION 54-3215, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM THE SOCIAL WORK LICENSING ACT FOR EMPLOYEES OF CERTAIN HEALTH FACILITIES; REPEALING SECTION 54-3215, IDAHO CODE; AMENDING CHAPTER 32, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-3215, IDAHO CODE, TO PROVIDE FOR EXEMPTIONS FROM THE SOCIAL WORK LICENSING ACT; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 54-3215, Idaho Code, be, and the same is hereby amended to read as follows:

54-3215. EXEMPTIONS. Nothing within this act shall be construed to prevent any person from doing work within the standards and ethics of their respective professions or calling provided they do not hold themselves out to the public by title or description of service as being engaged in social work practice. Students enrolled in a recognized program of social work leading to a degree may practice only under the direct supervision of a certified social worker or social worker licensed under this act. <u>This act shall not apply to any employee of any facility licensed under section 39-1301(a), Idaho Code, section 39-1301(b), Idaho Code, or section 39-1301(c), Idaho Code, who is designated in writing to be responsible for that facility's social services program and who receives regular consultation from a qualified social worker.</u>

SECTION 2. That Section 54-3215, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 32, Title 54, 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 54-3215, Idaho Code, and to read as follows:

54-3215. EXEMPTIONS. Nothing within this act shall be construed to prevent any person from doing work within the standards and ethics of their respective professions or calling provided they do not hold themselves out to the public by title or description of service as being engaged in social work practice. Students enrolled in a recognized program of social work leading to a degree may practice only under the direct supervision of a certified social worker or social worker licensed under this act.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after its passage and approval; and Sections 2 and 3 of this act shall become effective on and after July 2, 2001.

Approved April 3, 2000.

CHAPTER 167
(H.B. No. 637, As Amended in the Senate)

AN ACT

RELATING TO EARLY RETIREMENT INCENTIVE FOR CERTIFICATED EMPLOYEES OF PUBLIC SCHOOL DISTRICTS; AMENDING SECTION 33-1004G, IDAHO CODE, TO PROVIDE THAT AN EMPLOYEE SHALL BE FIFTY-FIVE YEARS OLD BEFORE SEPTEMBER 1 OF THE YEAR APPLICATION IS MADE FOR EARLY RETIREMENT, TO PROVIDE AN EXCEPTION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-1004G, Idaho Code, be, and the same is hereby amended to read as follows:

33-1004G. EARLY RETIREMENT INCENTIVE. (1) Each certificated employee of an Idaho public school district as defined in section 33-1001 13., Idaho Code, is eligible for an early retirement incentive, provided they meet the following criteria:

(a) The employee has completed a minimum of ten (10) years of continuous full-time certified employment, which may include time spent on a sabbatical leave, in Idaho public school districts at the time of application.

(b) The employee is not eligible for unreduced service, early or disability retirement from the public employee retirement system of Idaho at the time of application.

(c) The employee is fifty-five (55) years old before ~~August 15~~ September 1 of the year the application is made; provided that persons turning fifty-six (56) years old or greater between August 15 and 31, 2000, will be eligible to receive the retirement incentive option percentage provided in this section that reflects their age on August 15, 2000.

(d) The employee submits his/her application to the state superintendent of public instruction on or before April 1 of the year of application.

(e) The employee is contracted with an Idaho public school district for the entire school year during the year of application and has not been terminated or on a leave of absence for the current or upcoming school year.

(2) (a) Full-time qualifying applicants shall receive as a one (1) time incentive the following amount of the employee's qualifying salary allocation as provided in section 33-1004E, Idaho Code:

at 55 years of age	55% of allocation
at 56 years of age	50% of allocation
at 57 years of age	45% of allocation
at 58 years of age	40% of allocation
at 59 years of age	30% of allocation
at 60 years of age	30% of allocation
at 61 years of age	20% of allocation
at 62 years of age	20% of allocation
at 63 years of age and over	0% of allocation

(b) Certified employees working less than full-time in the application year will have the incentive payment prorated according to their full-time equivalent (FTE) percentage.

(c) Incentive payments for certified employees not placed on the experience and education multiplier table as provided in section 33-1004A, Idaho Code, will be calculated using the BA column of the table.

(3) Incentives and the employer's share of FICA benefits shall be paid by the state department of education to the Idaho public school district with which the applicant was last contracted on or before July 31 of the year of application and acceptance.

(4) Incentives shall be considered additional compensation flowing from the employment relationship and subject to federal and state tax laws. Incentives shall not be considered salary for purposes of the public employee retirement system.

(5) Any employee receiving an early retirement incentive as provided in this section shall not be eligible for future employment with an Idaho school district where such employment would again qualify him/her for participation in the state retirement system.

(6) Any applicant choosing to withdraw their application must notify the state superintendent of public instruction in writing no later than June 20 in the year of application.

(7) A special application of the early retirement incentive shall ~~supercede~~ supersede the limitations of this section to the extent necessary to comply with this subsection. An otherwise qualified certificated employee who becomes medically unable to work prior to July 1 of any year shall be eligible to apply for the early retirement incentive for which the employee would have been eligible retroactive to April 1.

Approved April 3, 2000.

CHAPTER 168
(H.B. No. 701)

AN ACT

APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 2001; 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 desig-

nated expense classes from the listed fund for the period July 1, 2000, through June 30, 2001:

FOR:	
Personnel Costs	$2,460,400
Operating Expenditures	625,700
Capital Outlay	77,000
TOTAL	$3,163,100
FROM:	
State Regulatory Fund	$3,163,100

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, 2000, through June 30, 2001, 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 April 3, 2000.

CHAPTER 169
(H.B. No. 702)

AN ACT
APPROPRIATING MONEYS TO THE DEPARTMENT OF LABOR FOR FISCAL YEAR 2001; 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 Labor the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
I. WAGE AND HOUR:			
FROM:			
General Fund	$289,800	$152,200	$442,000
Miscellaneous Revenue Fund		10,300	10,300
TOTAL	$289,800	$162,500	$452,300
II. RURAL PARTNERSHIP:			
FROM:			
Federal Grant Fund	$ 87,100	$ 49,500	$136,600
Miscellaneous Revenue Fund		24,000	24,000
Unemployment Penalty and Interest Fund		20,000	20,000
TOTAL	$ 87,100	$ 93,500	$180,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	TOTAL
GRAND TOTAL	$376,900	$256,000	$632,900

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Department of Labor is authorized no more than seven (7) full-time equivalent positions at any point during the period July 1, 2000, through June 30, 2001, 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 April 3, 2000.

CHAPTER 170
(H.B. No. 703)

AN ACT

APPROPRIATING MONEYS TO THE LOTTERY COMMISSION FOR FISCAL YEAR 2001; 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 expense classes from the listed fund for the period July 1, 2000, through June 30, 2001:

FOR:	
Personnel Costs	$ 2,201,900
Operating Expenditures	7,861,200
Capital Outlay	162,600
TOTAL	$10,225,700
FROM:	
State Lottery Fund	$10,225,700

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, 2000, through June 30, 2001, 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 April 3, 2000.

CHAPTER 171
(H.B. No. 506, As Amended in the Senate)

AN ACT

RELATING TO ADOPTION; AMENDING CHAPTER 15, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 16-1501A, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT REGARDING RIGHTS AND RESPONSIBILITIES OF PARTIES IN ADOPTION PROCEEDINGS; AMENDING SECTION 16-1504, IDAHO CODE, TO PROVIDE NECESSARY CONSENT TO ADOPTION AND TO PROVIDE THAT A PROCEEDING TO ESTABLISH PATERNITY MAY BE FILED PRIOR TO THE BIRTH OF THE CHILD; REPEALING SECTION 16-1505, IDAHO CODE; AMENDING CHAPTER 15, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 16-1505, IDAHO CODE, TO PROVIDE FOR NOTICE OF ADOPTION PROCEEDINGS; AMENDING SECTION 16-1506, IDAHO CODE, TO PROVIDE THAT NOTHING IN THE STATUTES ON ADOPTION SHALL BE CONSTRUED AS LIMITING THE INITIATION OF ANY APPROPRIATE JUDICIAL PROCEEDING PRIOR TO THE BIRTH OF THE CHILD WHICH IS THE SUBJECT OF ANY ADOPTION PROCEEDING; REPEALING SECTION 16-1510, IDAHO CODE; AMENDING SECTION 16-1513, IDAHO CODE, TO PROVIDE FOR PROCEDURES OF REGISTRATION OF NOTICE OF COMMENCEMENT OF PATERNITY PROCEEDINGS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-2002, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-2005, IDAHO CODE, TO DELETE LANGUAGE WHERE THE PUTATIVE FATHER HAS FAILED TO ESTABLISH PATERNITY OR HAS FAILED TO FILE NOTICE OF CLAIM TO PATERNITY AND WILLINGNESS TO ASSUME RESPONSIBILITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-2007, IDAHO CODE, TO REVISE NOTICE PROCEEDINGS FOR GUARDIAN AD LITEM AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 16-2008, IDAHO CODE, TO REVISE REQUIREMENTS FOR SOCIAL STUDY OR INVESTIGATIONS OF A PUTATIVE FATHER; AND AMENDING SECTION 16-2010, IDAHO CODE, TO REVISE REQUIREMENTS FOR A DECREE TERMINATING THE PARENT-CHILD RELATIONSHIP.

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 16-1501A, Idaho Code, and to read as follows:

16-1501A. RIGHTS AND RESPONSIBILITIES OF PARTIES IN ADOPTION PROCEEDINGS. (1) The legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

(2) The legislature finds that:

(a) The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(b) An unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate deci-

sions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) Adoptive children have a right to permanence and stability in adoptive placements;

(d) Adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child; and

(e) An unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. The state has a compelling interest in requiring unmarried biological fathers to demonstrate that commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.

(3) (a) The legislature prescribes the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection pursuant to sections 16-1504 and 16-1513, Idaho Code.

(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The legislature finds that the interest of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.

(d) An unmarried biological father has the primary responsibility to protect his rights.

(e) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.

(4) The legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

SECTION 2. That Section 16-1504, Idaho Code, be, and the same is hereby amended to read as follows:

16-1504. NECESSARY CONSENT ~~OF-PARENTS,--GUARDIAN,--NEAREST--RELATIVE,--OR--NEXT-FRIEND-OF-CHILD----EXCEPTIONS~~ TO ADOPTION. (1) ~~A-child cannot-be-adopted-without-the--consent--of--its--parents,--if--living, except--that--the-consent-of-a-putative-father-whose-paternity-has-not~~

~~been legally established by order of a court of competent jurisdiction shall be implied as provided in section 16-1513, Idaho Code, nor without the consent of its guardian if one has been legally appointed--or, if--no living parents or guardian, then of its nearest relative; if no relative, then by the consent of some person appointed by the judge to act in the proceedings as the next friend to such child.--The--consent of--a--parent--who--is--a--minor shall not be voidable because of that minority~~ Consent to adoption is required from:

(a) The adoptee, if he is more than twelve (12) years of age, unless he does not have the mental capacity to consent;

(b) Both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is eighteen (18) years of age or older;

(c) The mother of an adoptee born outside of marriage;

(d) Any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent;

(e) An unmarried biological father of an adoptee only if the requirements and conditions of subsection (2)(a) or (b) of this section have been proven;

(f) Any legally appointed custodian or guardian of the adoptee;

(g) The guardian or conservator of a disabled or incapacitated adult, if one has been appointed;

(h) The adoptee's spouse, if any; and

(i) An unmarried biological father who has filed a voluntary acknowledgment of paternity with the vital statistics unit of the department of health and welfare pursuant to section 7-1106, Idaho Code; and

(j) The father of an illegitimate child who has adopted the child by acknowledgment pursuant to section 16-1510, Idaho Code.

(2) In accordance with subsection (1) of this section, the consent of an unmarried biological father is necessary only if the father has strictly complied with the requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six (6) months after birth, an unmarried biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

1. Visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

2. Have regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a determination that the father failed to meet the requirements of this subsection.

(iii) An unmarried biological father who openly lived with the child for a period of six (6) months within the one (1) year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and who openly held himself out to be the father of the child during that period, shall be deemed to have developed a substantial relationship with the child and to have otherwise met the requirements of this subsection.

(b) With regard to a child who is under six (6) months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection prior to the placement for adoption of the child in the home of prospective parents or prior to the date of commencement of any proceeding to terminate the parental rights of the birth mother, whichever event occurs first. The father shall:

(i) Commence proceedings to establish paternity under section 7-1111, Idaho Code, and file with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for the care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(ii) File a notice of his commencement of proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare pursuant to section 16-1513, Idaho Code; and

(iii) If he had actual knowledge of the pregnancy, pay a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(3) An unmarried biological father whose consent is required under subsection (1) or (2) of this section may nevertheless lose his right to consent if the court determines, in accordance with the requirements and procedures of the termination of parent and child relationship act, sections 16-2001 through 16-2015, Idaho Code, that his rights should be terminated, based on the petition of any party as set forth in section 16-2004, Idaho Code.

(4) If there is no showing that an unmarried biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, stating that a diligent search has been made of the registry of notices from putative fathers, of a child born out of wedlock, and that the putative father involved has not filed notice of his commencement of proceedings to establish his

paternity, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to the entrance of the final decree of adoption.

(5) An unmarried biological father who does not fully and strictly comply with each of the conditions provided in this section, is deemed to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required.

(6) A minor parent has the power to consent to the adoption of his or her child. That consent is valid and has the same force and effect as a consent executed by an adult parent. A minor parent, having executed a consent, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

(7) No consent shall be required of, nor notice given to, any person whose parental relationship to such child shall have been terminated in accordance with the provisions of either chapter 16 or 20, title 16, Idaho Code, or by a court of competent jurisdiction of a sister state under like proceedings; or in any other manner authorized by the laws of a sister state. Where a voluntary child placement agency licensed by the state in which it does business is authorized to place a child for adoption and to consent to such child's adoption under the laws of such state, the consent of such agency to the adoption of such child in a proceeding within the state of Idaho shall be valid and no further consents or notices shall be required.

(~~2~~8) ~~A petition to adopt an adult may be granted only if--written consent--to--adoption has been executed by the adult being adopted and the adult's spouse, if any, and by the guardian or--conservator--of--a disabled--or-incapacitated-adult, if one has been appointed~~ The legislature finds that an unmarried biological father who resides in another state may not, in every circumstance, be reasonably presumed to know of, and strictly comply with, the requirements of this chapter. Therefore when all of the following requirements have been met, that unmarried biological father may contest an adoption, prior to finalization of the decree of adoption, and assert his interest in the child:

(a) The unmarried biological father resides and has resided in another state where the unmarried mother was also located or resided;

(b) The mother left that state without notifying or informing the unmarried biological father that she could be located in the state of Idaho;

(c) The unmarried biological father has, through every reasonable means, attempted to locate the mother but does not know or have reason to know that the mother is residing in the state of Idaho; and

(d) The unmarried biological father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located, in order to protect and preserve his parental interest and rights in the child in cases of adoption.

(9) Notwithstanding section 7-1107, Idaho Code, a proceeding to

establish paternity filed pursuant to this section may be filed prior to the birth of the child.

SECTION 3. That Section 16-1505, Idaho Code, be, and the same is hereby repealed.

SECTION 4. 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 16-1505, Idaho Code, and to read as follows:

16-1505. NOTICE OF ADOPTION PROCEEDINGS. (1) Notice of an adoption proceeding shall be served on each of the following persons:

(a) Any person or agency whose consent or relinquishment is required under section 16-1504, Idaho Code, unless that right has been terminated by waiver, relinquishment, consent or judicial action, or their parental rights have been previously terminated;

(b) Any person who has registered notice of the commencement of paternity proceedings pursuant to section 16-1513, Idaho Code;

(c) The petitioner's spouse, if any, only if he or she has not joined in the petition;

(d) Any person who is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother, unless such right to notice or parental rights have been previously terminated;

(e) Any person who is openly living in the same household with the child at the time the mother's consent is executed or relinquishment made, and who is holding himself out to be the child's father, unless such rights to notice or parental rights have been previously terminated; and

(f) Any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption.

(2) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman, is deemed to be on notice that a pregnancy and an adoption proceeding regarding that child may occur, and has a duty to protect his own rights and interests. He is therefore entitled to actual notice of a birth or an adoption proceeding with regard to that child only as provided in this section.

(3) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.

(4) The notice required by this section may be served immediately after commencement of proceedings to adopt a child but shall be served at least twenty (20) days prior to the final dispositional hearing. The notice shall specifically state that the person served must respond to the petition for adoption within twenty (20) days of service if he intends to intervene in or contest the adoption.

(5) (a) Any person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a written objection to the adoption in the adoption proceeding within twenty (20) days after service. The written objection

shall set forth specific relief sought and be accompanied by a memorandum specifying the factual and legal grounds upon which the written objection is based.

(b) Any person who fails to file a written objection to the adoption within twenty (20) days after service of notice waives any right to further notice in connection with the adoption, forfeits all rights in relation to the adoptee, and is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(6) Service of notice under this section shall be made as follows:

(a) With regard to a person whose consent is necessary under section 16-1504, Idaho Code, notice shall be given by personal service. Where reasonable efforts to effect personal service have been unsuccessful, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than twenty (20) days after service of notice, or where service is by registered or certified mail and publication, the hearing shall take place no sooner than twenty (20) days after the date of last publication. Notice and appearance may be waived by any person in writing before the court or in the presence of, and witnessed by, a clerk of court or a representative of an authorized agency, provided that such parent has been apprised by the court or by such person of the meaning and consequences of the adoption proceeding. Where the person entitled to notice resides outside the state, the waiver shall be acknowledged before a notary of the state and shall contain the current address of said person. The person who has executed such a waiver shall not be required to appear. If service is by publication, the court shall designate the content of the notice regarding the identity of the parties. The notice may not include the name of the person or persons seeking to adopt the adoptee.

(b) As to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient. If that service cannot be completed after two (2) attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has registered a notice of his commencement of paternity proceedings with the vital statistics unit of the department of health and welfare in accordance with the requirements of section 16-1513, Idaho Code, shall be served by certified mail, return receipt requested, at the last address filed with the department.

(7) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(8) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(9) Except as to those persons whose consent to an adoption is required under section 16-1504, Idaho Code, the sole purpose of notice under this section is to enable the person served to present evidence to the court relevant to the best interest of the child.

SECTION 5. That Section 16-1506, Idaho Code, be, and the same is hereby amended to read as follows:

16-1506. PROCEEDINGS ON ADOPTION. (1) Proceedings to adopt a child shall be commenced by the filing of a petition together with a copy thereof. Said petition shall be initiated by the person or persons proposing to adopt the child and shall be filed with the district court of the county in which said person or persons reside. The petitioners shall have resided and maintained a dwelling within the state of Idaho for at least six (6) consecutive months prior to the filing of a petition. The petition shall set forth the name and address of the petitioner or petitioners, the name of the child proposed to be adopted and the name by which the person to be adopted shall be known if and when adopted, the degree of relationship of the child, if any, to the petitioner or petitioners and the names of any person or agency whose consent to said adoption is necessary. At the time fixed for hearing such petition the person adopting a child, and the child adopted, and the spouse of petitioner if a natural parent of the child, must appear before the court of the county wherein the petition was filed. Petitioner shall at such time execute an agreement to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated.

(2) Any person or persons whose consent is required shall execute such consent in writing, in a form consistent with the provisions of subsection f. of section 16-2005, Idaho Code, which consent being filed in the court where the application is made, shall be deemed a sufficient appearance on the part of such person or persons. If any adoptive parent, or a person not a minor being adopted by a resident adult under the provisions of section 16-1501, Idaho Code, is a member of the armed services and is unable to attend the hearing, his appearance and testimony shall be received by means of deposition, which shall be filed in the court at the time of the hearing.

(3) Prior to the placement for adoption of any child in the home of prospective adoptive parents, it shall be required that a thorough social investigation of the prospective adoptive family and all of its members, consistent with the rules regarding such investigations promulgated by the department of health and welfare, shall be completed and that a positive recommendation for adoptive placement shall have been made. The social investigation may be performed by any individual who meets the requirements of the law. A copy of the study must be submitted to the department and the department may impose a reasonable fee, not to exceed fifty dollars ($50.00), for oversight of such privately conducted studies. In those instances where the prospective adoptive parent is married to the birth parent or is the grandparent of the child to be adopted, such social investigation shall be completed with regard to the prospective adoptive parent only upon order of the court. In exigent circumstances where the prospective adoptive parents are determined by the court to have been unable to complete a

social investigation of the family with a positive recommendation prior to the time the child is placed in the home, the child shall remain in the home unless the court determines the best interests of the child are served by other placement. If exigent circumstances exist, a social investigation shall be initiated within five (5) days of placement. Once initiated, all studies shall be completed within sixty (60) days. Upon the filing of a petition to adopt a minor child by a person unrelated to the child or unmarried to a natural parent of the child and at the discretion of the court upon the filing of any other petition for adoption, a copy of such petition, together with a statement containing the full names and permanent addresses of the child and the petitioners, shall be served by the court receiving the petition within five (5) days on the director of the department of health and welfare by registered mail or personal service. If no private investigation is conducted, it shall then be the duty of the said director, through the personnel of the department or through such qualified child-placing children's adoption agency incorporated under chapter 3, title 30, Idaho Code, as the director may designate, to verify the allegations of the petition, and as soon as possible not exceeding thirty (30) days after service of the petition on the director to make a thorough investigation of the matter to include in all cases information as to the alleged date and place of birth and as to parentage of the child to be adopted as well as the source of all such information and report his findings in writing to the court. The investigative report shall include reasonably known or available medical and genetic information regarding both natural parents and sources of such information as well as reasonably known or available providers of medical care and services to the natural parents. A copy of all medical and genetic information compiled in the investigation shall be made available to the adopting family by the department or other investigating children's adoption agency prior to entry of the final order of adoption. The petition, statement and all other papers, records or files relating to the adoption, including the preplacement investigation and recommendation, shall be returned to the court with the investigative report. The department of health and welfare or other children's adoption agency may require the petitioner to pay all or any part of the costs of the investigation. If the report disapproves of the adoption of the child, motion may be made to the court to dismiss the petition.

(4) Proceedings for termination of parent-child relationship in accordance with chapter 20, title 16, Idaho Code, and proceedings for adoption may be consolidated and determined at one (1) hearing provided that all of the requirements of this chapter as well as chapter 20, title 16, Idaho Code, be fully complied with. Nothing in either chapter shall be construed as limiting the initiation of any petition for approval of a verified financial plan for adoption expenses pursuant to section 18-1511, Idaho Code, prior to the birth of the child which is the subject of any adoption proceeding. In all disputed matters under this chapter or chapter 20, title 16, Idaho Code, the paramount criterion for consideration and determination by the court shall be the best interests of the child.

(5) Proceedings for the adoption of an adult shall be as provided in subsection (1) of this section and any consents required shall be

executed as provided in subsection (2) of this section. Upon a finding by the court that the consent of all persons for whom consent is required has been given and that the requirements of section 16-1501, Idaho Code, have been proven to the satisfaction of the court, the court shall enter an order granting the adoption. In cases where the adult proposed to be adopted is incapacitated or disabled, the court may require that an investigation be performed. The form and extent of the investigation to be undertaken may be as provided in subsection (3) of this section, or as otherwise ordered by the court. If an investigation is performed, the court must review and approve the findings of the investigation before issuing an order approving the adoption.

SECTION 6. That Section 16-1510, Idaho Code, be, and the same is hereby repealed.

SECTION 7. That Section 16-1513, Idaho Code, be, and the same is hereby amended to read as follows:

16-1513. ~~CLAIM~~ REGISTRATION OF NOTICE OF COMMENCEMENT OF PATERNITY PROCEEDINGS. (1) A person who is the father or claims to be the father of a child born ~~out-of-wedlock~~ out of wedlock may claim rights pertaining to his paternity of the child by ~~registering~~ commencing proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare~~,--a-notice-of-his-claim-of-paternity-to~~ notice of his commencement of proceedings to establish his paternity of the child born ~~out-of-wedlock--and-his-willingness-and-intent-to-support the-child-to-the-best-of-his-ability~~ out of wedlock. The vital statistics unit of the department of health and welfare shall provide forms for the purpose of ~~registering~~ filing the notice of commencement of paternity proceedings, and the forms shall be made available through the vital statistics unit of the Idaho department of health and welfare and in the office of the county clerk in every county of this state. When ~~making-a-claim-of~~ filing a notice of the commencement of paternity proceedings, a person who ~~is-the-father-or~~ claims to be the father of a child born ~~out-of-wedlock~~ out of wedlock, shall ~~mail-to~~ file with the vital statistics unit of the department of health and welfare, the completed form prescribed by the vital statistics unit of the department of health and welfare. Said form will be filled out completely, signed by the person claiming paternity, and witnessed before a notary public.

(2) The ~~claim~~ notice of the commencement of paternity proceedings may be ~~registered~~ filed prior to the birth of the child, but must be ~~registered~~ filed prior to the placement for adoption of the child in the home of prospective parents or prior to the date of ~~any-termination-proceeding,-or-proceeding-wherein-the-child--is--placed--with--an agency--licensed--to-provide-adoption-services.--The-claim-of-paternity~~ commencement of any proceeding to terminate the parental rights of the birth mother, whichever event occurs first. The notice of the commencement of paternity proceedings shall be signed by the ~~registrant~~ person filing the notice and shall include his name and address, the name and last address of the mother, and either the ~~birthdate~~ birth

date of the child or the probable month and year of the expected birth of the child. The vital statistics unit of the department of health and welfare shall maintain a registry for this purpose which shall be subject to disclosure according to chapter 3, title 9, Idaho Code. The department shall record the date and time the notice of the commencement of proceedings is filed with the department. The notice shall be deemed to be duly filed with the department as of the date and time recorded on the notice by the department.

(3) If the unmarried biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in venue.

(4) Any father of ~~such~~ a child born out of wedlock who fails to file and register his notice of ~~claim-to-paternity-and-willingness--to assume--responsibility--for~~ the commencement of paternity proceedings prior to the placement for adoption of the child in the home of prospective parents or prior to the date of commencement of any proceeding to terminate the parental rights of the birth mother, whichever event occurs first, is deemed to have waived and surrendered any right in relation to the child and shall be barred from thereafter bringing or maintaining any action to establish his paternity of the child. Failure of such filing or registration shall constitute an abandonment of said child. ~~and-shall-be-prima-facie-evidence-of-sufficient-grounds to--support-termination-of-such-father's-parental-rights-in-accordance with-section-16-2005,-Idaho-Code,-and-to-adoption-for-the-purposes--of section-16-1504,-Idaho-Code.-The-filing-and-registering-of-a-notice-of claim--to--paternity--and-willingness-to-assume-responsibility-for-the child~~ The filing and registration of a notice of the commencement of paternity proceedings by a putative father shall ~~also~~ constitute prima facie evidence of the fact of his paternity in any contested proceeding under chapter 11, title 7, Idaho Code.~~,-but~~ The filing of a notice of the commencement of paternity proceedings shall not be a bar to an action for termination of his parental rights under chapter 20, title 16, Idaho Code. ~~The-filing-of-an-action-under--chapter--11,--title--7, Idaho--Code,--by--such--putative--father-at-any-time-prior-to-the-date scheduled-for-hearing-of-a-petition-for-termination--of--his--parental rights,--as-shown-in-the-notice-thereof-duly-served-upon-such-putative father-pursuant-to-section-16-2007,-Idaho-Code,--shall--constitute--an automatic--stay--of-such-termination-proceeding-until-a-final-order-of the-court-has-been-entered-in-the-paternity-action.--If-the--court--in the--paternity--action--establishes--the--paternity--of--such-putative father,-the-court-in-the-termination-proceeding-may-dismiss-the-termination-proceeding.--If-the-court-in--the--paternity--action--does--not establish--the--paternity-of-such-putative-father,-or-if-such-putative father-fails-to-commence-a-paternity-action-in-the-manner-set-forth-in section-7-1111,-Idaho-Code,-and-to-request,-but-at--his--own--expense, the--blood--tests-provided-for-in-section-7-1116,-Idaho-Code,-prior-to the-date-set-for-the-hearing-on-the-petition-for-termination-of-parental-rights,-he-shall-be-barred-from-thereafter-bringing-or-maintaining any-action-to-establish-his-paternity-of-the-child--and--such--failure shall--also--constitute-an-abandonment-of-the-child-and-shall-be-prima facie-evidence-of-sufficient-grounds-to-support-and--shall--constitute an--implied-consent-to-termination-of-such-father's-parental-rights-in accordance-with-section-16-2005,-Idaho-Code,-and-to-adoption--for--the~~

~~purposes of section 16-1504, Idaho Code.~~

~~(4) The department of health and welfare, division of family and children's services, private adoption agencies or attorneys and/or their representatives involved in adoptions shall notify all putative fathers by personal service at least ten (10) days prior to the date of any termination proceeding or proceeding wherein the child is placed with an agency licensed to provide adoption services, of their need to register their intent to support and exercise their rights and responsibilities toward the child born out of wedlock, whether born or unborn.~~

~~(5) If personal service cannot be obtained, then service by publication, notifying the father of the requirement to register his claim of paternity with the vital statistics unit of the department of health and welfare prior to the date of any termination proceeding or proceeding wherein the child is placed with an agency licensed to provide adoption services, shall be sufficient. Service by publication shall include sending of notice by registered or certified mail to the last known address of the person to be notified and publication of the notice once a week for three (3) successive weeks in a newspaper of general circulation within the county where the court is located. Notification by publication must be completed at least ten (10) days prior to any termination proceeding, or proceeding wherein the child is placed with an agency licensed to provide adoption services.~~

~~(6) Notice of the requirement to register, as provided in this section, may be combined with a notice of termination of parental rights, as provided in chapter 20, title 16, Idaho Code.~~

(~~7~~5) In any ~~termination~~ adoption proceeding pertaining to a child born ~~out-of-wedlock~~ out of wedlock, if there is no showing that the putative father has consented to ~~termination prior to the granting of a decree allowing the termination~~ the adoption, a certificate shall be obtained from the vital statistics unit of the department of health and welfare, signed by the state registrar of vital statistics, which certificate shall state that a diligent search has been made of the registry of notices from putative fathers, ~~of a child born out of wedlock,~~ and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father ~~involved is not registered~~ and the time and date of filing. That certificate shall be filed with the court prior to entry of a final decree of adoption.

(~~8~~6) Identities of putative fathers can only be released pursuant to procedures contained in chapter 3, title 9, Idaho Code.

(~~9~~7) To cover the cost of implementing and maintaining said registry, the vital statistics unit of the department of health and welfare shall charge a ~~registration~~ filing fee of ten dollars ($10.00) at the time the putative father ~~registers his intent to exercise his parental rights~~ files his notice of his commencement of proceedings. It is the intent of the legislature that the fee shall cover all direct and indirect costs incurred pursuant to this section. The board of health and welfare shall annually review the fees and expenses incurred pursuant to administering the provisions of this section.

(~~10~~8) Consistent with its authority denoted in the vital statistics act, section 39-242(c), Idaho Code, the board of health and welfare shall adopt, amend and repeal ~~regulations~~ rules for the purpose

of carrying out the provisions of this section.

SECTION 8. That Section 16-2002, Idaho Code, be, and the same is hereby amended to read as follows:

16-2002. DEFINITIONS. When used in this act, unless the text otherwise requires:

a. "Court" means the district court.

b. "Child" or "minor" means a person less than eighteen (18) years of age.

c. The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of the act.

d. "Neglected" used with respect to a child refers to those situations in which the child lacks proper support or parental care necessary for his health, morals, and well-being.

e. "Abuse" used with respect to a child refers to those situations in which physical cruelty in excess of that required for reasonable disciplinary purposes has been inflicted by a parent or other person in whom legal custody of the child has been vested.

f. "Legal custody" means status created by court order embodying the following rights and responsibilities:

(1) ~~t~~The right to physical possession of the child~~,~~;

(2) ~~t~~The right and duty to protect, train and discipline the child~~,~~; and

(3) ~~t~~The responsibility to provide the child with food, shelter, education and medical care~~,~~;

provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person.

g. "Guardianship of the person" means those rights and duties imposed upon a person appointed as guardian of a minor under the laws of Idaho. It includes but is not necessarily limited either in number or kind to:

(1) ~~t~~The authority to consent to marriage, to enlistment in the armed forces of the United States, and to major medical, psychiatric and surgical treatment; to represent the minor in legal actions; and to make other decisions concerning the child of substantial legal significance;

(2) ~~t~~The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;

(3) ~~t~~The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized child placement agency;

(4) ~~w~~When the parent and child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.

h. "Guardian ad litem" means a person appointed as such pursuant to law, by the court to protect the interest of a minor or an incompetent in a case before the court.

i. "Authorized agency" means the state department of health and welfare or a voluntary child placement agency licensed to care for and place children by the state department of health and welfare.

j. "Parent" means:

(1) T~~t~~he birth mother or the adoptive mother; ~~or~~

(2) T~~t~~he ~~birth,~~ adoptive~~,-or-legal~~ father;~~,-whose-parental-rights have-not-been-terminated~~

(3) The biological father of a child conceived or born during the father's marriage to the birth mother;

(4) The unmarried biological father whose consent to an adoption of the child is required pursuant to section 15-1504, Idaho Code;

(5) A man whose paternity is established by court decree; and

(6) An unmarried biological father who has filed a voluntary acknowledgment of paternity with the vital statistics unit of the department of health and welfare pursuant to section 7-1106, Idaho Code; and

(7) The father of an illegitimate child who has adopted the child by acknowledgment pursuant to section 16-1510, Idaho Code.

k. "Presumptive father" means a man who is or was married to the birth mother and the child is born during the marriage or within three hundred (300) days after the marriage is terminated.

l. "Parent and child relationship" includes all rights, privileges, duties and obligations existing between parent and child, including inheritance rights, and shall be construed to include adoptive parents.

~~l~~m. "Protective supervision" means a legal status created by court order in proceedings not involving violations of the law but where the legal custody of the child is subject to change, whereby the child is permitted to remain in his home under the supervision of an authorized agency designated by the court and is subject to return to the court during the period of protective supervision.

~~m~~n. "Parties" includes the child and the petitioners.

~~n~~o. "Rape," (18-6101, Idaho Code); "lewd conduct with a minor child under sixteen," (18-1508, Idaho Code); "sexual abuse of a child under the age of sixteen years," (18-1506, Idaho Code); and "incest" (18-6602, Idaho Code) shall be defined as provided in the applicable provisions of title 18, Idaho Code, but for purposes of this chapter shall not include any circumstance where the parents of the child in question were married at the time of conception.

p. "Unmarried biological father," as used in this chapter and chapter 15, title 16, Idaho Code, means the biological father of a child, which biological father was not married to the child's mother at the time the child was conceived or born.

q. "Unmarried biological mother," as used in this chapter, means the biological mother of a child, which biological mother was not married to the child's biological father at the time the child was conceived or born.

SECTION 9. That Section 16-2005, Idaho Code, be, and the same is hereby amended to read as follows:

16-2005. CONDITIONS UNDER WHICH TERMINATION MAY BE GRANTED. The court may grant an order terminating the relationship where it finds

one (1) or more of the following conditions exist:

a. The parent has abandoned the child by having willfully failed to maintain a normal parental relationship including, but not limited to, reasonable support or regular personal contact; failure of the parent to maintain this relationship without just cause for a period of one (1) year shall constitute prima facie evidence of abandonment under this section. Provided further, that where termination is sought by a grandparent seeking to adopt the child, willful failure of the parent to maintain a normal parental relationship as provided herein, without just cause, for six (6) months shall constitute prima facie evidence of abandonment.

b. The parent has neglected or abused the child. Neglect as used herein shall mean a situation in which the child lacks parental care necessary for his health, morals and well-being.

c. The presumptive parent is not the natural parent of the child.

d. The parent is unable to discharge parental responsibilities because of mental illness or mental deficiency, and there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period and will be injurious to the health, morals or well-being of the child.

e. If termination is found to be in the best interest of the parent and child, where the petition has been filed by a parent or through an authorized agency, or interested party.

f. Where a consent to termination in the manner and form prescribed by this act has been filed by the parent(s) of the child in conjunction with a petition for adoption initiated by the person or persons proposing to adopt the child, or where the consent to termination has been filed by a licensed adoption agency, no subsequent hearing on the merits of the petition shall be held. Consents required by this act must be witnessed by a district judge or magistrate of a district court, or equivalent judicial officer of the state, where a person consenting resides or is present, whether within or without the county, and shall be substantially in the following form:

IN THE DISTRICT COURT OF THE .... JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ....

In the Matter of the termination)
of the parental rights of)
.....)
.....)

I (we), the undersigned, being the .... of ...., do hereby give my (our) full and free consent to the complete and absolute termination of my (our) parental right(s), to the said ...., who was born ...., ~~19~~..., unto ...., hereby relinquishing completely and forever, all legal rights, privileges, duties and obligations, including all rights of inheritance to and from the said ...., and I (we) do hereby expressly waive my (our) right(s) to hearing on the petition to terminate my (our) parental relationship with the said ...., and respectfully request the petition be granted.

DATED: ...., ~~19~~20...

.....

STATE OF IDAHO)
) ss.
COUNTY OF ....)

On this .... day of ...., ~~19~~20.., before me, the undersigned ...., ... (Judge or Magistrate) of the District Court of the .... Judicial District of the state of Idaho, in and for the county of ...., personally appeared ...., known to me (or proved to me on the oath of ....) to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he (she, they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

..... (District Judge or Magistrate)

The court shall accept a consent or a surrender and release executed in another state if:

(1) It is witnessed by a magistrate or district judge of the state where signed; or

(2) The court receives an affidavit or a certificate from a court of comparable jurisdiction stating that the consent or the surrender and release was executed in accordance with the laws of the state in which it was executed, or the court is satisfied by other showing that the consent or surrender and release was executed in accordance with the laws of the state in which it was executed; or

(3) The court shall accept a termination or relinquishment from a sister state that has been ordered by a court of competent jurisdiction under like proceedings; or in any other manner authorized by the laws of a sister state. In a state where the father has failed to file notice of claim to paternity and willingness to assume responsibility as provided for pursuant to the laws of such state, and where such failure constitutes an abandonment of such child and constitutes a termination or relinquishment of the rights of the putative father, the court shall accept such failure as a termination in this state without further hearing on the merits, if the court is satisfied that such failure constitutes a termination or relinquishment of parental rights pursuant to the laws of that state.

g. ~~Where consent to termination of parental rights is implied--by reason--of--the failure of a putative father to establish paternity in the manner prescribed in section 16-1513, Idaho Code.~~

~~h.~~ Unless a consent to termination signed by the parent(s) of the child has been filed by an adoption agency licensed in the state of Idaho, or unless the consent to termination was filed in conjunction with a petition for adoption of the child, the court shall hold a hearing.

~~i.--In--the--case--of--a-father's-parental-relationship,-where-the father-has-failed-to-file-notice-of-claim-to-paternity-and-willingness to-assume-responsibility-as--provided--in--section--16-1513(3),--Idaho Code.~~

~~j~~h. The court may grant termination as to a parent:

(1) Who caused the child to be conceived as a result of rape, incest, lewd conduct with a minor child under sixteen (16) years, or sexual abuse of a child under the age of sixteen (16) years, as defined in section 16-2002 n., Idaho Code;

(2) Who murdered or intentionally killed the other parent of the child; or

(3) Who has been incarcerated and has no possibility of parole. There is a rebuttable presumption that termination of the parent-child relationship in any of the circumstances provided in subsection ~~j~~h. of this section is in the best interest of the child.

SECTION 10. That Section 16-2007, Idaho Code, be, and the same is hereby amended to read as follows:

16-2007. NOTICE -- WAIVER -- GUARDIAN AD LITEM. After a petition has been filed, the court shall set the time and place for hearing, and shall cause notice thereof to be given to the petitioner, the parents of the child if married, the mother of the child if unmarried, those persons entitled to notice pursuant to section 16-1513, Idaho Code, the guardian of the person of the child, the person having legal custody of the child, any individual standing in loco parentis to the child, and the guardian ad litem of any party, or if service cannot be had on the parent or guardian, then upon the nearest blood relative named in the petition. The division of welfare of the Idaho department of health and welfare shall be given notice of the hearing if the petition for termination was not filed in conjunction with a petition for adoption or by an adoption agency licensed by the state of Idaho. Notice shall be given by personal service on the parents or guardian. Where reasonable efforts to effect personal service have been unsuccessful, the court shall order service by registered or certified mail to the last known address of the person to be notified and by publication once a week for three (3) successive weeks in a newspaper or newspapers to be designated by the court as most likely to give notice to the person to be served. The hearing shall take place no sooner than ten (10) days after service of notice, or where service is by registered or certified mail and publication, the hearing shall take place no sooner than ten (10) days after the date of last publication. Notice and appearance may be waived by a parent in writing before the court or in the presence of, and witnessed by, a clerk of court or a representative of an authorized agency, provided that such parent has been apprised by the court or by such person of the meaning and consequences of the termination action. Where the parent resides outside the state, the waiver shall be acknowledged before a notary of the state and shall contain the current address of the parent. The parent who has executed such a waiver shall not be required to appear. ~~Where the parent is a minor, the waiver shall be effective only upon approval by the court.~~ When the termination of the parent and child relationship is sought under section 16-2005~~(~~d.~~)~~, Idaho Code, the court shall appoint a guardian ad litem for the alleged incompetent parent. The court may in any other case appoint a guardian ad litem, as may be deemed necessary or desirable, for any party. Where the putative father has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare, notice of his commencement of proceedings to establish his paternity of the child born out of wedlock, notice under this section is not required unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code.

SECTION 11. That Section 16-2008, Idaho Code, be, and the same is hereby amended to read as follows:

16-2008. INVESTIGATION PRIOR TO DISPOSITION. a. If a petition for adoption is not filed in conjunction with a petition for termination, or the petition for termination was not filed by a children's adoption agency licensed by the state of Idaho upon the filing of a petition for termination, the court shall direct the department of health and welfare, bureau of child support enforcement to submit a written financial analysis report within thirty (30) days from date of notification, detailing the amount of any unreimbursed public assistance moneys paid by the state of Idaho on behalf of the child. The financial analysis shall include recommendations regarding repayment of unreimbursed public assistance and provisions for future support for the child, and the reasons therefor.

b. Upon the filing of a petition, the court may direct, in all cases where written consent to termination has not been given as provided in this act, that an investigation be made by the department of health and welfare, division of family and children's services, or a licensed children's adoption agency, and that a report in writing of such study be submitted to the court prior to the hearing, except that where the department of health and welfare or a licensed children's adoption agency is a petitioner, either in its own right or on behalf of a parent, a report in writing of the investigation made by such agency shall accompany the petition. The department of health and welfare or the licensed children's adoption agency shall have thirty (30) days from notification by the court during which it shall complete and submit its investigation unless an extension of time is granted by the court upon application by the agency. The court may order additional investigation as it deems necessary. The social study shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and such other facts as may be pertinent to the parent and child relationship, and the report submitted shall include a recommendation and the reasons therefor as to whether or not the parent and child relationship should be terminated. Where the parent is a minor, if the report does not include a statement of contact with the parents of said minor, the reasons therefor shall be set forth. The purpose of the investigation is to aid the court in making disposition of the petition and shall be considered by the court prior thereto.

c. No social study or investigation as provided for in paragraph b. of this section shall be directed by the court with respect to the putative father who has failed to timely commence proceedings to establish paternity under section 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare, notice of his commencement of proceedings to establish his paternity of the child, unless such putative father is one of those persons specifically set forth in section 16-1505(1), Idaho Code.

SECTION 12. That Section 16-2010, Idaho Code, be, and the same is hereby amended to read as follows:

16-2010. DECREE. Every order of the court terminating the parent

and child relationship or transferring legal custody or guardianship of the person of the child, or providing for protective supervision of the child, shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction.

a. If the court finds sufficient grounds exist for the termination of the parent and child relationship, it shall so decree and:

(1) Appoint an individual as guardian of the child's person, or

(2) Appoint an individual as guardian of the child's person and vest legal custody in another individual or in an authorized agency, or

(3) Appoint an authorized agency as guardian of the child's person and vest legal custody in such agency.

~~(4)--The--decree-shall-also-reflect-that-the-parent-has-been-notified-of-the-existence-of-the-voluntary-adoption--registry,--established-in-section-39-259A,-Idaho-Code.~~

The court shall also make an order fixing responsibility for the child's support. The parent and child relationship may be terminated with respect to one (1) parent without affecting the relationship between the child and the other parent.

b. Where the court does not order termination of the parent and child relationship, it shall dismiss the petition; provided, however, that where the court finds that the best interest of the child requires substitution or supplementation of parental care and supervision, it shall make an order placing the child under protective supervision, or vesting temporary legal custody in an authorized agency, fixing responsibility for temporary child support, and designating the period of time during which the order shall remain in effect.

c. If termination of parental rights is granted and the child is placed in the guardianship or legal custody of the department of health and welfare the court, upon petition, shall conduct a hearing as to the future status of the child within twelve (12) months of the order of termination of parental rights, and every twelve (12) months subsequently until the child is adopted or is in a placement sanctioned by the court.

Approved April 4, 2000.

CHAPTER 172
(H.B. No. 507)

AN ACT

RELATING TO ADOPTION; AMENDING SECTION 18-1511, IDAHO CODE, TO ALLOW CERTAIN FINANCIAL ASSISTANCE TO A BIRTH PARENT, TO ALLOW COURT APPROVED FINANCIAL ASSISTANCE BE PROVIDED BIRTH PARENTS FOR REASONABLE MATERNITY, LIVING AND POST PARTUM COSTS, PROVIDING A LIMIT OF TWO THOUSAND DOLLARS ON SUCH FINANCIAL ASSISTANCE UNLESS OTHERWISE APPROVED BY THE COURT, TO PROVIDE THAT THE FINANCIAL ASSISTANCE SHALL BE CONSIDERED A CHARITABLE GIFT AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 18-1511, Idaho Code, be, and the same is hereby amended to read as follows:

18-1511. SALE OR BARTER OF CHILD FOR ADOPTION OR OTHER PURPOSE PENALIZED -- ALLOWED EXPENSES. Any person or persons who shall sell or barter any child for adoption or for any other purpose, shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the state penitentiary for not more than fourteen (14) years, or by a fine of not more than five thousand dollars ($5,000), or by both such fine and imprisonment.

Provided however, this section shall not prohibit any person, or adoption agency from providing, in addition to legal and medical costs, reasonable maternity and living expenses during the pregnancy and for a period not to exceed six (6) weeks post partum based upon demonstrated financial need.

Any person or agency, seeking to provide financial assistance in excess of five hundred dollars ($500) shall do so after informally submitting to a court of competent jurisdiction, a verified financial plan outlining proposed expenditures. The court may approve or amend such a proposal. Only after court approval shall assistance totaling more than five hundred dollars ($500) become available to the birth parent. A prospective adoptive parent, or another person acting on behalf of a prospective adoptive parent, shall make payments for allowed expenses only to third party vendors, as is reasonably practical. All actual expenditures shall be presented by verified affidavit of counsel or the agency at the time of the adoption finalization.

No financial assistance to a birth parent shall exceed the sum of two thousand dollars ($2,000) unless otherwise authorized by the court. The financial assistance contemplated by this section shall be considered a charitable gift, not subject to recovery under the terms of section 16-1515, Idaho Code.

Approved April 4, 2000.

CHAPTER 173
(H.B. No. 508, As Amended, As Amended in the Senate)

AN ACT

RELATING TO THE ADOPTION OF CHILDREN; AMENDING SECTION 16-1512, IDAHO CODE, TO PLACE A SIX MONTH LIMITATION ON ALL CHALLENGES TO AN ADOPTION ORDER AND TO PROVIDE REASONS FOR AN ADOPTION ORDER TO BE OVERTURNED.

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

SECTION 1. That Section 16-1512, Idaho Code, be, and the same is hereby amended to read as follows:

16-1512. APPEAL FROM ORDER TO DISTRICT COURT -- BINDING EFFECT OF ADOPTION ORDER. (1) An appeal may be taken to the district court of the county from an order of the magistrates division of the district court granting or refusing to grant an order of adoption or from any other intermediate order in adoption proceedings.

(2) After the order of adoption by the court becomes final, no party to an adoption proceeding, nor anyone claiming under such party, may later question the validity or the adoption proceedings by reason of any defect or irregularity therein, jurisdiction or otherwise, but shall be fully bound by the order, except for such appeal as may be allowed in subsection (1) of this section. In no event, for any reason, other than fraud on the part of the party adopting a child, shall an adoption be overturned by any court or collaterally attacked by any person or entity after six (6) months from the date the order of adoption becomes final. This provision is intended as a statute of repose.

Approved April 4, 2000.

CHAPTER 174
(H.B. No. 509)

AN ACT

RELATING TO ADOPTION; AMENDING SECTION 18-1512A, IDAHO CODE, TO DEFINE THE TERM "ADVERTISEMENT," TO REVISE LEGAL ADVERTISEMENT PROCEDURES, TO PROVIDE FOR APPLICATION OF THE CONSUMER PROTECTION ACT, TO PROVIDE FOR ATTORNEYS LICENSED TO PRACTICE IN THE STATE TO ADVERTISE AND TO PROVIDE FOR PHYSICIANS AND OTHER HEALTH CARE PROVIDERS TO ASSIST NATURAL AND ADOPTIVE PARENTS WITH MEDICAL CARE NECESSARY TO INITIATE AND COMPLETE ADOPTIVE PLACEMENTS.

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

SECTION 1. That Section 18-1512A, Idaho Code, be, and the same is hereby amended to read as follows:

18-1512A. ADVERTISING FOR ADOPTION -- PROHIBITED ACTS. (1) Unless the context clearly requires otherwise in this section, "advertisement" means communication by newspaper, radio, television, handbills, placards or other print, broadcast or the electronic medium.

(2) No person or entity~~,--other-than-a-duly--authorized--agent--or employee--of--the--department--of--health-and-welfare-or-an-authorized children's-agency-or-institution-licensed-by-the-department-of--health and--welfare--to--care--for-and-place-children,~~ shall cause to be published for circulation or broadcast on a radio or television station within the geographic borders of the state of Idaho an advertisement or notice of a child or children offered or wanted for adoption~~.--No such-person-or-entity-through-such-advertisement-or-notice-shall-offer to--place,-locate,-dispose-or-receive-any-child-or-children-offered-or wanted-for-adoption,~~ or shall hold himself out through such advertisement or notice as ~~being-able~~ having the ability to place, locate, dispose or receive a child or children for adoption, unless the person or

entity is a duly authorized agent, contractee or employee of the department of health and welfare or an authorized children's agency or institution licensed by the department of health and welfare to care for and place children.

~~(2) Any such person or entity who places or causes such advertisement or notice as prohibited in subsection (1) of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000).~~

(3) A violation of subsection (2) of this section is a matter affecting the public interest for the purpose of applying chapter 6, title 48, Idaho Code. A violation of subsection (2) of this section is not reasonable in relation to the development and preservation of business. A violation of subsection (2) of this section constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 6, title 48, Idaho Code.

(4) Nothing herein is intended to prohibit an attorney licensed to practice in the state of Idaho from advertising his or her ability to practice or provide services related to the adoption of children.

(~~3~~5) Nothing herein is intended to prohibit ~~licensed attorneys,~~ physicians and other health care providers who are licensed to practice in the state of Idaho from assisting or providing natural and adoptive parents with ~~legal services or~~ medical care necessary to initiate and complete adoptive placements.

Approved April 4, 2000.

CHAPTER 175
(S.B. No. 1310)

AN ACT

RELATING TO CREDIT TRANSACTIONS; AMENDING SECTION 28-41-106, IDAHO CODE, TO PROVIDE THAT AN AGREEMENT TO FORGIVE OR WAIVE ALL OR PART OF A DEBT OR LEASE FOLLOWING A PARTIAL OR TOTAL LOSS OF THE SUBJECT PROPERTY IS NOT THE TRANSACTION OF INSURANCE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 28-41-106, Idaho Code, be, and the same is hereby amended to read as follows:

28-41-106. WAIVER -- AGREEMENT TO FOREGO RIGHTS -- SETTLEMENT OF CLAIMS. (1) Except as otherwise provided in this act, a debtor may not waive or agree to forego rights or benefits under this act.

(2) A claim by a debtor against a creditor for an excess charge, other violation of this act, or civil penalty, or a claim against a debtor for default or breach of a duty imposed by this act, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a debtor may be settled for less value than the amount claimed.

(4) A settlement in which the debtor waives or agrees to forego rights or benefits under this act is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

(5) Title 41, Idaho Code, shall not apply to an agreement by a creditor or lessor, with or without consideration, to forgive or waive all or any part of a debt or lease obligation following a partial or total loss of the property that is the subject of a loan, credit sale or lease transaction and the forgiveness shall not be considered the transaction of insurance for the purposes of the Idaho credit code.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 4, 2000.

CHAPTER 176
(S.B. No. 1316, As Amended)

AN ACT

RELATING TO REGULATION OF FOOD ESTABLISHMENTS; AMENDING SECTION 11, CHAPTER 194, LAWS OF 1997, TO DELAY THE SUNSET DATE; AMENDING SECTION 12, CHAPTER 194, LAWS OF 1997, TO DELAY THE EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 11, Chapter 194, Laws of 1997, be, and the same is hereby amended to read as follows:

SECTION 11. Section 7 of this act shall be null, void and of no force and effect on and after July 1, ~~2000~~ 2002.

SECTION 2. That Section 12, Chapter 194, Laws of 1997, be, and the same is hereby amended to read as follows:

SECTION 12. Sections 9 and 10 of this act shall be in full force and effect on and after July 1, ~~2000~~ 2002.

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 April 4, 2000.

CHAPTER 177
(S.B. No. 1337)

AN ACT

RELATING TO WATER RIGHTS; AMENDING SECTION 42-221, IDAHO CODE, TO INCREASE FILING FEES FOR AN APPLICATION FOR PERMIT TO APPROPRIATE WATER AND TO REQUIRE THAT A FEE BE PAID FOR AN APPLICATION TO THE DEPARTMENT OF WATER RESOURCES FOR CHANGE OF POINT OF DIVERSION, PLACE, PERIOD, OR NATURE OF USE OF WATER UNDER A VESTED WATER RIGHT BASED UPON THE QUANTITY OF WATER SOUGHT TO BE CHANGED; AND PROVIDING AN EFFECTIVE DATE.

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 or an application to change the point of diversion, place, period or nature of use of water under a vested water right:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less ..... $~~50~~.100

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 ..... $~~10~~250

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 ..... $~~10~~250 plus $~~2~~40.00 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 ..... $~~48~~1,010 plus $~~1~~20.00 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 ..... $~~1,28~~2,610 plus $510.00 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 ..... $~~3,286~~,610 plus $~~1~~2.00 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 an 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 water 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 submit 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. This act shall be in full force and effect on and after July 1, 2000.

Approved April 4, 2000.

CHAPTER 178
(S.B. No. 1356)

AN ACT

RELATING TO TRUSTS; AMENDING SECTION 15-5-508, IDAHO CODE, TO REDESIGNATE THE SECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 15-5-508, Idaho Code, be, and the same is hereby amended to read as follows:

15-~~5-508~~7-502. RESTRICTIONS ON TRANSFERS IN TRUST. A trust instrument may provide that a beneficiary's interest in the income and/or principal of the trust is not subject to voluntary or involuntary transfer. Such provision shall be valid and enforceable, and the beneficiary's interest shall not be subject to voluntary or involuntary transfer of any nature, and shall not be subject to enforcement of a money judgment, subject to any exceptions otherwise allowed by law. If a trust gives the trustee discretion over the payment of either income or principal of a trust, or both, nothing in this section shall be deemed to affect or limit that discretion in any manner. This section shall not be deemed to apply to any trust distributions after actual receipt by the beneficiary. Validity of a restraint on transfer in a trust document shall not require specific reference to this section or any specific language. This section shall apply both to trust instruments in existence on July 1, 1995, as well as trust instruments established thereafter.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 4, 2000.

CHAPTER 179
(S.B. No. 1357)

AN ACT

RELATING TO GUARDIANSHIPS; AMENDING SECTION 15-5-311, IDAHO CODE, TO REVISE THE ORDER OF PRIORITY FOR APPOINTMENT AS GUARDIAN AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 15-5-311, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-311. WHO MAY BE GUARDIAN -- PRIORITIES. (a) Any competent person or a suitable institution may be appointed guardian of an incapacitated person.

(b) The person preferred by the incapacitated person shall be appointed guardian unless good cause be shown why appointment of such person is contrary to the best interests of the incapacitated person. If the incapacitated person is unable to express a preference, any previous expression, including a durable power of attorney for health care, may be considered by the court.

(c) Persons who are not disqualified have priority for appointment as guardian in the following order:

(1) The person preferred by the incapacitated person. The court shall always consider the wishes expressed by an incapacitated person as to who shall be appointed guardian;

(2) T~~t~~he spouse of the incapacitated person;

(~~2~~3) ~~a~~An adult child of the incapacitated person;

(~~3~~4) ~~a~~A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(~~4~~5) ~~a~~Any relative of the incapacitated person with whom he has resided for more than six (6) months prior to the filing of the petition;

(~~5~~6) ~~a~~A person nominated by the person who is caring for him or paying benefits to him~~;~~

~~(6)--the-person-preferred-by-the-incapacitated-person.--The--court shall--always--consider--the--wishes-expressed-by-an-incapacitated person-as-to-who-shall-be-appointed-guardian.~~

Approved April 4, 2000.

CHAPTER 180
(S.B. No. 1358)

AN ACT
RELATING TO GUARDIANSHIP; AMENDING SECTION 15-5-101, IDAHO CODE, TO REVISE THE DEFINITION OF "INCAPACITATED PERSON" AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 15-5-101, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-101. DEFINITIONS AND USE OF TERMS. Unless otherwise apparent from the context, in this code:

(a) "Incapacitated person" means any person who is impaired, ~~by reason--of-mental-illness,-mental-deficiency,-physical-illness-or-disability,-chronic-use-of-drugs,-chronic-intoxication,--or--other--cause (~~except by minority~~)~~, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, provided, that the term shall not refer to a developmentally disabled person as defined in section 66-402(5), Idaho Code, and provided further that:

(1) "Incapacity" means a legal, not a medical disability and shall be measured by function limitations and it shall be construed to mean or refer to any person who has suffered, is suffering, or is likely to suffer, substantial harm due to an inability to provide for his personal needs for food, clothing, shelter, health care, or safety, or an inability to manage his or her property or financial affairs;

(2) Inability to provide for personal needs or to manage property shall be evidenced by acts or occurrences, or statements which strongly indicate imminent acts or occurrences; material evidence of inability must have occurred within twelve (12) months prior to the filing of the petition for guardianship or conservatorship;

(3) Isolated instances of simple negligence or improvidence, lack of resources, or any act, occurrence, or statement, if that act, occurrence, or statement is the product of an informed judgment, shall not constitute evidence of inability to provide for personal needs or to manage property;

(4) "Informed judgment" means a choice made by a person who has the ability to make such a choice, and who makes it voluntarily after all relevant information necessary to making the decision has been provided, and who understands that he is free to choose or refuse any alternative available and who clearly indicates or expresses the outcome of his choice;

(b) A "protective proceeding" is a proceeding under the provisions of section 15-5-401, ~~of-this-code~~ Idaho Code, to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(c) A "protected person" is a minor or other person for whom a conservator has been appointed or other protective order has been made;

(d) A "ward" is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 4, 2000.

CHAPTER 181
(S.B. No. 1373)

AN ACT

RELATING TO A WILL REGISTRY; AMENDING CHAPTER 2, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW PART 10, CHAPTER 2, TITLE 15, IDAHO CODE, TO PROVIDE FOR THE ESTABLISHMENT AND MAINTENANCE OF A WILL REGISTRY BY THE SECRETARY OF STATE AND TO PROVIDE FEES.

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

SECTION 1. That Chapter 2, Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW PART, to be known and designated as Part 10, Chapter 2, Title 15, Idaho Code, and to read as follows:

PART 10
WILL REGISTRY

15-2-1001. WILL REGISTRY. The secretary of state shall create and maintain a will registry. The information contained in such registry shall include: the full name of the person making the will; the date the will was made; and sufficient identification of the location of the will at the time of registration. The method of registration shall be on a form required by the secretary of state. The fee for registration shall be ten dollars ($10.00) which shall be deposited by the secretary of state in the general fund. The secretary of state shall not be liable in any way for the accuracy of the information contained in the registry. The existence, or nonexistence, of a registration for a particular will shall not be considered as an evidentiary fact in any proceeding relating to such will. The failure to file information about a will in the registry shall not be a factor in the validity of the will, nor shall the failure to file be considered as malpractice on the part of any attorney as to the will. Only interested persons as defined in section 15-1-201, Idaho Code, or their attorneys may search the records contained herein. The secretary of state shall not be liable for the accuracy of the representation of the interested person or the interested person's attorney.

Approved April 4, 2000.

CHAPTER 182
(S.B. No. 1396)

AN ACT

RELATING TO PROBATE; AMENDING SECTION 15-2-801, IDAHO CODE, TO CLARIFY THAT A RENUNCIATION MAY BE MADE BY AN AGENT APPOINTED UNDER A POWER OF ATTORNEY, OR BY A CONSERVATOR OR GUARDIAN, ON BEHALF OF AN INCAPACITATED PERSON, OR BY THE PERSONAL REPRESENTATIVE OR ADMINISTRATOR OF A DECEASED PERSON AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 15-2-801, Idaho Code, be, and the same is hereby amended to read as follows:

15-2-801. RENUNCIATION.

(a) (1) A person or the representative of an incapacitated or unascertained person who is an heir, devisee, person succeeding to a renounced interest, donee, beneficiary under a testamentary or nontestamentary instrument, donee of a power of appointment, grantee, surviving joint owner or surviving joint tenant, beneficiary of an insurance contract, person designated to take pursuant to a power of appointment exercised by a testamentary or nontestamentary instrument, or otherwise the recipient of any benefit under a testamentary or nontestamentary instrument, may renounce in whole or in part, powers, future interests, specific parts, fractional shares or assets thereof by filing a written instrument within the time and at the place hereinafter provided.

(2) The instrument shall: (i) describe the property or interest renounced; (ii) be signed by the person renouncing; and (iii) declare the renunciation and the extent thereof.

(3) The appropriate court may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce or to deviate from any power of administration, management or allocation of benefit upon finding that exercise of such power may defeat or impair the accomplishment of the purposes of the trust whether by the imposition of tax or the allocation of beneficial interest inconsistent with such purposes. Such authority shall be exercised after hearing and upon notice to all known persons beneficially interested in such trust or estate, in the manner provided by this act.

(b) The writing specified in subsection (a) of this section must be filed within nine (9) months after the transfer or the death of the decedent, or donee of the power, (whichever is the later) or, if the taker of the property is not then finally ascertained, not later than nine (9) months after the event that determines that the taker of the property or interest is finally ascertained or his interest indefeasibly vested. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. If an interest in real estate is renounced, a copy of the writing may also be recorded in the office of the recorder in the county in which said real estate lies. A copy of the writing also shall be delivered in person or mailed by registered or certified mail to the personal representative of the decedent, the trustee of any trust in which the interest renounced exists, and no such personal representative, trustee, or person shall be liable for any otherwise proper distribution or other disposition made without actual notice of the renunciation.

(c) Unless the decedent or donee of the power has otherwise indicated, the property or interest renounced passes as if the person renouncing had predeceased the decedent, or if the person renouncing is designated to take under a power of appointment as if the person renouncing had predeceased the donee of the power. A future interest

that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person renouncing had predeceased the decedent or the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.

(d) The right to renounce property or an interest therein is barred by: (1) assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor; (2) written waiver of the right to renounce; or (3) sale or other disposition of property pursuant to judicial process, made before the renunciation is effective.

(e) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(f) The renunciation or the written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

(g) This section does not abridge the right of any person to assign, convey, release, or renounce any property or an interest therein arising under any other statute.

(h) An interest in property existing on the effective date of this act as to which, if a present interest, the time for filing a renunciation has not expired, or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be renounced within nine (9) months after the effective date of this act.

(i) In clarification and amplification of subsection (a)(1) of this section, and to make clear the existing terms thereof, a renunciation may be made by an agent appointed under a power of attorney, by a conservator or guardian on behalf of an incapacitated person, or by the personal representative or administrator of a deceased person. The ability to renounce on behalf of the person does not need to be specifically set forth in a power of attorney if the power is general in nature.

Approved April 4, 2000.

CHAPTER 183
(S.B. No. 1402)

AN ACT

RELATING TO INSURANCE COMPANIES; AMENDING SECTION 41-403, IDAHO CODE, TO PROVIDE THAT TIME DEPOSITS IN IDAHO BRANCHES OF FINANCIAL INSTITUTIONS WITH ONE OR MORE BRANCHES LOCATED IN IDAHO QUALIFY AS A TYPE OF INVESTMENT IN WHICH AN INSURER MAY INVEST AT LEAST TWENTY-FIVE PERCENT OF ITS REQUIRED RESERVE UNDER SECTION 41-706(4), IDAHO CODE, AND THEREBY QUALIFY FOR A LOWER PREMIUM TAX RATE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-403, Idaho Code, be, and the same is hereby amended to read as follows:

41-403. REDUCED TAX BASED ON IDAHO INVESTMENTS. Provided that it shall comply with rules and standards duly promulgated by the director of insurance for the purposes of assuring the establishment and maintenance in this state of services and facilities consistent with the nature and extent of its operations, any insurer, other than a life insurance company, having at all times throughout the year with respect to which the tax is payable twenty-five ~~per-cent~~ percent (25%) or more of its assets invested in the investments set forth below, shall, with respect to premiums on which taxes are to be computed under section 41-402, Idaho Code, compute and pay such tax at the rate of one and four-tenths ~~per--cent~~ percent (1.4%) instead of at any higher rate provided for under section 41-402, Idaho Code; and provided further, any life insurance company, in order to qualify for a tax rate of one and four-tenths ~~per-cent~~ percent (1.4%) instead of any higher rate provided for under section 41-402, Idaho Code, shall maintain throughout the year with respect to which tax is payable at least twenty-five ~~per-cent~~ percent (25%) of the reserve required under section 41-706 (4), Idaho Code, invested in the designated investments set forth below:

(1) Bonds or warrants of this state, or of any county, city or incorporated town or district within this state authorized by law to be issued~~,~~; or

(2) Taxable real estate within this state~~,~~; or

(3) First mortgages upon improved, unencumbered real estate situated within this state~~,~~; or

(4) Stocks or bonds of corporations organized under the laws of, or maintaining their home office and principal administrative records in this state if such stocks or bonds are lawful investments of the insurer under chapter 7 (investments) of this code~~,~~; or

(5) Bonds authorized by law to be issued against the revenues derived from the operation in this state of domestic water and sewage systems or off-street parking facilities~~,~~; or

(6) Time deposits, ~~with~~ or other deposits for interest income purposes, in any Idaho branch of any banks, or trust ~~companies~~ company, or savings and loan associations, or ~~building-and-loan-associations-or-on-deposit-for-interest-income--purposes--with~~ any other legally organized and approved financial institution ~~domiciled-within~~ with one (1) or more branches in this state and insured by any instrumentality of the United States government.

Approved April 4, 2000.

CHAPTER 184
(S.B. No. 1403)

AN ACT
RELATING TO MOTOR VEHICLE DEALERS; AMENDING SECTION 49-1616, IDAHO CODE, TO REQUIRE A MANUFACTURER OF MOTOR VEHICLES TO PROVIDE AT

LEAST SIXTY DAYS NOTICE OF INTENT TO ESTABLISH AN ADDITIONAL DEALERSHIP OR TO RELOCATE AN EXISTING DEALERSHIP IN CERTAIN AREAS AND TO PROVIDE RESTRICTIONS ACCORDING TO THE RADIUS OF CERTAIN DISTANCES.

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

SECTION 1. That Section 49-1616, Idaho Code, be, and the same is hereby amended to read as follows:

49-1616. LIMITATIONS ON ESTABLISHING OR RELOCATING DEALERS. (1) In the event that a manufacturer seeks to enter into a franchise establishing an additional dealership or relocating an existing dealership within a radius of ten (10) miles from where the same line is represented, the manufacturer shall in writing, first notify the department and each dealer for the line within the ten (10) mile radius, <u>at least sixty (60) days prior to the addition or relocation,</u> of the intention to establish an additional dealership or to relocate an existing dealership within the ten (10) mile radius.

(2) This section shall not apply to the relocation of an existing dealer within that dealer's relevant market area, provided that the relocation not be at a site within <u>a radius of</u> seven (7) miles of a licensed franchise for the same line make of vehicle, or if the proposed franchise is to be established at or within <u>a radius of</u> two (2) miles of a location at which a former franchise for the same line make of new vehicle had ceased operating within the previous two (2) years. If the seven (7) and two (2) mile exceptions are not applicable, the relocation may still be possible upon notice and resolution of protest under subsections (1) and (3) of this section.

(3) A protest may be filed in accordance with the provisions of section 49-1617, Idaho Code.

Approved April 4, 2000.

CHAPTER 185
(S.B. No. 1406, As Amended)

AN ACT

RELATING TO CONSUMER PROTECTION; AMENDING TITLE 48, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 16, TITLE 48, IDAHO CODE, TO PROVIDE UNLAWFUL PRACTICES FOR OFFERING DISCOUNTS OR ACCESS TO DISCOUNTS FROM HEALTH CARE PROVIDERS USING CASH DISCOUNT CARDS IN HEALTH-RELATED PURCHASES AND TO PROVIDE EXCEPTIONS, TO PROVIDE COURT ACTIONS UPON VIOLATION OF LAW AND TO PROVIDE FOR DESIGNATION OF AN AGENT FOR SERVICE OF PROCESS IN THIS STATE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Title 48, Idaho Code, be, and the same is hereby amended by the addition thereto of a <u>NEW CHAPTER,</u> to be known and des-

ignated as Chapter 16, Title 48, Idaho Code, and to read as follows:

CHAPTER 16
HEALTH-RELATED CASH DISCOUNT CARDS

48-1601. UNLAWFUL PRACTICES -- EXCEPTIONS. It shall be unlawful and a violation of this chapter for any person to sell, market, promote, advertise or otherwise distribute any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts or access to discounts from health care providers in health-related purchases where:

(1) Such card or other purchasing mechanism or device does not expressly provide in bold and prominent type that the discounts are not insurance;

(2) Such discounts are not specifically authorized by an individual and separate contract with each health care provider listed in conjunction with the card or other purchasing mechanism or device; or

(3) The discounts or access to discounts offered or the range of discounts or access to the range of discounts offered are misleading, deceptive or fraudulent, regardless of the literal wording used.

(4) Nothing in this chapter shall be construed to apply to:

(a) A customer discount or membership card issued by a store or buying club for use at that store or buying club;

(b) A benefit administered by an insurer, a carrier or a managed care organization as defined in sections 41-103, 41-2212 and 41-3903, Idaho Code, respectively.

48-1602. COURT ACTIONS UPON VIOLATION. (1) The attorney general of the state of Idaho, any person, firm, private corporation, municipal or other public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of this chapter and for the recovery of damages.

(2) Any person subject to liability under this section shall be deemed, as a matter of law, to have purposefully availed himself of the privileges of conducting activities within Idaho, sufficient to subject the person to the personal jurisdiction of the district court hearing an action brought pursuant to this chapter.

(3) An action for violation of this section may be brought:

(a) In the county where the plaintiff resides;

(b) In the county where the plaintiff conducts business; or

(c) In the county where the card or other purchasing mechanism or device was sold, marketed, promoted, advertised or otherwise distributed.

(4) If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance thereof. It shall not be necessary, except to recover for actual damages under subsection (5) of this section, that actual damages to the plaintiff be alleged or proved.

(5) In addition to injunctive relief, the plaintiff in the action shall be entitled to recover from the defendant:

(a) One hundred dollars ($100) per card or other purchasing mechanism or device sold, marketed, promoted, advertised or otherwise

distributed within the state of Idaho, or ten thousand dollars ($10,000), whichever is greater;

(b) Three (3) times the amount of the actual damages, if any sustained;

(c) Reasonable attorney's fees;

(d) Costs; and

(e) Any other relief which the court deems proper.

(6) All actions under this section shall be commenced within two (2) years after the date on which the violation of this chapter occurred or within two (2) years after the person bringing the action discovered, or in the exercise of reasonable diligence, should have discovered, the occurrence of the violation of this chapter. The period of limitation provided in this section may be extended for a period of one hundred eighty (180) days if the person bringing the action proves by a preponderance of the evidence that the failure to timely commence the action was caused by the defendant's engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone commencement of the action.

(7) Any defendant in an action brought under the provisions of this chapter may be required to testify as provided by law. In addition, the books and records of any such defendant may be brought into court and introduced, by reference, into evidence.

(8) The remedies prescribed in this section are cumulative and in addition to any other remedies prescribed by law, and in addition to any other applicable criminal, civil or administrative penalties.

48-1603. DESIGNATION OF AGENT. Any person who sells, markets, promotes, advertises or otherwise distributes any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts from health care providers in health-related purchases in Idaho, shall designate an agent who is a resident of Idaho, for service of process and register such agent with the secretary of state.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 4, 2000.

CHAPTER 186
(S.B. No. 1427)

AN ACT

RELATING TO SEARCH AND RESCUE; AMENDING SECTION 67-2913, IDAHO CODE, TO PROVIDE THAT MONEYS IN THE SEARCH AND RESCUE FUND SHALL BE MAINTAINED IN FOUR SUBACCOUNTS, TO INCREASE THE MAXIMUM AMOUNT OF MONEY THAT MAY BE REIMBURSED TO COUNTY SHERIFFS FOR SEARCH AND RESCUE MISSIONS CONDUCTED BY THEIR OFFICE, TO PROVIDE THAT RECREATIONAL VEHICLE REGISTRATION FEES AND MOTOR FUELS TAX REVENUES SHALL BE DEPOSITED TO THE CREDIT OF THE COST REIMBURSEMENT SUBACCOUNT, TO PROVIDE PROCEDURES FOR ALLOCATION OF MONEYS TO THE

SUBACCOUNTS, TO PROVIDE FORMULAS FOR REIMBURSEMENT, TO PROVIDE REIMBURSEMENT PROCEDURES AND TO PROVIDE FOR RETURN OF INVESTMENT EARNINGS TO THE SEARCH AND RESCUE FUND; AMENDING SECTION 49-448, IDAHO CODE, TO PROVIDE A CORRECT IDAHO CODE CITATION AND TO PROVIDE CORRECT FUND NAMES; AMENDING SECTION 63-2412, IDAHO CODE, TO PROVIDE FOR A CORRECT IDAHO CODE CITATION, TO PROVIDE A CORRECT FUND NAME AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-2913, Idaho Code, be, and the same is hereby amended to read as follows:

67-2913. SEARCH AND RESCUE ~~ACCOUNT~~ FUND. There is hereby created in the ~~dedicated--fund~~ state treasury the search and rescue ~~account~~ fund.

(1) Moneys in the ~~account~~ fund shall be maintained in ~~two--(2)~~ four (4) subaccounts, identified respectively as the "cost reimbursement subaccount," the "training subaccount," the "catastrophic search subaccount" and the "equipment purchase matching subaccount." Moneys in the cost reimbursement subaccount are perpetually appropriated to and shall be used by the director of the department of law enforcement for the purpose of defraying costs of search and rescue missions conducted by the county sheriff's office at a maximum of ~~two~~ four thousand dollars ($~~2~~4,000) per rescue mission, regardless of the number of counties or county search and rescue organizations involved. One hundred percent (100%) of the moneys received pursuant to sections 49-448 and 63-2412, Idaho Code, shall be deposited to the credit of the cost reimbursement subaccount. Of the additional fine imposed pursuant to section 36-1405, Idaho Code, fifty percent (50%) shall be deposited to the credit of the cost reimbursement subaccount. In the event the balance in the cost reimbursement subaccount exceeds ~~fifty~~ twenty-five thousand dollars ($250,000), the amount in excess shall be transferred to the equipment purchase matching subaccount.

(2) Fifty percent (50%) of the moneys received pursuant to the provisions of section 36-1405, Idaho Code, and any amount in excess of ~~fifty~~ twenty-five thousand dollars ($250,000) in the cost reimbursement subaccount, shall be deposited in the search and rescue account to the credit of the equipment purchase matching subaccount, and are perpetually appropriated to the director of the department of law enforcement for the purposes of the subaccount. Moneys in the equipment purchase matching subaccount shall be used by the director to match local funds for the purchase of equipment for use by local search and rescue units, at a maximum amount of two thousand dollars ($2,000) per unit in any single year. The cost sharing match in the equipment purchase matching subaccount shall be thirty-five percent (35%) local funds to sixty-five percent (65%) from the equipment purchase matching subaccount. In the event the balance in the equipment purchase matching subaccount exceeds fifteen thousand dollars ($15,000), the amount in excess shall be transferred to the training subaccount.

(3) Excess moneys described in subsection (2) of this section shall be deposited to the credit of the training subaccount. In the

event the balance of the training subaccount exceeds twenty thousand dollars ($20,000), the amount in excess shall be transferred to the catastrophic search subaccount. Such moneys shall be perpetually appropriated to the director of the department of law enforcement for the purposes of the subaccounts. Moneys in the training subaccount shall be used by the director for the purpose of providing training funds to sheriffs' offices for search and rescue training, to a maximum of two thousand dollars ($2,000) per training exercise, regardless of the number of counties or county search and rescue organizations involved.

(4) Moneys in the catastrophic search subaccount shall be used by the director for the purpose of providing reimbursement to the sheriff's office for searches and rescues costing in excess of four thousand dollars ($4,000). Claims for reimbursement by sheriffs' offices shall be made on a quarterly basis and reimbursements shall be made by the director once each quarter. Reimbursement of each claim shall be made by the director as follows: (a) the first four thousand dollars ($4,000) of a claim shall be reimbursed from the cost reimbursement subaccount; (b) the remainder of each claim exceeding four thousand dollars ($4,000) shall be reimbursed from the catastrophic search subaccount. In the event that there are insufficient moneys in the catastrophic search subaccount to fully reimburse all catastrophic search claims in a given quarter, the director shall partially reimburse each claim on a pro rata basis. A sheriff's office may seek further reimbursement for any unreimbursed portion of a claim in the following quarters.

(5) The state treasurer shall invest all moneys in the search and rescue fund and the interest and proceeds earned on such investments shall be returned to the search and rescue fund.

SECTION 2. That Section 49-448, Idaho Code, be, and the same is hereby amended to read as follows:

49-448. DISPOSITION OF FEES. The revenues received from the annual license fees imposed by section 49-445, Idaho Code, for recreational vehicle registration shall be paid over monthly to the county treasurer, to be distributed as follows:

(1) Two dollars ($2.00) from each recreational vehicle license sold shall be apportioned to the county current expense fund, which shall be deemed necessary costs of collection and administration;

(2) From the balance remaining, ninety-nine percent (99%) shall be transmitted to the state treasurer for deposit in ~~an--account~~ fund known as the "state recreational vehicle ~~account~~ fund," which is established in ~~the-dedicated-fund-of~~ the state treasury, and one percent (1%) shall be distributed to the search and rescue ~~account~~ fund created in section 67-29~~0~~13, Idaho Code.

SECTION 3. That Section 63-2412, Idaho Code, be, and the same is hereby amended to read as follows:

63-2412. DISTRIBUTION OF TAX REVENUES. (1) The revenues received from the taxes imposed by sections 63-2402 and 63-2405, Idaho Code, and any penalties, interest, or deficiency additions, or from the fees

imposed by the commission under the provisions of section 63-2409, Idaho Code, shall be distributed periodically as follows:

(a) An amount of money equal to the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission at the end of each fiscal year shall be distributed as listed in paragraph (e) of this subsection.

(b) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

(c) As soon as possible after the beginning of each fiscal year, the sum of two hundred fifty thousand dollars ($250,000) shall be distributed to the railroad grade crossing protection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 62-304C, Idaho Code.

(d) As soon as possible after the beginning of each fiscal year, the sum of one hundred thousand dollars ($100,000) shall be distributed to the local bridge inspection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 40-703, Idaho Code.

(e) From the balance remaining with the commission after distributing the amounts in paragraphs (a) through (d) of subsection (1) of this section:

1. One and twenty-eight hundredths ~~per-cent~~ <u>percent</u> (1.28%) shall be distributed as follows: sixty-six ~~per--cent~~ <u>percent</u> (66%) of the one and twenty-eight hundredths ~~per-cent~~ <u>percent</u> (1.28%) shall be distributed to the waterways improvement account, as created in chapter 15, title 57, Idaho Code. Up to twenty ~~per-cent~~ <u>percent</u> (20%) of the moneys distributed to the waterways improvement account under the provisions of this paragraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the waterways improvement account. Thirty-three ~~per-cent~~ <u>percent</u> (33%) of the one and twenty-eight hundredths ~~per--cent~~ <u>percent</u> (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One ~~per-cent~~ <u>percent</u> (1%) of the one and twenty-eight hundredths ~~per--cent~~ <u>percent</u> (1.28%) shall be distributed to the search and rescue ~~account~~ <u>fund</u> created in section 67-290<u>1</u>3, Idaho Code;

2. One and twenty-eight hundredths ~~per-cent~~ <u>percent</u> (1.28%) shall be distributed as follows: sixty-six ~~per--cent~~ <u>percent</u> (66%) of the one and twenty-eight hundredths ~~per-cent~~ <u>percent</u> (1.28%) shall be distributed to the off-road motor vehicle account, as created in section 57-1901, Idaho Code. Up to

twenty ~~per--cent~~ percent (20%) of the moneys distributed to the off-road motor vehicle account by this subpart may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the off-road motor vehicle account. Thirty-three ~~per-cent~~ percent (33%) of the one and twenty-eight hundredths ~~per-cent~~ percent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One ~~per-cent~~ percent (1%) of the one and twenty-eight hundredths ~~per-cent~~ percent (1.28%) shall be distributed to the search and rescue ~~account~~ fund created in section 67-29~~0~~13, Idaho Code; and

3. Forty-four hundredths ~~per-cent~~ percent (.44%) shall be distributed to the park and recreation capital improvement account as created in section 57-1801, Idaho Code, to be used solely to improve roads and bridges within and leading to parks and recreation areas of the state.

4. The balance remaining shall be distributed to the highway distribution account created in section 40-701, Idaho Code.

(2) The revenues received from the taxes imposed by section 63-2408, Idaho Code, and any penalties, interest, and deficiency amounts, shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account, and those moneys are hereby continuously appropriated.

(b) The balance remaining of all the taxes collected shall be distributed to the state aeronautics account, as provided in section 21-211, Idaho Code.

Approved April 4, 2000.

CHAPTER 187
(S.B. No. 1424)

AN ACT

RELATING TO LEASE OF STATE LANDS; AMENDING SECTION 58-307, IDAHO CODE, TO INCLUDE THIRTY-THREE AND THREE-HUNDREDTHS ACRES OF LAND AT SAGE JUNCTION IN THE LONG-TERM LEASING AUTHORITY OF THE STATE BOARD OF LAND COMMISSIONERS FOR ENDOWMENT LANDS.

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

SECTION 1. That Section 58-307, Idaho Code, be, and the same is hereby amended to read as follows:

58-307. TERM OF LEASE -- APPLICATION FOR RENEWAL -- ALLOWANCE FOR IMPROVEMENTS. (1) No lease of state public school endowment lands,

other than those valuable for stone, coal, oil, gas or other minerals, shall be for a longer term than ten (10) years.

(2) Notwithstanding any other provisions of law, all state lands may be leased for a period of up to twenty-five (25) years to the federal government, to federal agencies, state agencies, counties, or cities, school districts or political subdivisions when leased for public purposes. Such leases for public purposes may be entered into by negotiation and shall secure a rental amount based on the fair market value of the state land.

(3) Notwithstanding any other provisions of law, only the state endowment lands, other than public school endowment lands, described below may be leased for a period of up to forty-nine (49) years for commercial purposes, under such terms and conditions as may be set by the board, provided that the board consults with the county commissioners of the county in which the lands are located before leasing the lands described below, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. The department shall hold a hearing, on each of the parcels described below, in the community in which the parcel is located.

(a) One (1) parcel - E1/2, Section 5, T2N, R2E, Boise Meridian, containing three hundred twenty (320) acres, more or less, and located south of the Boise Airport on Pleasant Valley Road.

(b) One (1) parcel - SWSWNW, Section 27, T3N, R2E, Boise Meridian, containing eight (8) acres, more or less, located northeasterly of the Boise Airport and north of the Boise Interagency Fire Center.

(c) Four (4) parcels - E1/2SW, W1/2SE, NESE, Section 31; SW1/4, Section 32, T3N, R2E, Boise Meridian, all containing three hundred sixty (360) acres, more or less, located south of the Boise Airport and west of Pleasant Valley Road.

(d) Three (3) parcels - SWSW, Section 28; Pt. SESE, Section 29 (east of the Railroad R/W, now a bikepath); W1/2NW, Section 33, all in T3N, R18E, Boise Meridian, all containing one hundred twenty-five (125) acres, more or less, located two (2) miles northerly of Hailey, Idaho, excepting therefrom, a parcel of land, containing twenty (20) acres, more or less, at a location to be determined with access to the sheep driveway located on the county road.

(e) One (1) parcel - SWNE, Section 32, T3N, R2E, Boise Meridian, containing forty (40) acres, more or less, located southerly and westerly of the Boise Airport off Gowen Road; Public Building Endowment.

(f) Two (2) parcels - Part NESWNE, Section 35, T3N, R2E, Boise Meridian, containing three and fifteen hundredths (3.15) acres, more or less; Part NENESE, Section 35, T3N, R2E, Boise Meridian, containing one and eight-tenths (1.8) acres, more or less; both located northerly and easterly of I-84 between the Broadway Interchange and the Gowen Road/State Highway 21 Interchange; Normal School Endowment.

(g) One (1) parcel - Part Lot 1, Section 1, T2N, R2E, Boise Meridian, containing five (5) acres, more or less, located near the Gowen Road/State Highway 21 Exit from I-84; Penitentiary

Endowment.

(h) One (1) parcel - N1/2NW1/4SW1/4, SW1/4NW1/4SW1/4, Section 4, T2N, R2E, Boise Meridian, excepting that portion deeded to Ada County for a public road, containing twenty-eight and seventy-nine hundredths (28.79) acres, more or less, located south of the Boise Airport and east of Pleasant Valley Road; Normal School Endowment.

(4) Notwithstanding any other provisions of law, only the state public school endowment lands described below may be leased for commercial purposes, for a term not to exceed ten (10) years, and the board may grant, upon payment of good and valuable consideration, a preferential right to renew said lease not more than four (4) times, provided that the board shall consult with the county commissioners of the county in which the lands are located before leasing the lands described below, and the use for which the land is leased shall be consistent with the local planning and zoning ordinances insofar as is reasonable and practicable. The department shall hold a hearing, on each of the parcels described below, in the community in which the parcel is located.

(a) One (1) parcel - All, Section 16, T3N, R18E, Boise Meridian, containing six hundred forty (640) acres, more or less, and located in Ohio Gulch some five (5) miles northerly of Hailey, Idaho.

(b) One (1) parcel - E1/2NE, Section 16, T18N, R3E, Boise Meridian, containing eighty (80) acres, more or less, and located northwesterly of the intersection of Deinhard Lane and Sampson Trail in McCall, Idaho.

(c) One (1) parcel - S1/2NW, NESW, Part NWSW, Part SWSW, Part SESW, Section 36, T3N, R2E, Boise Meridian, containing one hundred seventy-eight and seventy-one hundredths (178.71) acres, more or less, located northerly and easterly of I-84 between the Broadway Interchange and the Gowen Road/State Highway 21 Interchange; Public School Endowment.

(d) One (1) parcel - NE1/4SW1/4, SE1/4NW1/4SW1/4, Section 4, T2N, R2E, Boise Meridian, containing fifty (50) acres, more or less, located south of the Boise Airport and east of Pleasant Valley Road; Public School Endowment.

(e) Two (2) parcels - Lot 14 (Pt. NESE), Lot 15 (Pt. NESE), Lot 16 (Pt. N2SE), SWSE, Lot 17 (SESE), Section 22, Township 6 North, Range 36 East, Boise Meridian, containing one hundred ~~twenty-seven and seventeen--hundredths--(127.17)~~ sixty and two-tenths (160.20) acres more or less; NWSW, Pt. SWSW, Section 23, Township 6 North, Range 36 East, Boise Meridian, containing forty-eight (48) acres, more or less, located fifty (50) miles north of Idaho Falls at the junction of State Highway 28 and Interstate Highway 15.

(f) One (1) parcel - Lot 9 (Pt. NWNE, Pt. NENW), Lot 10 (Pt. SWNE, Pt. SENW), Section 12, Township 2 North, Range 37 East, Boise Meridian, containing nineteen and twenty-seven hundredths (19.27) acres, more or less, located adjacent to the U of I/ISU Center in Idaho Falls.

(g) One (1) parcel - Lots 1 and 2, Section 8, Township 2 North, Range 38 East, Boise Meridian, containing seven and seventy-seven hundredths (7.77) acres, more or less, located on Lincoln Street

in Idaho Falls.

(h) One (1) parcel - W1/2, Section 16; Lot 1 and 2 (E2NE), W2NE, Section 17, Township 3 South, Range 18 East, Boise Meridian, containing four hundred eighty and fifty-seven hundredths (480.57) acres more or less, located on State Highway 93 north of Shoshone at Shoshone Ice Caves.

(5) The term "commercial purposes" means industrial enterprises, retail sales outlets, business and professional office buildings, hospitality enterprises, commercial recreational activities, multifamily residential developments and other similar businesses. For purposes of this section, agricultural leases, grazing leases, oil and gas leases, mineral leases, geothermal leases and single family, recreational cottage site and homesite leases are not considered leases for commercial purposes.

(6) The board may require that all fixed improvements constructed upon land leased for commercial purposes be removed or become the property of the state upon termination of the lease, and that any heirs, encumbrances or claims of third parties with respect to any improvements shall be expressly subordinate and subject to the rights of the state under this section.

(7) Except for geothermal, oil and gas, and mineral leases, the lease year shall run from January 1 through December 31, and all leases shall expire on December 31 of the year of expiration.

(8) The annual rental shall be due and payable in advance of year one of the lease and by January 1 of each succeeding year, except for grazing leases which shall be due and payable by the date set by the state board of land commissioners in the lease, but in no case shall the rental for grazing leases be due and payable earlier than January 1 or later than May 1 of each succeeding year.

(9) All applications to lease or to renew an existing lease which expires December thirty-first of any year, shall be filed in the office of the director of the department of lands by the thirtieth day of April preceding the date of such expiration. Such applications will be considered by the state land board and be disposed of in the manner provided by law; except that the board may reject conflicting applications for a lease for commercial purposes if the lessee exercises the preference right to renew clause.

(10) Where conflicts appear upon leases which do not contain a preferential right to renew clause, such applications shall be considered as having been filed simultaneously. However, nothing herein shall be construed to prevent the state board of land commissioners from accepting and considering applications for new leases at any time.

(11) In case improvements have been made on land while under lease which is expiring, and the former lessee is not the successful bidder, but the land is leased to another, the amount of such improvements shall be paid to the former lessee. The following shall be considered improvements: plowing done within one (1) year, provided no crop has been raised on the plowed land after such plowing, fencing, buildings, cisterns, wells, growing crops and any other asset which shall be considered an improvement by the director.

(12) Commercial leases of the state lands described in this section shall not be subject to the conflict auction provisions of sec-

tion 58-310, Idaho Code. The board may, at its discretion, call for proposals and sealed bids by public advertisement, and may evaluate said proposals and award the lease to the bidder whose proposal achieves the highest return over the term of the lease and who is capable of meeting such terms and conditions as may be set by the board; in the alternative, the board may call for lease applications by public advertisement and if more than one (1) person files an application to hold an auction in the same manner as provided in section 58-310, Idaho Code. In either case, the board must obtain a reasonable rental, based upon fair market value of the state land, throughout the duration of the lease. The board may reject any or all proposals and any or all bids, and may reoffer the lease at a later date if the board determines that the proposals or bids do not achieve the highest and best use of the land at market rental.

Approved April 4, 2000.

CHAPTER 188
(S.B. No. 1437)

AN ACT

RELATING TO DAIRY FARMS; AMENDING SECTION 37-401, IDAHO CODE, TO REQUIRE DAIRY FARMS TO HAVE NUTRIENT MANAGEMENT PLANS APPROVED BY THE DEPARTMENT OF AGRICULTURE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 37-401, Idaho Code, be, and the same is hereby amended to read as follows:

37-401. INSPECTIONS, EXAMINATIONS AND TESTS BY DEPARTMENT OF AGRICULTURE -- DAIRY FARMS -- NUTRIENT MANAGEMENT PLANS REQUIRED. The director of the department of agriculture is hereby authorized and directed to designate any agent to inspect, examine and test any or all dairy products in accordance with rules as the department may prescribe; and to ascertain and certify the grade, classification, quality or sanitary condition thereof and other pertinent facts as the department may require. The director or agent of the department of agriculture of the state of Idaho shall make sanitary inspection of milk, cream, butter and dairy products of any kind whatsoever, intended for human consumption, and of containers, utensils, equipment, buildings, premises or anything whatsoever employed in the production, handling, storing, processing or manufacturing of dairy products or that would affect the purity of the products. Inspections, examinations and tests shall be made to meet the requirements of the laws of the state and of the United States for the sale of the products or their transportation in both intrastate and interstate commerce. Any agent designated by the director to make inspections shall have the right for that purpose to enter any premises and buildings where milk, cream, butter or dairy products shall be produced, stored, processed or manufactured. Acting in accord with rules of the depart-

ment, the director or agent of the department shall review plans and specifications for construction of new, modified or expanded waste systems and inspect any dairy farm to ascertain and certify sanitary conditions, waste systems and milk quality. The director or agent shall issue a permit authorizing the sale of milk for human consumption to all dairy farms that meet the requirements of this chapter, and rules promulgated pursuant to this chapter. All dairy farms shall have a nutrient management plan approved by the department. Existing dairy farms shall submit a nutrient management plan to the department on or before July 1, 2001. Any new dairy farms or dairy farms that change owners or operators shall have an approved nutrient management plan on file with the department prior to the issuance of the milk permit for that dairy. The nutrient management plan shall be implemented upon approval of the plan by the department.

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 April 4, 2000.

CHAPTER 189
(S.B. No. 1455, As Amended)

AN ACT

RELATING TO THE IDAHO PHARMACY ACT; AMENDING CHAPTER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1727, IDAHO CODE, TO PROVIDE FOR CONFIDENTIALITY OF PATIENT-SPECIFIC INFORMATION CONCERNING PRESCRIPTIONS AND OTHER INFORMATION, TO PROVIDE FOR THE RELEASE OF SUCH INFORMATION TO CERTAIN PERSONS, TO PROVIDE PENALTIES FOR VIOLATION AND TO PROVIDE IMMUNITY FROM LIABILITY FOR THE GOOD FAITH RELEASE OF SUCH INFORMATION; AMENDING CHAPTER 13, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1335, IDAHO CODE, TO PROHIBIT ANY PERSON FROM RELEASING OR SELLING PATIENT IDENTIFIABLE PRESCRIPTION INFORMATION, TO PROVIDE PENALTIES AND TO PROVIDE IMMUNITY FROM LIABILITY FOR THE GOOD FAITH RELEASE OF SUCH INFORMATION; AND AMENDING SECTION 9-340C, IDAHO CODE, TO EXEMPT PATIENT IDENTIFIABLE PRESCRIPTION INFORMATION FROM DISCLOSURE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Chapter 17, 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 54-1727, Idaho Code, and to read as follows:

54-1727. CONFIDENTIALITY OF PRESCRIPTIONS AND PATIENT INFORMATION. (1) All prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient shall be held in the strictest confidence. No person in pos-

session of such information shall release the information, unless requested as follows:

(a) By the board, or its representatives, acting in their official capacity;

(b) By the patient, or the patient's designee, regarding the patient's own records;

(c) By the practitioner, or the practitioner's designee, who issued the prescription;

(d) By other licensed health care professionals who are responsible for the direct and acute care of the patient;

(e) By agents of the department of health and welfare when acting in their official capacity with reference to issues related to the practice of pharmacy (written requests by authorized agents of the department requesting such information are required);

(f) By agents of any board whose practitioners have prescriptive authority, when the board is enforcing laws governing that practitioner;

(g) By an agency of government charged with the responsibility for providing medical care for the patient (written requests by authorized agents of the agency requesting such information are required);

(h) By the federal food and drug administration (FDA), for purposes relating to monitoring of adverse drug events in compliance with the requirements of federal law, rules or regulations adopted by the federal food and drug administration;

(i) By the patient's authorized insurance benefit provider or health plan providing health care coverage or pharmacy benefits to the patient.

(j) Nothing in this section shall be construed to prohibit consultations between health care professionals who are involved in the diagnosis, care and treatment of the patient.

(k) Nothing in this section shall prohibit insurance companies and health plans from sharing patient specific information with law enforcement authorities or any of the entities identified in subsections (1)(a) through (i) of this section, in cases of suspected fraud and substance abuse.

(2) Nothing in this section shall prevent the pharmacist or others from providing aggregate or other data, which does not identify the patient to qualified researchers, including pharmaceutical manufacturers, for purposes of clinical, pharmacoepidemiological, or pharmacoeconomic research.

(3) Any person who has knowledge by virtue of his office or occupation of any prescription drug order, record, or pharmacy related information that specifically identifies an individual patient shall not divulge such information except as authorized in subsections (1) and (2) of this section. Any person or entity to whom information is divulged pursuant to subsection (1) of this section shall not divulge such information except in compliance with this section.

(4) Nothing in this section shall limit the authority of the board or its representatives from inspecting the records of pharmacies or pharmacists or the authority of any other board with licensees who have prescriptive authority from performing any other duty or authority of that board, nor shall this section limit a court of competent

jurisdiction from ordering the release or disclosure of such records upon a showing of just cause after such review or hearing as the court deems necessary and proper. This section shall not limit the authority of any other board or agency to inspect records of persons it regulates, notwithstanding that the records may contain information protected by the provisions of this section.

(5) In addition to all other penalties as provided by law, any person or entity found by the board to be in violation of the provisions of this section shall be subject to an administrative penalty not to exceed three thousand dollars ($3,000) for each violation.

(6) No person shall be liable, nor shall a cause of action exist, for any loss or damage based upon the proper good faith release of records pursuant to the provisions of subsection (1) or (2) of this section.

SECTION 2. That Chapter 13, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-1335, Idaho Code, and to read as follows:

41-1335. RELEASE OF PATIENT IDENTIFIABLE PRESCRIPTION INFORMATION PROHIBITED -- EXCEPTIONS. (1) No person shall release or sell, or include in any policy of insurance delivered or issued for delivery in this state any provision for the release or sale of any information pertaining to prescriptions, drug orders, records or any other prescription information that specifically identifies an individual insured, except as authorized under the provisions of section 54-1727, Idaho Code.

(2) In addition to any other penalties provided by law, any person violating the provisions of this section shall be subject to an administrative penalty not to exceed three thousand dollars ($3,000) for each violation.

(3) No person who releases records or information specified in subsection (1) of this section in good faith pursuant to the provisions of section 54-1727, Idaho Code, shall be subject to penalty or liability, nor shall a cause of action exist against such person, for any loss or damage based upon the release of the records or information.

SECTION 3. That Section 9-340C, Idaho Code, be, and the same is hereby amended to read as follows:

9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records are exempt from disclosure:

(1) 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 mate-

rials, 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.

(2) 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.

(3) 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.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(5) 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.

(6) 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.

(7) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to

waive the exemption.

(8) 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.

(9) 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.

(10) The records, finding, determinations and decision of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, <u>including prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient,</u> 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.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) 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.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records on and after the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(1~~8~~<u>9</u>) Records and information contained in the registry of

immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

Approved April 4, 2000.

CHAPTER 190
(S.B. No. 1474)

AN ACT

RELATING TO ORGANIC FOODS; AMENDING SECTION 22-1103, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE MAY NOT ISSUE A CERTIFICATE UNDER THE PROVISIONS OF THIS ACT UNLESS THE APPLICANT HAS MET THE REQUIREMENTS IMPOSED BY THE DIRECTOR TO ENSURE THE APPLICANT UNDERSTANDS THE REQUIREMENTS AND HAS THE KNOWLEDGE NECESSARY FOR SUCCESSFUL FARMING; AND AMENDING SECTION 22-1103, IDAHO CODE, AS AMENDED BY SECTION 4, CHAPTER 136, LAWS OF 1999, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE MAY NOT ISSUE A CERTIFICATE UNDER THE PROVISIONS OF THIS ACT UNLESS THE APPLICANT HAS MET THE REQUIREMENTS IMPOSED BY THE DIRECTOR TO ENSURE THE APPLICANT UNDERSTANDS THE REQUIREMENTS AND HAS THE KNOWLEDGE NECESSARY FOR SUCCESSFUL FARMING.

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

SECTION 1. That Section 22-1103, Idaho Code, be, and the same is hereby amended to read as follows:

22-1103. ADMINISTRATION AND ENFORCEMENT -- RULES AND REGULATIONS. The administration and enforcement of the provisions of this chapter shall be under the director. The director is authorized, in conformance with chapter 52, title 67, Idaho Code, to promulgate rules and regulations concerning, but not limited to:

(1) Standards for agricultural crops and livestock produced for sale as organically grown products.

(2) Records required of organic crop and livestock producers.

(3) The number of on-site inspections, announced and unannounced.

(4) Chemical residue analysis of organically grown agricultural products and fees for conducting such analysis.

(5) Certification of private laboratories to conduct chemical residue analyses.

(6) Standards that an agricultural producer must meet to be recognized as a producer under the provisions of this chapter.

(7) Development and distribution of the organic certification seal and standards for its application for use on Idaho agricultural products.

(8) Development and implementation of labeling standards.

(9) Rules establishing organic standards for poultry and poultry products, livestock and livestock products, milk and dairy products or aquaculture products will be promulgated in consultation with the appropriate agricultural or commodity organizations, as determined by

the director. No pending or temporary rule adopted by the department shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review pursuant to sections 67-5224 and 67-5291, Idaho Code.

(10) Education. The director may not issue a certificate under the provisions of this act unless the applicant has met the requirements imposed by the director to ensure the applicant understands the requirements and has the knowledge necessary for successful farming.

SECTION 2. That Section 22-1103, Idaho Code, as amended by Section 4, Chapter 136, Laws of 1999, be, and the same is hereby amended to read as follows:

22-1103. ADMINISTRATION AND ENFORCEMENT -- RULES AND REGULATIONS. The administration and enforcement of the provisions of this chapter shall be under the director. The director is authorized, in conformance with chapter 52, title 67, Idaho Code, to promulgate rules and regulations concerning, but not limited to:

(1) Standards for agricultural crops and livestock produced for sale as organically grown products.

(2) Records required of organic crop and livestock producers.

(3) The number of on-site inspections, announced and unannounced.

(4) Chemical residue analysis of organically grown agricultural products and fees for conducting such analysis.

(5) Certification of private laboratories to conduct chemical residue analyses.

(6) Standards that an agricultural producer must meet to be recognized as a producer under the provisions of this chapter.

(7) Development and distribution of the organic certification seal and standards for its application for use on Idaho agricultural products.

(8) Development and implementation of labeling standards.

(9) Standards for health care and medical treatment for lambs and for the prevention and control of infectious or communicable diseases among lambs.

(10) Standards for prohibitions against denial of health care or medical treatment of lambs in order to obtain or retain organic certification.

(11) Rules establishing organic standards for poultry and poultry products, livestock and livestock products, milk and dairy products or aquaculture products will be promulgated in consultation with the appropriate agricultural or commodity organizations, as determined by the director. No pending or temporary rule adopted by the department shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review pursuant to sections 67-5224 and 67-5291, Idaho Code.

(12) Education. The director may not issue a certificate under the provisions of this act unless the applicant has met the requirements imposed by the director to ensure the applicant understands the requirements and has the knowledge necessary for successful farming.

Approved April 4, 2000.

CHAPTER 191
(S.B. No. 1477)

AN ACT

RELATING TO CRIMINAL HISTORY CHECKS AND THE BASIC DAY CARE LICENSE; AMENDING SECTION 39-1105, IDAHO CODE, TO REQUIRE THAT ANY PERSON WHO OWNS, OPERATES OR IS EMPLOYED BY A PRIVATE SCHOOL FOR EDUCATIONAL PURPOSES FOR CHILDREN FOUR THROUGH SIX YEARS OF AGE OR A PRIVATE KINDERGARTEN SHALL COMPLY WITH THE CRIMINAL HISTORY CHECK REQUIREMENTS FOR BASIC DAY CARE LICENSURE.

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

SECTION 1. That Section 39-1105, Idaho Code, be, and the same is hereby amended to read as follows:

39-1105. CRIMINAL HISTORY CHECKS. (1) The department shall obtain a criminal history check on the owners, operators and employees of a day care center who have direct contact with children, and on all volunteers and other individuals twelve (12) years of age or older who have unsupervised direct contact with children in a day care center. The criminal history check shall include the following for all persons subject to the provisions of this section who are eighteen (18) years of age or older:

(~~1~~a) Statewide criminal identification bureau;

(~~2~~b) Federal bureau of investigation (FBI) criminal history;

(~~3~~c) National crime information center; and

(~~4~~d) Statewide child abuse register.

(2) Criminal history checks on those persons under eighteen (18) years of age shall include a check of the juvenile justice records of adjudications of the magistrate division of the district court, county probation services and department of health and welfare records as authorized by the minor and his parent or guardian.

(3) Notwithstanding the provisions of section 39-1103, Idaho Code, which provide for exemption from the provisions of this chapter, any person who owns, operates or is employed by a private school for educational purposes for children four (4) through six (6) years of age or a private kindergarten shall comply with the provisions of this section.

Approved April 4, 2000.

CHAPTER 192
(S.B. No. 1494, As Amended)

AN ACT

RELATING TO RELOCATION OF PERSONS DISPLACED BY PUBLIC PROGRAMS; AMENDING SECTION 40-2001, IDAHO CODE, TO PROVIDE THAT RELOCATION PAYMENTS AND ASSISTANCE SHALL BE PROVIDED TO PERSONS DISPLACED BY PUBLIC PROGRAMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SEC-

TION 40-2002, IDAHO CODE, TO PROVIDE THAT RELOCATION ASSISTANCE SHALL BE PROVIDED; AMENDING SECTION 40-2004, IDAHO CODE, TO PROVIDE THAT ANY AGENCY USING FUNDS FOR PUBLIC PURPOSES SHALL COMPENSATE A DISPLACED PERSON FOR MOVING EXPENSES AND LOSSES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 40-2005, IDAHO CODE, TO PROVIDE THAT AN AGENCY SHALL MAKE A PAYMENT TO A QUALIFIED DISPLACED OWNER OF A DWELLING AND TO A QUALIFIED DISPLACED INDIVIDUAL OR FAMILY; AMENDING SECTION 40-2007, IDAHO CODE, TO PROVIDE THAT AN AGENCY SHALL REIMBURSE OWNERS OF REAL PROPERTY FOR CERTAIN EXPENSES; AMENDING CHAPTER 20, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-2013, IDAHO CODE, TO PROVIDE THAT IF MOVING AND RELOCATION COSTS RESULTING FROM A CONDEMNATION PURSUANT TO CHAPTER 7, TITLE 7, IDAHO CODE, OR RELOCATION PURSUANT TO CHAPTER 20, TITLE 40, IDAHO CODE, ARE NOT PAID BY THE CONDEMNER, THE OWNER OF THE PROPERTY SHALL BE AWARDED ATTORNEY'S FEES AND COSTS INCURRED TO RECOVER THE SAME; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 40-2001, Idaho Code, be, and the same is hereby amended to read as follows:

40-2001. RELOCATION AID FOR PERSONS DISPLACED BY PUBLIC PROGRAMS -- LEGISLATIVE FINDING. The legislature finds and declares that the prompt and equitable relocation and reestablishment of persons, families, businesses, farmers, and nonprofit organizations displaced as a result of any state or local governmental program or project is a necessary purpose, is a cost of those programs and projects and is a public purpose. In order to insure that individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole the legislature declares that relocation payments and relocation advisory assistance ~~may~~ shall be provided to all persons so displaced in accordance with the terms and provisions of this chapter and rules ~~and regulations~~ promulgated by the board. The legislature finds and declares that rent supplement or purchase assistance payments to tenants and relocation payments to owner-occupants, businesses, and farmers in accordance with the provisions of this chapter are a public purpose and are necessary to enable all displaced persons to obtain decent, safe, and sanitary dwellings. The legislature further declares the provisions of this chapter may be applicable to all programs.

SECTION 2. That Section 40-2002, Idaho Code, be, and the same is hereby amended to read as follows:

40-2002. RELOCATION ADVISORY ASSISTANCE. Any agency is authorized, as a part of the cost of any program or project, to give relocation advisory assistance to any individual, family, business or farm operation displaced because of the acquisition of real property for any project. If any agency determines that any person occupying property immediately adjacent to the real property acquired has been caused substantial economic injury because of the acquisition, it ~~may~~ shall offer him relocation advisory services.

SECTION 3. That Section 40-2004, Idaho Code, be, and the same is hereby amended to read as follows:

40-2004. RELOCATION EXPENSE -- COMPENSATION OPTIONS -- LIMIT OF COMPENSATION FOR BUSINESS OR FARM RELOCATIONS. (1) As a part of the cost of any public program or project, any agency using any funds for public purposes **may** shall compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property, and for any actual direct losses of tangible personal property as the result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, as determined by the agency, and for actual reasonable expenses in searching for a replacement business or farm. However, the compensation authorized by this section for actual and reasonable moving expenses, actual direct losses of tangible personal property, and expenses in searching for a replacement farm or business shall be limited to relocating a displaced person, family, business or farm operation within a reasonable distance from the location previously occupied and from which the displaced person has been required to move.

(2) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (1) of this section **may** shall receive a moving expense allowance, determined according to regulations and schedules established by the agency, not to exceed three hundred dollars ($300), and in addition a dislocation allowance of two hundred dollars ($200).

(3) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (1) of this section, **may** shall receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that the payment shall not be less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000). In the case of a business, no payment shall be made under this subsection unless the agency is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one (1) other establishment not being acquired which is engaged in the same or similar business. In addition to the other requirements of this chapter, to be eligible for the payment authorized by this subsection the business or farm operation must make its financial statements, accounting records, and state income tax returns available to the agency for audit for confidential use in determining the payment or payments authorized by this subsection. Such financial statements, accounting records and state income tax returns shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(4) If any agency determines that property, contiguous with property acquired, owned or occupied by an individual, family, business or farm operation, has been damaged as the result of a public program or project, it **may** shall offer the individual, family, business or farm operation the same compensation as it might offer to a displaced per-

son under subsections (1), (2) or (3) of this section and under sections 40-2005 and 40-2007, Idaho Code.

SECTION 4. That Section 40-2005, Idaho Code, be, and the same is hereby amended to read as follows:

40-2005. PURCHASE ASSISTANCE TO RELOCATING OWNER-OCCUPANT -- LEASE OR DOWN PAYMENT ASSISTANCE TO RELOCATING TENANT. (1) In addition to the payments authorized by section 40-2004, Idaho Code, an agency ~~may~~ shall make a payment to the owner of a dwelling, provided the dwelling has been owned and occupied by the owner for at least one hundred eighty (180) days prior to the first written offer for the acquisition of the property. The payment shall not exceed fifteen thousand dollars ($15,000) and shall be the amount, which, when added to the acquisition payment, equals the reasonable cost required for a comparable dwelling determined in accordance with standards established by the agency to be suitable to accommodate the displaced owner. The payment shall be made only to a displaced owner who purchases and occupies a dwelling that meets standards established by the agency, not later than the end of a one (1) year period beginning on the date on which he received final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date. Payment under this subsection will include an amount which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. This amount will be paid only if the dwelling acquired by the agency was encumbered by a mortgage which was a valid lien on the dwelling for not less than one hundred eighty (180) days prior to the first written offer for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted current value. The discounted rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located. This amount shall also include reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but shall not include prepaid expenses.

(2) In addition to the payments authorized by section 40-2004, Idaho Code, any agency ~~may~~ shall make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under subsection (1) of this section, which dwelling was actually and lawfully occupied by the individual or family for at least ninety (90) days prior to the first written offer for the acquisition of the property. The payment, not to exceed four thousand dollars ($4,000), shall be the additional amount which is necessary to enable the individual or family to lease or rent for a period not to exceed four (4) years, or to make a down payment, including reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of a dwelling of standards ade-

quate to accommodate the individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, except that if the amount exceeds two thousand dollars ($2,000) the person must equally match any payment in excess of two thousand dollars ($2,000), in making the down payment.

SECTION 5. That Section 40-2007, Idaho Code, be, and the same is hereby amended to read as follows:

40-2007. COMPENSATION FOR MISCELLANEOUS EXPENSES. In addition to amounts authorized by this chapter, any agency as a part of the cost of any public program or project, ~~may~~ shall reimburse the owner of real property acquired for a project for reasonable and necessary expenses incurred for:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying the property;

(2) Penalty costs for prepayment of any mortgage entered into in good faith encumbering the real property if the mortgage is on record or has been filed for record under applicable state law on the date of final approval by the agency of the location of the project; and

(3) The pro rata share or portion of ad valorem taxes paid which are allocable to a period subsequent to the date of vesting of title in the state or the effective date of possession of the real property by the agency, whichever is earlier.

SECTION 6. That Chapter 20, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-2013, Idaho Code, and to read as follows:

40-2013. COSTS AND ATTORNEY'S FEES. Any moving and relocation costs which will accrue as a result of a condemnation undertaken pursuant to chapter 7, title 7, Idaho Code, or pursuant to this chapter, shall be paid by the condemner as required by law. If such costs are not paid by the condemner, the owner of the property shall be awarded attorney's fees and costs incurred to recover the same.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved April 4, 2000.

CHAPTER 193
(S.B. No. 1503)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE AND TO CLARIFY DEPOSIT OF CERTAIN FEES; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-417C, IDAHO CODE, TO ESTABLISH

A FAMOUS POTATOES SPECIAL LICENSE PLATE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-402, Idaho Code, be, and the same is hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds shall be:

Vehicles one (1) and two (2) years old $48.00
Vehicles three (3) and four (4) years old $36.00
Vehicles five (5) and six (6) years old $36.00
Vehicles seven (7) and eight (8) years old $24.00
Vehicles over eight (8) years old $24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers numbered 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all motorcycles and all-terrain vehicles the annual fee shall be nine dollars ($9.00). For operation of an ATV off the public highways, the fee specified in section 67-7122, Idaho Code, shall also be paid. Registration exemptions provided in section 49-426(2), Idaho Code, apply to all-terrain vehicles and motorcycles used for the purposes described in that subsection (2).

(3) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(4) Registration fees shall not be subject to refund.

(5) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed

ninety-six (96) hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

(6) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars ($25.00) and an annual program fee of fifteen dollars ($15.00) for all special license plate programs for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416 and 49-418, Idaho Code. For special plates issued pursuant to sections 49-406 and 49-406A, Idaho Code, there shall be an initial program fee of twenty-five dollars ($25.00) but there shall be no annual renewal fee. For special plates issued pursuant to sections 49-417, 49-417A, 49-417B, 49-417C, 49-418A, 49-419, 49-419A and 49-420, Idaho Code, there shall be an initial program fee of thirty-five dollars ($35.00) and an annual program fee of twenty-five dollars ($25.00). ~~For special plates issued pursuant to section 49-418A, Idaho Code, the initial program fee and the annual renewal fee shall be fifty dollars ($50.00).~~ The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited ~~as~~ in the state highway account and shall be used to fund the cost of administration of special license plate programs, unless otherwise specified by law. ~~for each program.~~

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 49-417C, Idaho Code, and to read as follows:

49-417C. FAMOUS POTATOES LICENSE PLATES. (1) On and after January 1, 2001, 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 famous potatoes license plates in lieu of regular license plates. Availability of famous potatoes 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 plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer to the Idaho potato commission created in chapter 12, title 22, Idaho Code, and shall be used exclusively for the purposes described in subsection 14. of section 22-1207, Idaho Code.

(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 famous potatoes license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. The distinguishing feature of the license plate shall be a representation of a prepared Idaho potato with a melting pat of butter. The design and any slogan on the plate shall be acceptable to the Idaho potato commission and shall be 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 Idaho potato commission.

(5) Sample famous potatoes license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty dollars ($20.00) of which shall be transferred to the Idaho potato commission. 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, 2001.

Approved April 4, 2000.

CHAPTER 194
(S.B. No. 1510, As Amended)

AN ACT

RELATING TO THE BOARD OF PHARMACY; AMENDING CHAPTER 27, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-2730A, IDAHO CODE, TO RECOGNIZE THE PRESCRIPTION TRACKING PROGRAM AND RESULTING DATABASE MAINTAINED BY THE BOARD OF PHARMACY FROM INFORMATION SUBMITTED TO THE BOARD UNDER SECTION 37-2730, IDAHO CODE, AND TO ESTABLISH THE PARAMETERS FOR USE OF, AND ACCESS TO, THE INFORMATION IN THE DATABASE; AMENDING SECTION 9-340C, IDAHO CODE, TO PROVIDE THAT PRESCRIPTION RECORDS MAINTAINED BY THE BOARD OF PHARMACY UNDER SECTION 37-2730A, IDAHO CODE, BE EXEMPT FROM DISCLOSURE AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 3, TITLE 9, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 9-340G, IDAHO CODE, TO PROVIDE THAT CERTAIN RECORDS OF THE BOARD OF PHARMACY ARE CONFIDENTIAL AND NOT SUBJECT TO DISCLOSURE; DECLARING AN EMERGENCY, PROVIDING A SUNSET CLAUSE AND PROVIDING A CONTINGENT EFFECTIVE DATE ONLY IF THE SUNSET CLAUSE TAKES EFFECT.

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

SECTION 1. That Chapter 27, Title 37, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 37-2730A, Idaho Code, and to read as

follows:

37-2730A. PRESCRIPTION TRACKING PROGRAM. (1) The board shall maintain a program to track the prescriptions for controlled substances that are filed with the board under section 37-2730, Idaho Code, for the purpose of assisting in identifying illegal activity related to the dispensing of controlled substances and for the purpose of assisting the board in providing information to patients, practitioners and pharmacists to assist in avoiding inappropriate use of controlled substances. The tracking program and any data created thereby shall be administered by the board.

(2) The board shall use the information obtained through the tracking program in identifying activity it reasonably suspects may be in violation of this chapter or medical assistance law. The board may report this information to the appropriate law enforcement agency, medicaid or medicare agency or licensing board. The board may provide the agency or board with the relevant information in the board's possession, including information obtained from the tracking program, for further investigation, or other appropriate law enforcement or administrative enforcement use.

(3) The board may, in its discretion, authorize release of information from the tracking program to patients, practitioners and pharmacists where release of such information may be of assistance in preventing or avoiding inappropriate use of controlled substances.

(4) Information obtained from the program is confidential and, except as otherwise provided by this section, must not be disclosed by the board or by any recipient of such information from the board, provided however, such information must be disclosed:

(a) Upon the request of a person about whom the information requested concerns or upon the request on his behalf by his attorney; or

(b) Upon the lawful order of a court of competent jurisdiction.

(5) Information, which does not identify individual patients, practitioners or dispensing pharmacists or pharmacies, may be released by the board for educational, research or public information purposes.

(6) Unless there is shown malice or criminal intent or gross negligence or reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, the state of Idaho, the board, any other state agency, or any person, or entity in proper possession of information as herein provided shall not be subject to any liability or action for money damages or other legal or equitable relief by reason of any of the following:

(a) The furnishing of information under the conditions herein provided;

(b) The receiving and use of, or reliance on, such information;

(c) The fact that any such information was not furnished; or

(d) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

(7) The board may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

SECTION 2. That Section 9-340C, Idaho Code, be, and the same is

hereby amended to read as follows:

9-340C. RECORDS EXEMPT FROM DISCLOSURE -- PERSONNEL RECORDS, PERSONAL INFORMATION, HEALTH RECORDS, PROFESSIONAL DISCIPLINE. The following records are exempt from disclosure:

(1) 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.

(2) 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.

(3) 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.

(4) Records of a personal nature as follows:

(a) Records of personal debt filed with a public agency pursuant to law;

(b) Personal bank records compiled by a public depositor for the purpose of public funds transactions conducted pursuant to law;

(c) Records of ownership of financial obligations and instruments of a public agency, such as bonds, compiled by the public agency pursuant to law;

(d) Records, with regard to the ownership of, or security interests in, registered public obligations;

(e) Vital statistics records.

(5) 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.

(6) 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.

(7) Employment security information and unemployment insurance benefit information, except that all interested parties may agree to waive the exemption.

(8) 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.

(9) 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.

(10) The records, findings, determinations and decisions of any prelitigation screening panel formed under chapters 10 and 23, title 6, Idaho Code.

(11) Board of professional discipline reprimands by informal admonition pursuant to subsection (6)(f) of section 54-1806A, Idaho Code.

(12) Records of the department of health and welfare or a public health district that identify a person infected with a reportable disease.

(13) Records of hospital care, medical records, prescription records maintained by the board of pharmacy under section 37-2730A, Idaho Code, 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.

(14) Information collected pursuant to the directory of new hires act, chapter 16, title 72, Idaho Code.

(15) Personal information contained in motor vehicle and driver records that is exempt from disclosure under the provisions of chapter 2, title 49, Idaho Code.

(16) Records of the financial status of prisoners pursuant to subsection (2) of section 20-607, Idaho Code.

(17) 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.

(18) Records of the department of health and welfare relating to a survey, resurvey or complaint investigation of a licensed nursing facility shall be exempt from disclosure. Such records shall, however, be subject to disclosure as public records on and after the fourteenth day following the date that department of health and welfare representatives officially exit the facility pursuant to federal regulations. Provided however, that for purposes of confidentiality, no record shall be released under this section which specifically identifies any nursing facility resident.

(189) Records and information contained in the registry of immunizations against childhood diseases maintained in the department of health and welfare, including information disseminated to others from the registry by the department of health and welfare.

SECTION 3. 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 9-340G, Idaho Code, and to read as follows:

9-340G. CERTAIN RECORDS OF THE BOARD OF PHARMACY. Prescription records in the possession of the board of pharmacy shall remain confidential and not subject to disclosure except:

(1) Upon the request of the person about whom the information requested concerns or upon the request on his behalf by his attorney;

(2) By the board in the course of its lawful duties; or

(3) Upon the lawful order of a court of competent jurisdiction.

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. The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2002. Section 3 of this act shall be in full force and effect only if the provisions of Section 1 become null, void and of no force and effect.

Approved April 4, 2000.

CHAPTER 195
(S.B. No. 1516)

AN ACT

RELATING TO HIGHWAY DISTRICT MEETINGS; AMENDING SECTION 40-1306A, IDAHO CODE, TO REVISE QUORUM REQUIREMENTS; AND AMENDING SECTION 40-1306B, IDAHO CODE, TO REVISE THE REQUIREMENTS FOR A QUORUM TO AUTHORIZE AN EXECUTIVE SESSION.

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

SECTION 1. That Section 40-1306A, Idaho Code, be, and the same is

hereby amended to read as follows:

40-1306A. HIGHWAY DISTRICT MEETINGS -- DEFINITIONS -- OPEN TO THE PUBLIC -- NOTICE OF MEETINGS. (1) Definitions used in this section and in sections 40-1306B and 40-1306C, Idaho Code:

(a) "Board of highway district commissioners" means a quorum of two (2) or more highway commissioners~~, with the authority to make decisions on behalf of the highway district regarding any matter~~ in a highway district organized under the provisions of this chapter and three (3) or more highway district commissioners in a highway district organized under the provisions of section 40-1401, Idaho Code.

(b) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a board of highway commissioners is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with this section.

(c) "Deliberation" means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the board of highway district commissioners for decision.

(d) "Executive session" means any meeting or part of a meeting of the board of highway commissioners which is closed to any person for deliberation of certain matters.

(e) "Meeting" means the convening of the highway district board of commissioners to make a decision or to deliberate toward a decision on any matter.

(i) "Regular meeting" means the convening of the board of highway commissioners on the date designated by the highway district board of commissioners or fixed by law, to conduct the business of the highway district.

(ii) "Special meeting" means a convening of the board of highway commissioners pursuant to a special call for the conduct of business as specified in the call.

(2) All meetings of the highway district board of commissioners shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this section. A majority of the commissioners shall constitute a quorum for the transaction of business. No decision at a meeting of the highway district board of commissioners shall be made by secret ballot. A highway district shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.

(a) Regular meetings. No less than a five (5) calendar day meeting notice shall be given unless otherwise provided by statute. Provided however, when a highway district holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year, the district may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. A forty-eight (48) hour agenda

notice shall be required in advance of each regular meeting, however, additional agenda items may be added after completion of the agenda up to and including the hour of the meeting, provided that a good faith effort is made to include in the notice all agenda items known at the time to be probable items of discussion. The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the highway district, or if no such office exists, at the building where the meeting is to be held.

(b) Special meetings. All special meetings must be ordered by the chairman or a majority of the highway commissioners. The order must be entered on the record, and the secretary must give each member not joining in the order twenty-four (24) hours' notice of any special meeting. The order must specify the business to be transacted at the special meeting and none other than that specified shall be transacted. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is a situation involving injury or damage to person or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reasons for the emergency are stated at the outset of the meeting. The notice required under this section shall include at a minimum: the meeting date, time, place and name of the highway district calling for the meeting. The secretary or other designee of the highway district shall maintain a list of the news media requesting notification of meetings and shall make a good faith effort to provide advance notification to them of the time and place of each meeting.

(3) Executive sessions. If an executive session only will be held, a twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.

(4) The highway district shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be recorded in the official minute book as specified in section 40-1336(1), Idaho Code, and shall be available to the public within a reasonable time after the minutes have been approved by the board of highway commissioners, and shall include at least the following information:

(a) All commissioners and officers of the highway district present;

(b) All motions, resolutions, orders or ordinances proposed and their disposition;

(c) All bills presented, showing to whom payable, for what service and material, amount, allowed and disallowed;

(d) The results of all votes, and upon the request of a member, the vote of each member, by name;

(e) All other action taken by the board of highway district commissioners requiring recordation as required in section 40-1336,

Idaho Code; and

(f) Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of section 40-1306B, Idaho Code, but shall contain sufficient detail to convey the general tenor of the meeting.

SECTION 2. That Section 40-1306B, Idaho Code, be, and the same is hereby amended to read as follows:

40-1306B. EXECUTIVE SESSIONS -- WHEN AUTHORIZED. (1) Nothing contained in this chapter shall be construed to prevent, upon a ~~two-thirds (2/3)~~ vote of two (2) or more highway district commissioners in a highway district organized under the provision of this chapter, or three (3) or more highway district commissioners in a district organized under the provisions of section 40-1401, Idaho Code, recorded in the minutes of the meeting by individual vote, a highway district from holding an executive session during any meeting, after the presiding officer has identified the authorization under this act for the holding of such executive session. An executive session may be held:

(a) To consider hiring an officer, employee, staff member or individual agent. This paragraph does not apply to filling a vacancy in an elective office;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against an officer, employee, staff member or individual agent;

(c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;

(e) To consider and advise its legal representatives in pending litigation or where there is a general public awareness of probable litigation.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

Approved April 4, 2000.

CHAPTER 196

(H.B. No. 484, As Amended, As Amended in the Senate)

AN ACT

RELATING TO THE COUNTY VALUATION PROGRAM FOR PROPERTY TAX PURPOSES; AMENDING SECTION 63-314, IDAHO CODE, TO ALLOW A BOARD OF COUNTY COMMISSIONERS TO REQUEST THAT THE STATE TAX COMMISSION GRANT AN EXTENSION OF THE FIVE YEAR REAPPRAISAL DEADLINE REQUIRED BY LAW, TO PROVIDE PROCEDURES, TO PROVIDE THE MAXIMUM EXTENSION THAT MAY

BE GRANTED AND TO PROVIDE FOR A REPORT WHEN AN EXTENSION IS GRANTED; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-314, Idaho Code, be, and the same is hereby amended to read as follows:

63-314. COUNTY VALUATION PROGRAM TO BE CARRIED ON BY ASSESSOR. (1) It shall be the duty of the county assessor of each county in the state to conduct and carry out a continuing program of valuation of all taxable properties under his jurisdiction pursuant to such rules as the state tax commission may prescribe, to the end that all parcels of property under the assessor's jurisdiction are assessed at current market value. In order to promote uniform assessment of property in the state of Idaho, taxable property shall be appraised or indexed annually to reflect current market value. In order to achieve this goal, at least twenty percent (20%) of the taxable properties in the county shall be included in each year's appraisal, resulting in a complete appraisal of all taxable property every five (5) years, except as provided in subsection (6) of this section. Annually, all taxable property, not actually appraised each year, shall be indexed to reflect current market value for assessment purposes using market value property transactions and results of the annual appraisal of twenty percent (20%) of the taxable property. The county assessor shall maintain in the respective offices sufficient records to show when each parcel or item of property was last appraised. The appraisal required by this section shall include a plan outlining the continuing valuation program. Said plan shall be submitted to the state tax commission for approval on or before the first Monday in February, 1997, and no less frequently than every fifth year thereafter. The state tax commission shall not approve any plan that fails to provide for adequate appraisal and valuation of all taxable properties in any county.

(2) The state tax commission is hereby authorized, empowered and directed to promulgate rules for the implementation of this program, and to provide any such county assessor with such supervision and technical assistance as may be necessary.

(3) The county commissioners of each county shall furnish the assessor with such additional funds and personnel as may be required to carry out the program hereby provided, and for this purpose may levy annually a property tax of not to exceed four-hundredths percent (.04%) of the market value for assessment purposes on all taxable property in the county to be collected and paid into the county treasury and appropriated to the property valuation fund which is hereby created.

(4) If compliance with the requirements of subsection (1) of this section is not obtained, or if any county fails to meet the goals set in subsection (1) of this section, the state tax commission may proceed as required by section 63-316, Idaho Code.

(5) As used in this section the term "adequate appraisal and valuation of all taxable properties in any county" means a process which includes a field inspection of at least twenty percent (20%) of the

taxable properties each year. Appraisal also includes collection, verification and analysis of market value sales, applicable income and expense data and building cost information, and application of this information to predict market value.

(6) The board of county commissioners may request that the Idaho state tax commission grant an extension of the five (5) year reappraisal deadline set forth in subsection (1) of this section. The request shall be in writing and shall set forth the reason(s) that the county is unable to complete the reappraisal process as required by subsection (1) of this section and shall set forth the measures the county will undertake in order to complete the reappraisal program within the extension of time requested. In no case shall an extension exceed two (2) years. The state tax commission may approve or deny any request for an extension and shall notify the board of county commissioners of its decision in writing. The state tax commission shall not approve any extension absent a showing by the county of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, natural disasters or unforeseen circumstances that result in extreme financial hardship to the county. Circumstances that will not qualify for an extension may include, but are not limited to, failure to adequately fund the county valuation program as provided by this section, malfeasance, or mismanagement by a current elected official. The state tax commission shall not grant the extension provided in this section if studies conducted by the commission indicate that any category of property affected by such extension is not assessed at market value.

(7) The Idaho state tax commission shall report back to the Idaho house of representatives revenue and taxation committee and the senate local government and taxation committee whenever an extension authorized under subsection (6) of this section is granted.

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, 2000.

Approved April 4, 2000.

CHAPTER 197
(H.B. No. 494)

AN ACT

RELATING TO THE DESIGNATION OF THE I.B. PERRINE BRIDGE; AMENDING CHAPTER 5, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-513A, IDAHO CODE, TO DESIGNATE THE BRIDGE SPANNING THE SNAKE RIVER ON U.S. HIGHWAY 93 SOUTH OF INTERSTATE HIGHWAY 84 NEAR TWIN FALLS, IDAHO, AS THE I.B. PERRINE BRIDGE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 5, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-513A, Idaho Code, and to read as follows:

40-513A. DESIGNATION OF THE I.B. PERRINE BRIDGE. The bridge spanning the Snake River Canyon on U.S. Highway 93 south of Interstate Highway 84 near the city of Twin Falls, Idaho, shall be designated as the "I.B. Perrine Bridge" to honor I.B. Perrine for his part as founder and father of the Twin Falls area. His dream for agriculture and his efforts to bring water to the valley set in motion the development we see today. The transportation department shall erect suitable signs so designating the bridge as the "I.B. Perrine Bridge."

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 4, 2000.

CHAPTER 198
(H.B. No. 575, As Amended in the Senate)

AN ACT

RELATING TO WELFARE; AMENDING SECTION 56-202, IDAHO CODE, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE TO PROVIDE WELFARE ASSISTANCE TO DRUG DEPENDENT PERSONS UPON CERTAIN CIRCUMSTANCES OCCURRING AND TO PROVIDE A SUNSET CLAUSE.

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

SECTION 1. That Section 56-202, Idaho Code, be, and the same is hereby amended to read as follows:

56-202. DUTIES OF DIRECTOR OF STATE DEPARTMENT OF HEALTH AND WELFARE. The director of the state department of health and welfare shall:

(a) Administer public assistance and social services to eligible people;

(b) Promulgate, adopt and enforce such rules and such methods of administration as may be necessary or proper to carry out the provisions of title 56, Idaho Code, except as provided in section 56-203A, Idaho Code;

(c) Conduct research and compile statistics relating to public welfare;

(d) Prepare for the governor and legislature an annual report of activities and expenditures; make such reports in such form and containing such information as the federal government may from time to time require; and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(e) Cooperate with the federal government through its appropriate

agency or instrumentality in establishing, extending, and strengthening services for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent; and to undertake other services for children authorized by law;

(f) Cooperate with the federal government through its appropriate agency or instrumentality in establishing and maintaining a comprehensive system of in-home services as defined in section 67-5006, Idaho Code, designed to assist older persons, as defined in section 67-5006, Idaho Code, of Idaho to continue living in an independent and dignified home environment and to undertake other services for older persons as authorized by law;

(g) Exercise the opt out provision in section 115 of the personal responsibility and work opportunity reconciliation act of 1996, P. L. 104-193. Consistent with this, the department may provide food stamps and services funded under title 4A (including cash assistance, TANF supportive services and at risk payments) to a person who has been convicted of a felony involving a controlled substance as defined in chapter 27, title 37, Idaho Code, if they comply with the terms of a withheld judgment, probation or parole. The provisions of this subsection (g) shall be null, void and of no force and effect on and after June 30, 2003.

Approved April 4, 2000.

CHAPTER 199
(H.B. No. 601)

AN ACT

RELATING TO THE LOCAL LAND USE PLANNING ACT; REPEALING SECTION 67-6510, IDAHO CODE; AND AMENDING CHAPTER 65, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-6510, IDAHO CODE, TO REQUIRE THAT PROCEDURES FOR THE PROCESSING OF APPLICATIONS INCLUDE THE OPTION OF MEDIATION BOTH BEFORE AND AFTER A FINAL DECISION, TO PROVIDE FOR MANDATORY AND OPTIONAL PARTICIPATION IN MEDIATION BY THE APPLICANT AND AFFECTED PERSONS, TO PROVIDE FOR COMPENSATION OF THE MEDIATOR, TO PROVIDE FOR TOLLING OF TIME LIMITATIONS DURING MEDIATION, TO PROVIDE WHEN TOLLING SHALL CEASE, TO PROVIDE FOR MEDIATION PURSUANT TO STATUTORY PROVISIONS OR LOCAL ORDINANCES NOT IN CONFLICT THEREWITH AND TO PROVIDE THAT THE MEDIATION PROCESS SHALL NOT BE PART OF THE OFFICIAL RECORD REGARDING THE APPLICATION.

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

SECTION 1. That Section 67-6510, Idaho Code, be, and the same is hereby repealed.

SECTION 2. 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 67-6510, Idaho Code, and to read as follows:

67-6510. MEDIATION -- TIME LIMITATIONS TOLLED. (1) The procedure established for the processing of applications by this chapter or by local ordinance shall include the option of mediation upon the written request of the applicant, an affected person, the zoning or planning and zoning commission or the governing board. Mediation may occur at any point during the decision-making process or after a final decision has been made. If mediation occurs after a final decision, any resolution of differences through mediation must be the subject of another public hearing before the decision-making body.

(2) The applicant and any other affected persons objecting to the application shall participate in at least one (1) mediation session if mediation is requested by the commission or the governing board. The governing board shall select and pay the expense of the mediator for the first meeting among the interested parties. Compensation of the mediator shall be determined among the parties at the outset of any mediation undertaking. An applicant may decline to participate in mediation requested by an affected person, and an affected person may decline to participate in mediation requested by the applicant, except that the parties shall participate in at least one (1) mediation session if directed to do so by the governing board.

(3) During mediation, any time limitation relevant to the application shall be tolled. Such tolling shall cease when the applicant or any other affected person, after having participated in at least one (1) mediation session, states in writing that no further participation is desired and notifies the other parties, or upon notice of a request to mediate wherein no mediation session is scheduled for twenty-eight (28) days from the date of such request.

(4) The mediation process may be undertaken pursuant to the general limitations established by this section or pursuant to local ordinance provisions not in conflict herewith.

(5) The mediation process shall not be part of the official record regarding the application.

Approved April 4, 2000.

CHAPTER 200
(H.B. No. 535, As Amended in the Senate)

AN ACT

RELATING TO SPECIAL MOTOR VEHICLE LICENSE PLATES; AMENDING SECTION 49-402, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE AND TO CLARIFY DEPOSIT OF CERTAIN FEES; AMENDING SECTIONS 49-417B, 49-418B AND 49-419A, IDAHO CODE, TO PROVIDE FOR DEPOSIT OF FEES CHARGED FOR THE SPECIAL LICENSE PLATES; AMENDING CHAPTER 4, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-420B, IDAHO CODE, TO ESTABLISH A LEWIS AND CLARK COMMEMORATIVE LICENSE PLATE PROGRAM; AND PROVIDING EFFECTIVE DATES.

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

SECTION 1. That Section 49-402, Idaho Code, be, and the same is

hereby amended to read as follows:

49-402. ANNUAL REGISTRATION. (1) The annual fee for operating each pickup truck and each other motor vehicle having a maximum gross weight not in excess of eight thousand (8,000) pounds shall be:

Vehicles one (1) and two (2) years old $48.00
Vehicles three (3) and four (4) years old $36.00
Vehicles five (5) and six (6) years old $36.00
Vehicles seven (7) and eight (8) years old $24.00
Vehicles over eight (8) years old $24.00

There shall be twelve (12) registration periods, starting in January for holders of validation registration stickers numbered 1, and proceeding consecutively through December for holders of validation registration stickers numbered 12, each of which shall start on the first day of a calendar month and end on the last day of the twelfth month from the first day of the beginning month. Registration periods shall expire midnight on the last day of the registration period in the year designated by the validation registration sticker. The numeral digit on the validation registration stickers shall, as does the registration card, fix the registration period under the staggered plate system of Idaho for the purpose of reregistration and notice of expiration.

A vehicle that has once been registered for any of the above designated periods shall, upon reregistration, be registered for the period bearing the same number, and the registration card shall show and be the exclusive proof of the expiration date of registration and licensing. Vehicles may be initially registered for less than a twelve (12) month period, or for more than a twelve (12) month period, and the fee prorated on a monthly basis if the fractional registration tends to fulfill the purpose of the monthly series registration system.

(2) For all motorcycles and all-terrain vehicles the annual fee shall be nine dollars ($9.00). For operation of an ATV off the public highways, the fee specified in section 67-7122, Idaho Code, shall also be paid. Registration exemptions provided in section 49-426(2), Idaho Code, apply to all-terrain vehicles and motorcycles used for the purposes described in that subsection (2).

(3) For all motor homes the fee shall be as specified in subsection (1) of this section and shall be in addition to the fees provided for in section 49-445, Idaho Code.

(4) Registration fees shall not be subject to refund.

(5) A financial institution or repossession service contracted to a financial institution repossessing vehicles under the terms of a security agreement shall move the vehicle from the place of repossession to the financial institution's place of business on a repossession plate. The repossession plate shall also be used for demonstrating the vehicle to a prospective purchaser for a period not to exceed ninety-six (96) hours. The registration fees for repossession plates shall be as required in subsection (1) of this section for a vehicle one (1) and two (2) years old. All other fees required under chapter 4, title 49, Idaho Code, shall be in addition to the registration fee. The repossession plate shall be issued on an annual basis by the department.

(6) In addition to the annual registration fee in this section, there shall be an initial program fee of twenty-five dollars ($25.00) and an annual program fee of fifteen dollars ($15.00) for all special license plate programs for those license plates issued pursuant to sections 49-404A, 49-407, 49-408, 49-409, 49-414, 49-416 and 49-418, Idaho Code. For special plates issued pursuant to sections 49-406 and 49-406A, Idaho Code, there shall be an initial program fee of twenty-five dollars ($25.00) but there shall be no annual renewal fee. For special plates issued pursuant to sections 49-417, 49-417A, 49-417B, 49-418A, 49-419, 49-419A, ~~and~~ 49-420 and 49-420B, Idaho Code, there shall be an initial program fee of thirty-five dollars ($35.00) and an annual program fee of twenty-five dollars ($25.00). ~~For special plates issued pursuant to section 49-418A, Idaho Code, the initial program fee and the annual renewal fee shall be fifty dollars ($50.00).~~ The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited ~~as~~ in the state highway account and shall be used to fund the cost of administration of special license plate programs, unless otherwise specified by law. ~~for each program.~~

SECTION 2. That Section 49-417B, Idaho Code, be, and the same is hereby amended to read as follows:

49-417B. IDAHO AGRICULTURE PLATES. (1) On and after January 1, 2000, 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 agriculture 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 Idaho agriculture 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 thirty-five dollars ($35.00) for the initial issuance of the plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. ~~Twenty-five~~ Ten dollars ($~~25~~10.00) of the initial fee and ~~fifteen~~ ten dollars ($1~~5~~0.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of the administration of this special license plate program. ~~Ten~~ Twenty-five dollars ($~~10~~25.00) of each initial fee and ~~ten~~ fifteen dollars ($10~~5~~.00) of each renewal fee shall be transferred by the state treasurer to the ag in the classroom account created by the provisions of section 57-815, Idaho Code.

(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) The Idaho agriculture license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. That portion of the design which features Idaho agriculture shall be acceptable to the Food Producers of Idaho, Inc. and 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 from the ag in the classroom

account.

(5) Sample Idaho agriculture plates may be purchased from the department 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 transferred to the ag in the classroom account.

SECTION 3. That Section 49-418B, Idaho Code, be, and the same is hereby amended to read as follows:

49-418B. IDAHO YOUTH PLATES. (1) On or after January 1, 2000, 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 youth license plates in lieu of regular license plates. Availability of Idaho youth 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 ($25.00) upon each succeeding annual registration. ~~Twenty-five~~ Ten dollars ($~~25~~10.00) of the initial fee and ~~fifteen~~ ten dollars ($1~~5~~0.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of the administration of this special license plate program. ~~Ten~~ Twenty-five dollars ($~~10~~25.00) of each initial fee and ~~ten~~ fifteen dollars ($1~~0~~5.00) of each renewal fee shall be transferred by the county assessor's motor vehicle registration division of each county into the youth programs fund of the sheriff of that county, for use in implementation of prevention and early intervention programs for Idaho's at-risk youth including, but not limited to: (a) providing mentoring programs, (b) creating safe places and structured activities in non-school hours, (c) fostering good health, (d) developing effective education opportunities for marketable career skills, and (e) providing an opportunity for youth to give back to their community.

(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 youth 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 association of counties, 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 association of counties.

(5) Sample Idaho youth 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 sheriff's youth program fund of the county where the plate was purchased for the implementation of youth programs for at-risk youth. No additional fee shall be charged for personalizing sample plates.

SECTION 4. That Section 49-419A, Idaho Code, be, and the same is hereby amended to read as follows:

49-419A. IDAHO SAWTOOTH NATIONAL RECREATION AREA PLATES. (1) On and after January 1, 2000, 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 Idaho sawtooth national recreation area 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 Idaho sawtooth national recreation area plates for other vehicles shall be subject to the rules, policies and procedures of the department.

(2) In addition to the regular registration fees 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 ($25.00) upon each succeeding annual registration. ~~Twenty-five~~ Ten dollars ($~~25~~10.00) of the initial fee and ~~fifteen~~ ten dollars ($15~~0~~.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. ~~Ten~~ Twenty-five dollars ($~~1~~025.00) of each initial fee and ~~ten~~ fifteen dollars ($10~~5~~.00) of each renewal fee shall be deposited by the state treasurer in the park and recreation fund established in section 67-4225, Idaho Code, for use in the maintenance of parks and facilities. This fee shall be treated as a contribution to the outdoor recreation program and shall not be considered a motor vehicle registration fee as described in section 17, article VII, of the constitution of the state of Idaho.

(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 sawtooth national recreation area license plate design shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. That portion of the design which features the Idaho sawtooth national recreation area shall be acceptable to the sawtooth society and 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 the plate design, shall be paid by the sawtooth society.

(5) Sample Idaho sawtooth national recreation area plates may be purchased from the department 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 by the state treasurer in the park and recreation fund for use in the maintenance of parks and facilities. No additional fee shall be charged for personalizing sample plates.

SECTION 5. 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 49-420B, Idaho Code, and to read as follows:

49-420B. LEWIS AND CLARK COMMEMORATIVE PLATES. (1) On and after January 1, 2001, 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 Lewis and Clark commemorative 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 Lewis and Clark commemorative 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 plates, and twenty-five dollars ($25.00) upon each succeeding annual registration. Ten dollars ($10.00) of the initial fee and ten dollars ($10.00) 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. Twenty-five dollars ($25.00) of each initial fee and fifteen dollars ($15.00) of each renewal fee shall be transferred by the state treasurer for deposit to the governor's Idaho Lewis and Clark trail committee fund created in section 67-8601, Idaho Code, and shall be used exclusively for the purposes described in section 67-8601, Idaho Code.

(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 Lewis and Clark commemorative license plate shall be of a color and design in accordance with the provisions of section 49-402C, Idaho Code. That portion of the design which features Lewis and Clark and other commemorative aspects of their trail and journeys shall be acceptable to the governor's Lewis and Clark advisory board, and shall be 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 from the Lewis and Clark trail committee fund.

(5) Sample Lewis and Clark commemorative license plates may be purchased for a fee of thirty dollars ($30.00), ten dollars ($10.00) of which shall be deposited in the state highway account and twenty

dollars ($20.00) of which shall be transferred to the governor's Idaho Lewis and Clark trail committee fund. No additional fee shall be charged for personalizing sample plates.

SECTION 6. Sections 2, 3 and 4 of this act shall be in full force and effect on and after July 1, 2000; and Sections 1 and 5 of this act shall be in full force and effect on and after January 1, 2001.

Approved April 5, 2000.

CHAPTER 201
(H.B. No. 557)

AN ACT

RELATING TO THE ALFALFA SEED INDUSTRY ACT; AMENDING THE HEADING FOR CHAPTER 42, TITLE 22, IDAHO CODE; AMENDING SECTION 22-4201, IDAHO CODE, TO CHANGE THE TITLE OF THE ACT TO THE ALFALFA AND CLOVER SEED INDUSTRIES ACT; AMENDING SECTION 22-4202, IDAHO CODE, TO ADD REFERENCES TO CLOVER SEED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-4203, IDAHO CODE, TO ADD REFERENCES TO CLOVER AND CLOVER SEED IN DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-4204, IDAHO CODE, TO CHANGE THE NAME OF THE ALFALFA SEED COMMISSION TO THE ALFALFA AND CLOVER SEED COMMISSION AND TO PROVIDE THAT MEMBERS INCLUDE REPRESENTATIVES OF THE CLOVER SEED INDUSTRY; AMENDING SECTION 22-4205, IDAHO CODE, TO ADD REFERENCES TO CLOVER SEED GROWERS; AMENDING SECTION 22-4207, IDAHO CODE, TO PROVIDE THAT THE POWERS AND DUTIES OF THE ALFALFA AND CLOVER SEED COMMISSION INCLUDE ACTIVITIES RELATED TO CLOVER SEED AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-4208, IDAHO CODE, TO PROVIDE A REFERENCE TO THE ALFALFA AND CLOVER SEED COMMISSION; AMENDING SECTION 22-4210, IDAHO CODE, TO PROVIDE AN ASSESSMENT ON CLOVER SEED; AMENDING SECTION 22-4211, IDAHO CODE, TO ADD REFERENCES TO CLOVER SEED IN THE CONTEXT OF PAYING ASSESSMENTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-4214, IDAHO CODE, TO REQUIRE RECORDS FOR CLOVER SEED AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That the Heading for Chapter 42, Title 22, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 42
ALFALFA <u>AND CLOVER</u> SEED ~~INDUSTRY~~ <u>INDUSTRIES</u>

SECTION 2. That Section 22-4201, Idaho Code, be, and the same is hereby amended to read as follows:

22-4201. TITLE OF ACT. This act shall be known as the "Alfalfa <u>and Clover</u> Seed ~~Industry~~ <u>Industries</u> Act."

SECTION 3. That Section 22-4202, Idaho Code, be, and the same is hereby amended to read as follows:

22-4202. PURPOSE. It is hereby declared, as a matter of legislative determination, that 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; that economic waste threatens the alfalfa seed and clover seed ~~industry~~ industries in the state of Idaho by the lack of facilities and funds for research to develop and improve control measures for diseases and pests which attack alfalfa seed and clover seed pollinators, to improve alfalfa seed and clover seed growing culture and to disseminate information to the growers, and by lack of proper advertising and dissemination of information necessary for the development and promotion of alfalfa seed and clover seed grown in the state of Idaho; and that it is in the interests of the people, welfare and general prosperity of the state of Idaho that this avoidable economic waste be eliminated by the growers having at their disposal all available information on the best and most advanced methods of culture, growing, harvesting and marketing of alfalfa seed and clover seed. The purpose of this act is to promote the general welfare of our people by improving the culture and production of and expanding the market for alfalfa seed and clover seed grown in the state of Idaho.

SECTION 4. That Section 22-4203, Idaho Code, be, and the same is hereby amended to read as follows:

22-4203. DEFINITIONS. Wherever used or referred to in this act, unless the context requires otherwise:

(1) "Commission" means the Idaho alfalfa and clover commission.

(2) "Grower" means any landowner personally engaged in growing alfalfa seed or clover seed, a tenant personally engaged in growing alfalfa seed or clover seed, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative organization, trust, sharecropper or any and all other business units, devices and arrangements that grow alfalfa seed or clover seed.

(3) "Dealer" means any person, partnership, association, corporation, cooperative or other business unit or device that first handles, packs, ships, buys and sells alfalfa seed or clover seed, or who acts as sales or purchasing agent, broker or factor of alfalfa seed or clover seed.

(4) "Handled in the primary channels of trade" means the time when any alfalfa seed or clover seed is delivered under a sales contract, sold, or delivered for shipment and sale.

(5) "Ship" means to load alfalfa seed or clover seed into any mode of conveyance for transport in the channels of trade or to market.

(6) "Processor" and "processing plant" means every person, partnership, association, corporation, cooperative or other business unit or device to whom and every place to which alfalfa seed or clover seed is delivered for cleaning, packing and blending.

(7) "District No. 1" shall consist of the following counties: Ada, Owyhee, Elmore, Camas, Blaine, Gooding, Lincoln, Minidoka, Je-

rome, Twin Falls, Cassia, Power, Franklin, Oneida, Bannock, Bear Lake, Caribou, Bonneville, Madison, Teton, Jefferson, Fremont, Butte, Clark and Bingham.

(8) "District No. 2" shall consist of the following counties: Boundary, Bonner, Benewah, Shoshone, Kootenai, Nez Perce, Lewis, Latah, Clearwater, Idaho, Valley, Adams, Boise, Gem, Payette, Washington, Canyon, Lemhi and Custer.

SECTION 5. 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 and clover seed commission within the department of agriculture, to be thus known and designated. The commission shall be composed of six (6) practical alfalfa seed or clover seed growers and one (1) practical alfalfa seed or clover 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 or clover seed within the state of Idaho, and a substantial portion of whose income has been derived from growing alfalfa seed or clover 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 or clover 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 clover seed, or acting as sales or purchasing agent, broker or factor of alfalfa seed or clover 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(n), Idaho Code.

SECTION 6. 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 and clover 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 or

clover seed and shall be now actually engaged in growing alfalfa seed or clover seed in Idaho and shall derive a substantial portion of his income from growing alfalfa seed or clover 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 or clover 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. Said annual meeting shall be held at a time and place designated by the alfalfa and clover seed growers association with notification mailed to all alfalfa seed and clover seed growers in Idaho.

(2) A general meeting of the Idaho Eastern Oregon Seed Association shall nominate two (2) dealers, one (1) of whom shall be appointed as provided for in this act by June 30 of each year, and one (1) of whom shall be designated as alternate.

SECTION 7. That Section 22-4207, Idaho Code, be, and the same is hereby amended to read as follows:

22-4207. POWERS AND DUTIES OF COMMISSION. The powers and duties of the commission shall include the following:

(1) To administer and enforce this act.

(2) To contract in the name of the commission and be contracted with.

(3) To employ and at pleasure discharge a research director, research staff, a secretary, advertising manager, advertising agents, agents, attorneys, and such clerical and other help as it deems necessary and to control their powers and duties and to fix their compensation.

(4) To keep books, records and accounts of all its dealings, which books, records and accounts of all its dealings shall be open to inspection by the state controller at all times.

(5) To purchase or authorize the purchase of all office equipment and/or supplies and 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.

(6) To become a member of and purchase membership in trade organizations and to subscribe to and purchase trade bulletins, journals and other trade publications.

(7) To plan and conduct a research program to improve the quality of alfalfa seed and clover seed, to develop and improve control measures for disease and pests which attack alfalfa and alfalfa seed pollinators and clover and clover seed pollinators and to improve alfalfa and clover growing culture and to disseminate such information among the growers and dealers of the state and to make such research contracts and other agreements as may be necessary.

(8) To plan and conduct a publicity and sales promotion campaign

to increase the sale and use of Idaho alfalfa seed and clover seed and to make such publicity and sales promotion contracts and other agreements as may be necessary.

(9) To establish and maintain the executive offices of the commission at any place within the state of Idaho, which designated place may be changed at the discretion of the commission.

(10) To adopt and from time to time alter, rescind, modify or amend all proper and necessary rules and orders for the exercise of its powers and the performance of its duties under this act.

(11) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or the United States government, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts or agreements with such organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity and reciprocal enforcement of these objectives.

(12) To investigate and prosecute in the name of the state of Idaho violations of this act; to investigate and prosecute in the name of the state of Idaho any suit or action for the collection of assessments as hereinafter provided, or to protect brands, marks, packages, brand names or trademarks being promoted by the commission.

(13) To promote the sale and use of Idaho alfalfa seed and clover seed.

(14) To provide for and conduct a comprehensive and extensive research, promotion and educational campaign as continuous as the crop, sales and market conditions reasonably require.

SECTION 8. That Section 22-4208, Idaho Code, be, and the same is hereby amended to read as follows:

22-4208. RECEIPT OF GIFTS -- PAYABLE TO COMMISSION. The commission may accept grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this act, which may be specified as a condition of any grant, donation or gift. All funds received under the provisions of this act shall be paid to the Idaho alfalfa and clover seed commission.

SECTION 9. That Section 22-4210, Idaho Code, be, and the same is hereby amended to read as follows:

22-4210. ASSESSMENT ON ALFALFA SEED AND CLOVER SEED. There is hereby levied upon all alfalfa seed and clover seed grown annually in this state, ~~and~~ all alfalfa seed sold as Idaho alfalfa seed and all clover seed sold as Idaho clover seed, an assessment of one-fourth cent (1/4¢) per pound of clean seed. All moneys collected hereunder shall be expended to effectuate the purposes and objects of this act.

SECTION 10. That Section 22-4211, Idaho Code, be, and the same is hereby amended to read as follows:

22-4211. TIME FOR PAYMENT OF ASSESSMENTS -- RECOVERY OF PAYMENT FROM GROWER. All assessments levied and imposed under and pursuant to the provisions of this chapter shall be paid to the commission by the

person, either grower or dealer, by whom the alfalfa seed or clover seed is first handled in the primary channels of trade and shall be paid at such times as the commission may by rule ~~or regulation~~ prescribe, but not later than sixty (60) days from the date on which the grower received payment for the alfalfa seed or clover seed. If the party first handling the alfalfa seed or clover seed in the primary channels of trade is a person other than the grower he may charge against or recover from the grower of such alfalfa seed or clover seed the full amount of any assessment levied and imposed under this chapter.

SECTION 11. That Section 22-4214, Idaho Code, be, and the same is hereby amended to read as follows:

22-4214. DEALER'S RECORDS OF SEED HANDLED -- OPEN TO INSPECTION BY COMMISSIONER. Every dealer shall maintain accurate records of all alfalfa seed and clover seed handled, packed, shipped or processed by him. The record shall be in such form and contain such information as the commission may by rule ~~or regulation~~ prescribe, and shall be preserved for a period of two (2) years, and be subject to inspection at any time upon request of the commission or its agents.

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, and retroactively to January 1, 2000.

Approved April 5, 2000.

CHAPTER 202
(S.B. No. 1460)

AN ACT

RELATING TO CONSOLIDATION OF HIGHWAY DISTRICTS; AMENDING THE HEADING FOR CHAPTER 15, TITLE 40, IDAHO CODE; AMENDING SECTION 40-1501, IDAHO CODE, TO DELETE PROVISIONS ALLOWING A PORTION OF ONE HIGHWAY DISTRICT FROM CONSOLIDATING WITH AN ADJOINING DISTRICT; AMENDING SECTION 40-1502, IDAHO CODE, TO REVISE PETITION REQUIREMENTS; AMENDING SECTION 40-1503, IDAHO CODE, TO REVISE TIMING AND PROCEDURAL REQUIREMENTS REGARDING ORDER FOR A HEARING AND NOTICE; AMENDING SECTION 40-1505, IDAHO CODE, TO PROVIDE THAT THE COUNTY COMMISSIONERS SHALL CONSIDER THE PETITION AND HEAR ALL QUALIFIED PERSONS IN RELATION TO THE PETITION AND TO PROVIDE FOR AN ELECTION ON ONE OF THE DATES SPECIFIED IN SECTION 34-106, IDAHO CODE; AMENDING SECTION 40-1506, IDAHO CODE, TO PROVIDE FOR COUNTY COMMISSIONERS OF EACH CONCERNED COUNTY TO MEET, TO DELETE ELECTION DISTRICTS, TO PROVIDE POLLING PLACES AND TO PROVIDE QUALIFICATIONS OF VOTERS; AMENDING SECTION 40-1507, IDAHO CODE, TO REVISE CONTENTS OF THE NOTICE OF ELECTION; AMENDING SECTION 40-1508, IDAHO CODE, TO REVISE HOURS WHEN POLLING PLACES WILL BE OPEN AND TO PROVIDE THAT THE ELECTION SHALL BE SEPARATE AND DISTINCT IN EACH OF

THE HIGHWAY DISTRICTS; AMENDING SECTION 40-1509, IDAHO CODE, TO REVISE THE PROCEDURES FOR THE CONDUCT OF ELECTIONS; AMENDING SECTION 40-1510, IDAHO CODE, TO CLARIFY TERMS AND TO PROVIDE A FOUR-YEAR WAITING PERIOD BEFORE ANOTHER CONSOLIDATION ELECTION CAN BE HELD IF AN ELECTION TO CONSOLIDATE FAILS; AMENDING SECTION 40-1511, IDAHO CODE, TO REVISE VOTE COUNTING AND CANVASSING PROCEDURES AND TO PROVIDE FOR THE CONTINUANCE OF OPERATIONS OF CONSOLIDATED HIGHWAY DISTRICTS UNTIL THE NEWLY APPOINTED COMMISSIONERS OF THE CONSOLIDATED HIGHWAY DISTRICT MEET AND ORGANIZE; AMENDING SECTION 40-1512, IDAHO CODE, TO PROVIDE FOR A NEWLY CONSOLIDATED DISTRICT TO BE DIVIDED INTO THREE SUBDISTRICTS AND TO CLARIFY THAT THE NEW COMMISSIONERS OF A CONSOLIDATED DISTRICT SHALL BE APPOINTED BY THE GOVERNOR; AMENDING SECTION 40-1513, IDAHO CODE, TO PROVIDE CLARIFYING LANGUAGE; AMENDING SECTION 40-1514, IDAHO CODE, TO REVISE PROCEDURES FOR ORGANIZATION OF THE HIGHWAY DISTRICT COMMISSIONERS; AMENDING SECTION 40-1515, IDAHO CODE, TO REVISE SUCCESSION REQUIREMENTS AND TO DELETE THE REQUIREMENT THAT ALL PERSONAL PROPERTY BELONGING TO FORMER HIGHWAY DISTRICTS SHALL BE SOLD; AMENDING SECTION 40-1516, IDAHO CODE, TO REVISE REQUIREMENTS OF THE HIGHWAY DISTRICT TREASURER AND TO DELETE REFERENCE TO MONEYS FROM THE SALE OF PROPERTY BELONGING TO FORMER DISTRICTS; AMENDING SECTION 40-1517, IDAHO CODE, TO PROVIDE CLARIFYING LANGUAGE; AMENDING SECTION 40-1518, IDAHO CODE, TO PROVIDE CLARIFYING LANGUAGE; AND AMENDING CHAPTER 15, TITLE 40, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 40-1519, IDAHO CODE, TO PROVIDE FOR PAYMENT OF EXPENSES OF CONSOLIDATION ELECTIONS, TO PROVIDE A FORMULA FOR PRORATING COSTS, TO PROVIDE FOR REPAYMENT TO THE COUNTY FROM HIGHWAY DISTRICT FUNDS AND TO PROVIDE FOR APPEALS.

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

SECTION 1. That the Heading for Chapter 15, Title 40, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 15
CONSOLIDATION OF <u>HIGHWAY</u> DISTRICTS

SECTION 2. That Section 40-1501, Idaho Code, be, and the same is hereby amended to read as follows:

40-1501. HIGHWAY DISTRICTS -- CONSOLIDATION -- EFFECT OF CONSOLIDATION. Any highway district within the state, whether the same are situated entirely within the boundaries of any one (1) county or within two (2) or more adjoining counties, may be consolidated with any adjoining highway district, whether situated entirely within the boundaries of any county or within two (2) or more adjoining counties~~, and a portion of one (1) highway district may consolidate with an adjoining district~~.

SECTION 3. That Section 40-1502, Idaho Code, be, and the same is hereby amended to read as follows:

40-1502. PETITIONS FOR CONSOLIDATION. <u>(1)</u> Whenever electors of

two (2) or more existing adjoining highway districts ~~or parts of them~~ desire to consolidate those districts, ~~or parts of them,~~ a petition from each of the districts ~~or parts of them~~ for consolidation, signed by ~~not less than~~ five percent (5%) or twenty-five (25) electors, whichever is greater, qualified to vote at a highway district election in each of the highway districts, ~~or its parts,~~ shall be presented to the commissioners of the county in which the highway districts ~~or its parts~~ are situated. The petitions shall state the name and, in a general way, describe the highway districts ~~or parts~~ which it is proposed to consolidate.

(2) A majority of the elected commissioners of each of two (2) or more existing adjoining highway districts may also, on their own initiative, petition the county commissioners, in lieu of a petition as provided in subsection (1) of this section.

SECTION 4. That Section 40-1503, Idaho Code, be, and the same is hereby amended to read as follows:

40-1503. ORDER FOR HEARING -- NOTICE. The commissioners of the counties concerned, shall at the earliest possible date, meet at a time and place as shall be agreed upon by them, and at the meeting shall, by order, entered in the minutes of the commissioners of each of the counties concerned, fix a time and place for a hearing upon the petitions, which time shall not be less than ~~fifteen (15)~~ sixty (60) days from and after the date of the first publication of notice of the petition and hearing on them. The hearing meeting shall be at the county seat of one of the counties concerned. At the meeting the commissioners shall prepare a notice of hearing to be signed by them and attested by the county clerks, setting forth the filing of petitions; the name and general description of the highway districts proposed to be consolidated; the total bonded and current warrant and other indebtedness; the market value for assessment purposes and the last preceding ad valorem tax levy of each of the highway districts; a statement that at the hearing any elector qualified to vote at elections of highway district commissioners of the highway districts proposed for consolidation may, prior to or at the time of the hearing, file with the clerk of the commissioners of the county in which he resides, written objections to the proposed consolidation; and that at the hearing any qualified elector of the highway districts proposed for consolidation may appear and make oral objections to the consolidation.

SECTION 5. That Section 40-1505, Idaho Code, be, and the same is hereby amended to read as follows:

40-1505. HEARING -- ORDER FOR ELECTION -- CONSOLIDATION, WHEN DEFEATED. At the time and place specified in the notice, the county commissioners shall proceed to consider the petition and all written and oral objections, and shall hear all qualified persons in relation to it. Upon conclusion of the hearing, which may be continued from day to day, if a majority of the members of each of the commissioners of the counties involved are of the opinion that a consolidation is practical and to the best interests of each and all of the highway dis-

tricts concerned, they shall make an order directing that the question of consolidation of the highway districts proposed for consolidation be submitted to the electors at an election to be held separately within each of the highway districts at a date in conformance with section 34-106(1), Idaho Code, but not less than ~~thirty (30) nor more than sixty (60)~~ ninety (90) days ~~from and~~ after the date of the order. The date of the election shall be specified in the order. The order shall set forth: the name, number, and general description of the respective highway districts proposed to be consolidated; the market value for assessment purposes of all the property situated in each of the concerned highway districts, as shown by the last county assessment rolls; the total bonded and current warrant and other indebtedness of each of the highway districts; the preceding ad valorem highway tax levy of each of the highway districts; and the total bonded and current warrant and other indebtedness of the proposed consolidated highway district. A copy of the order shall be entered in the minutes of the commissioners of each county concerned. The proposed consolidation shall be defeated if a majority of the commissioners of either of the counties concerned vote against it, and in that event a record of that action shall be entered in the minutes of each of the counties concerned.

SECTION 6. That Section 40-1506, Idaho Code, be, and the same is hereby amended to read as follows:

40-1506. POLLING PLACES ~~AND ELECTION DISTRICTS~~ -- ELECTION OFFICERS. The commissioners of each county concerned shall ~~immediately~~ meet within thirty (30) days, in either special or regular session and, by order, enter in their minutes and designate the polling places ~~and the election districts~~ in each of the concerned ~~district or~~ highway districts situated in the county, and appoint two (2) or more judges and one (1) or more clerks for each ~~election--district~~ polling place, who shall possess the qualifications necessary to entitle them to vote at an election of highway district commissioners in the highway district proposed for consolidation.

SECTION 7. That Section 40-1507, Idaho Code, be, and the same is hereby amended to read as follows:

40-1507. NOTICE OF ELECTION -- PUBLICATION AND CONTENTS. The commissioners of each county shall require its clerk to give notice of the election by causing notices to be posted in at least three (3) public places within each of the highway districts situated within the county and concerned in the proposed consolidation for at least twenty-one (21) days prior to the date of election, and in addition to the posting, shall cause a copy of the notice to be published in accordance with the provisions of section 40-206, Idaho Code. The notice shall state the purpose and date of the election, the hours during which the polls shall be open and list the polling places~~,~~ ~~election districts~~ and the qualifications required of voters, in addition to the following: the name~~, number,~~ and general description of the respective highway districts proposed to be consolidated; the market value for assessment purposes of all the property situated in each

of the concerned highway districts, as shown by the last county assessment rolls; the total bonded and current warrant and other indebtedness of each of the highway districts; the preceding ad valorem highway tax levy of each of the highway districts; and the total bonded and current warrant and other indebtedness of the proposed consolidated highway district.

SECTION 8. That Section 40-1508, Idaho Code, be, and the same is hereby amended to read as follows:

40-1508. SEPARATE ELECTIONS -- TIME OF HOLDING. An election held under the provisions of this chapter shall be separate and distinct in each of the highway districts and counties affected by the proposed consolidation and shall be held on the same day and between the hours of ~~1~~8:00 ~~p~~a.m. and ~~7~~8:00 p.m.

SECTION 9. That Section 40-1509, Idaho Code, be, and the same is hereby amended to read as follows:

40-1509. CONDUCT OF ELECTIONS. (1) The polls shall be presided over by the appointed judges and clerks who must take an oath as judge and clerk of the highway district election and which oath shall obligate the judges and clerks to faithfully perform the duties of a board of election.

(2) All elections shall be by secret and separate ballot, each ballot in type, print or legible writing, stating in the affirmative and negative the proposition to be voted upon, and all ballots shall be in a form that the voters may express a choice by the marking of a cross (X).

(3) In all elections it is intended that no informalities in conducting the election shall invalidate the election, if the election has been otherwise fairly conducted. The clerks of the county commissioners shall prepare the necessary ballots for use in each of the highway districts.

SECTION 10. That Section 40-1510, Idaho Code, be, and the same is hereby amended to read as follows:

40-1510. DEFEAT OF PROPOSAL -- SUBSEQUENT ELECTIONS. The failure to carry the proposal to consolidate ~~a~~ highway districts by at least a majority vote in any one (1) of the highway districts concerned shall defeat the entire proposal. Subsequent elections to consolidate highway districts having failed to be consolidated as provided in this chapter shall not be considered for consolidation under the provisions of this chapter for a period of four (4) years after the consolidation election.

SECTION 11. That Section 40-1511, Idaho Code, be, and the same is hereby amended to read as follows:

40-1511. COUNT OF VOTES -- RETURN OF ELECTION -- CANVASS -- ORDER FOR CONSOLIDATION. Immediately following the close of the polls the boards of election shall compute the result of the election making the

count in public view, and upon completion shall make a return of the election to the clerk of the commissioners of their respective counties, upon forms to be supplied by the clerk, and shall transmit with the returns all ballots cast at the election, whether or not the ballots were counted by the election board or rejected by them. ~~Immediately~~ At the earliest possible date thereafter, the commissioners shall meet separately at their respective county seats, and canvass the returns of the election boards within their counties. ~~On the tenth~~ Within fifteen (15) days after the canvass, ~~unless that day is a Sunday or a legal holiday, then on the following day,~~ the commissioners shall meet in joint session at a location as shall be agreed upon by them and compile the total votes cast in their respective counties for or against the proposal to consolidate the highway districts concerned. If the proposal carried in each of the highway districts concerned, the county commissioners in the joint meeting shall make and enter an order declaring the districts consolidated in one (1) highway district of a name or designation as may be ordered by them, and at that time the consolidation shall be effective. The highway districts having been consolidated shall remain in operation, with all legal authority of a highway district, until the newly appointed highway commissioners of the consolidated highway district meet and organize as provided in this chapter.

SECTION 12. That Section 40-1512, Idaho Code, be, and the same is hereby amended to read as follows:

40-1512. SUBDIVISION OF DISTRICT -- APPOINTMENT OF HIGHWAY COMMISSIONERS -- CONSOLIDATION, WHEN EFFECTIVE. At the joint meeting, as provided by section 40-1511, Idaho Code, by a majority vote of all the commissioners present, the territory consolidated in one (1) highway district shall be divided into three (3) subdistricts, as provided by section 40-1304, Idaho Code. ~~and h~~Highway commissioners for the consolidated highway district shall be appointed by the governor, as provided for by section 40-1303, Idaho Code.

SECTION 13. That Section 40-1513, Idaho Code, be, and the same is hereby amended to read as follows:

40-1513. HIGHWAY DISTRICT LAWS APPLICABLE -- EXCEPTIONS -- TAX LEVIES. After the consolidation is effective, statutes relating to highway districts shall be applicable to the joint consolidated highway district, except as otherwise provided in this chapter. The assessing of property, the levying and collection of ad valorem taxes and all accounts which from their nature should be separately kept, shall be done and kept and the report on them made as if each portion of the consolidated district were a separate highway district in the respective counties. Nothing in this chapter shall be construed as preventing the new highway district board from levying ad valorem taxes against property within the consolidated district in accordance with chapter 8, ~~of this~~ title 40, Idaho Code.

SECTION 14. That Section 40-1514, Idaho Code, be, and the same is hereby amended to read as follows:

40-1514. ORGANIZATION OF HIGHWAY DISTRICT COMMISSIONERS -- COMPUTATION OF INDEBTEDNESS OF FORMER DISTRICTS. Immediately after consolidation is effected and highway commissioners are appointed, they shall meet and organize as provided by law, appoint required officers and designate a time and place for their meetings and have and exercise all the powers, jurisdiction, and authority and perform all duties and be subject to the responsibilities and liabilities of a highway district as provided by law. Upon organization, the highway district shall ascertain and compute all indebtedness, including bonded, warrant and current indebtedness, separately, of each of the former highway districts comprising the consolidation.

SECTION 15. That Section 40-1515, Idaho Code, be, and the same is hereby amended to read as follows:

40-1515. PROPERTY AND MONEYS OF FORMER DISTRICTS -- DELIVERY TO CONSOLIDATED HIGHWAY DISTRICT. ~~----SALE--OF--PROPERTY.~~ All property rights of the former highway districts shall be vested in and become the property of the consolidated highway district~~,-except-as-otherwise provided-in-this-chapter~~. The highway district commissioners and officers of each of the former highway districts comprising the consolidated highway district shall, immediately after consolidation is effected and the consolidated highway district commissioners have met and organized, turn over and deliver to them all property of every kind and description belonging to the former highway districts, including all moneys, books and accounts. ~~All--personal--property, excepting--moneys,--books--and-accounts,-belonging-to-former-districts shall-be-sold-by-the-former-highway-board-at--public-sale-to-the-highest-bidder-after-notice-and-at-a-time-as-the-highway-district--commissioners--shall--determine.--At--the-sale-the-consolidated-highway-district,-through-any-of-its-commissioners,-may-bid,-and-in-the-event-the consolidated-district-is-the-successful--bidder,--the--amount--of--bid shall--be--credited-by-the-treasurer-to-the-account-of-the-former-district-to-which-the-property-belonged.~~

SECTION 16. That Section 40-1516, Idaho Code, be, and the same is hereby amended to read as follows:

40-1516. SEPARATE ACCOUNTS OF FUNDS AND PROCEEDS FROM FORMER HIGHWAY DISTRICTS -- DUTIES OF TREASURER. The highway district treasurer shall keep separate accounts of all moneys coming into his hands from each of the former highway districts, ~~together--with--all--moneys from--the--sale-of-any-property-belonging-to-those-districts;~~ together with all moneys received from special tax levies against the taxable property situated within the boundaries of the former highway districts and together with all moneys paid out upon the indebtedness of the former highway districts. He shall pay from the funds in the accounts the amounts as the highway commissioners may from time to time order.

SECTION 17. That Section 40-1517, Idaho Code, be, and the same is hereby amended to read as follows:

40-1517. FUNDING OF INDEBTEDNESS OF FORMER HIGHWAY DISTRICTS. If the consolidated highway district commissioners determine that valid outstanding indebtedness of any of the former highway districts, existing prior to the consolidation may be funded or refunded to the profit and benefit of the taxpayers within the boundaries of the former highway district, and without incurring any additional liability, the highway commissioners have the power and authority to make provision for issuing of funding or refunding bonds in an amount equal to the unpaid principal and interest on the outstanding bonds or other indebtedness. Before the highway commissioners shall issue any bonds to refund any outstanding indebtedness, it shall cause all moneys of the former highway district on hand available for the payment and discharge of any indebtedness to be applied in payment and discharge of them and issue funding or refunding bonds only for the remainder of the indebtedness. The issuance of bonds shall not create any liability against the consolidated highway district or any of the property within its boundaries, excepting that the property within the boundaries of the former highway district shall be liable for the payment of the bonds.

SECTION 18. That Section 40-1518, Idaho Code, be, and the same is hereby amended to read as follows:

40-1518. INDEBTEDNESS PRIOR TO CONSOLIDATION -- LIABILITY OF PROPERTY IN FORMER HIGHWAY DISTRICTS. It is expressly provided that property situated within the boundaries of a former highway district shall be liable for the indebtedness of that district existing prior to consolidation, but shall not be liable for the indebtedness of any other highway district forming a consolidation and existing prior to the consolidation.

SECTION 19. That Chapter 15, Title 40, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 40-1519, Idaho Code, and to read as follows:

40-1519. EXPENSES OF ELECTION -- PRORATION TO HIGHWAY DISTRICTS -- APPEALS. In all counties where highway district consolidation elections are held under the provisions of this chapter, county commissioners shall pay expenses of the elections from the general fund of the county. The expenses shall be prorated by the commissioners according to the mileage and market value for assessment purposes of each of the highway districts involved, and upon certification of this pro rata share by the county commissioners, that share shall be paid to the county from funds of the appropriate highway district. Any appeals shall follow the appeals procedure set forth in section 40-1706, Idaho Code.

Approved April 5, 2000.

CHAPTER 203
(S.B. No. 1301, As Amended)

AN ACT

RELATING TO THE ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 67-5229, IDAHO CODE, TO SPECIFY THE MATERIAL WHICH MAY BE INCORPORATED BY REFERENCE IN AGENCY RULES, TO PROVIDE THAT AN AGENCY MAY NOT ADOPT A TEMPORARY RULE INCORPORATING BY REFERENCE REPEALED RULES OF THAT AGENCY WITHOUT LEGISLATIVE APPROVAL, TO REQUIRE THAT INCORPORATED MATERIAL BE IDENTIFIED WITH SPECIFICITY, TO PROVIDE FOR PUBLIC ACCESS TO INCORPORATED MATERIAL, TO PROVIDE FOR LEGISLATIVE REVIEW OF THE INCORPORATED MATERIAL AND TO PROVIDE THE EFFECT OF THE INCORPORATED MATERIAL; AMENDING SECTION 67-5226, IDAHO CODE, TO CROSS REFERENCE THE EXCEPTION TO THE ADOPTION OF TEMPORARY RULES PROVIDED IN SECTION 67-5229, IDAHO CODE; AMENDING SECTION 67-5201, IDAHO CODE, TO ADD A DEFINITION AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-5229, Idaho Code, be, and the same is hereby amended to read as follows:

67-5229. INCORPORATION BY REFERENCE. (1) If the incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient a~~A~~n agency may incorporate by reference in its rules and without republication of the incorporated material in full, all or any part of:

(a) A~~a~~ code, standard or rule ~~which has been~~ adopted by an agency ~~of the state or~~ of the United States;

(b) ~~or~~ A code, standard or rule adopted by any nationally recognized organization or association~~, if the incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient~~;

(c) A code or standard adopted by Idaho statute or authorized by Idaho statute for adoption by rule; or

(d) A final rule of a state agency; provided however, that a state agency shall not adopt a temporary rule incorporating by reference a rule of that agency that is being or has been repealed unless the rule providing for the incorporation has been reviewed and approved by the legislature.

(2) The agency shall, as part of the rulemaking:

(a) ~~n~~Note where copies of the incorporated material may be obtained or electronically accessed; and

(b) ~~i~~If otherwise unavailable, provide one (1) copy of the incorporated material to the ~~state~~ Idaho supreme court law library. ~~and to the coordinator;~~

(~~2~~3) The incorporated material shall be identified with specificity and shall include the date when the code, standard or rule was published, approved or became effective. If the agency subsequently wishes to ~~incorporate~~ adopt amendments to previously incorporated material, it shall comply with the rulemaking procedures of this

chapter.

(4) Unless prohibited by other provisions of law, the incorporated material is subject to legislative review in accordance with the provisions of section 67-5291, Idaho Code, and shall have the same force and effect as a rule.

SECTION 2. That Section 67-5226, Idaho Code, be, and the same is hereby amended to read as follows:

67-5226. TEMPORARY RULES. (1) If the governor finds that:

(a) protection of the public health, safety, or welfare; or

(b) compliance with deadlines in amendments to governing law or federal programs; or

(c) conferring a benefit;

requires a rule to become effective before it has been submitted to the legislature for review the agency may proceed with such notice as is practicable and adopt a temporary rule, except as otherwise provided in section 67-5229(1)(d), Idaho Code. The agency may make the temporary rule immediately effective. The agency shall incorporate the required finding and a concise statement of its supporting reasons in each rule adopted in reliance upon the provisions of this subsection.

(2) A rule adopted pursuant to subsection (1) of this section which imposes a fee or charge may become effective under this section before it has been approved, amended or modified by concurrent resolution only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge.

(3) In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule which has become effective as provided in section 67-5224(5), Idaho Code.

(4) Temporary rules shall be published in the first available issue of the bulletin.

(5) Temporary rules are not subject to the requirements of section 67-5223, Idaho Code.

(6) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the promulgation of a proposed rule in accordance with the rulemaking requirements of this chapter, unless the temporary rule adopted by the agency will expire by its own terms or by operation of law before the proposed rule could become final.

SECTION 3. That Section 67-5201, Idaho Code, be, and the same is hereby amended to read as follows:

67-5201. DEFINITIONS. As used in this act:

(1) "Administrative code" means the Idaho administrative code established in this chapter.

(2) "Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested

cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

(3) "Agency action" means:

(a) the whole or part of a rule or order;

(b) the failure to issue a rule or order; or

(c) an agency's performance of, or failure to perform, any duty placed on it by law.

(4) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(5) "Bulletin" means the Idaho administrative bulletin established in this chapter.

(6) "Contested case" means a proceeding which results in the issuance of an order.

(7) "Coordinator" means the administrative rules coordinator prescribed in section 67-5202, Idaho Code.

(8) "Document" means any executive order, notice, rule or statement of policy of an agency.

(9) "Final rule" means a rule that has been adopted by an agency under the regular rulemaking process and is in effect.

(10) "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes.

(11) "Official text" means the text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. Judicial notice shall be taken of all documents issued, prescribed, or promulgated in accordance with this chapter.

(12) "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.

(13) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(14) "Pending rule" means a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review.

(15) "Person" means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.

(16) "Proposed rule" means a rule published in the bulletin as provided in section 67-5221, Idaho Code.

(17) "Provision of law" means the whole or a part of the state or federal constitution, or of any state or federal:

(a) statute; or

(b) rule or decision of court.

(18) "Publish" means to bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law.

(19) "Rule" means the whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

(a) law or policy~~,~~; or

(b) the procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:

(i) statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or

(ii) declaratory rulings issued pursuant to section 67-5232, Idaho Code; or

(iii) intra-agency memoranda; or

(iv) any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

(20) "Rulemaking" means the process for formulation, adoption, amendment or repeal of a rule.

(21) "Standard" means a manual, guideline, criterion, specification, requirement, measurement or other authoritative principle providing a model or pattern in comparison with which the correctness or appropriateness of specified actions, practices or procedures may be determined.

(22) "Submitted for review" means that a rule has been provided to the legislature for review at a regular or special legislative session as provided in section 67-5291, Idaho Code.

(2~~2~~3) "Temporary rule" means a rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in section 67-5226, Idaho Code.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved April 5, 2000.

CHAPTER 204
(S.B. No. 1350)

AN ACT

RELATING TO SCHOOL ELECTIONS; AMENDING SECTION 33-502A, IDAHO CODE, TO INCREASE THE TIME PRIOR TO AN ELECTION WHEN A WRITE-IN CANDIDATE MUST FILE A DECLARATION OF CANDIDACY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 33-502A, Idaho Code, be, and the same is hereby amended to read as follows:

33-502A. DECLARATION OF INTENT FOR WRITE-IN CANDIDATES. No write-in vote for school district trustee in a school district election shall be counted unless a declaration of intent has been filed indicating that the person desires the office and is legally qualified to assume the duties of school trustee if elected. The declaration of intent shall be filed with the school district clerk. Such declaration of intent shall be filed not later than ~~five~~ fourteen (~~5~~14) days before the day of election.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 5, 2000.

CHAPTER 205
(S.B. No. 1371)

AN ACT

RELATING TO SCHOOL ELECTIONS; AMENDING SECTION 33-406, IDAHO CODE, TO GOVERN THE TIME FOR APPLICATION FOR ABSENTEE BALLOTS 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~~ 5:00 p.m. of the day before the election.

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 enclose his ballot or ballots in an envelope to be supplied by the clerk and seal the same. The elector shall then place the secrecy envelope in 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 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 April 5, 2000.

CHAPTER 206
(S.B. No. 1485)

AN ACT

RELATING TO COLLEGE SCHOLARSHIPS; AMENDING SECTION 33-4303, IDAHO CODE, TO PROVIDE THAT THE SCHOLARSHIP PROGRAM SHALL BE KNOWN AS THE "IDAHO PROMISE SCHOLARSHIP PROGRAM"; AMENDING SECTION 33-4305, IDAHO CODE, TO REVISE PURPOSES; AMENDING SECTION 33-4306, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-4307, IDAHO CODE, TO PROVIDE ELIGIBILITY REQUIREMENTS FOR CATEGORY A AND CATEGORY B PARTICIPANTS, TO PROVIDE GRANT PROVISIONS FOR CATEGORY B PARTICIPANTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-4308, IDAHO CODE, TO PROVIDE FOR THE MAXIMUM NUMBER OF GRANTS FOR CATEGORY A AND CATEGORY B STUDENTS; AMENDING SECTION 33-4309, IDAHO CODE, TO PROVIDE FOR CONTINUANCE IN THE CASE OF EXTREME HARDSHIP AND TO MAKE TECH-

NICAL CORRECTIONS; AND AMENDING SECTION 33-4313, IDAHO CODE, TO EXPAND THE DUTIES OF THE STATE BOARD OF EDUCATION AND THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO REGARDING SCHOLARSHIPS AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 33-4303, Idaho Code, be, and the same is hereby amended to read as follows:

33-4303. SHORT TITLE. This act shall be known and cited as the ~~"State of~~ "Idaho Promise Scholarship Program."

SECTION 2. That Section 33-4305, Idaho Code, be, and the same is hereby amended to read as follows:

33-4305. PURPOSES. The purpose of this act is:

(1) To establish a state scholarship program for the most talented Idaho secondary school graduates or the equivalent, consisting of category A students with outstanding academic qualifications and category B students with a cumulative grade point average for grades nine (9) through twelve (12) of 3.0 or better or achieving an ACT score of 20 or better or who become eligible after the student's first semester or who meet any other criteria as may be established by the state board of education and the board of regents of the university of Idaho, who will enroll in undergraduate nonreligious academic and professional-technical programs in eligible postsecondary institutions in the state; and

(2) To designate the state board of education and the board of regents of the ~~U~~niversity of Idaho as the administrative agency for the state scholarship program.

SECTION 3. That Section 33-4306, Idaho Code, be, and the same is hereby amended to read as follows:

33-4306. DEFINITIONS. As used in this act, unless the context otherwise requires:

(1) "Eligible postsecondary institution" means ~~an--educational organization-within-the-state-as-follows:~~

~~(a)--"Public--postsecondary--institution"--means~~ a public postsecondary organization governed or supervised by the state board of education, the board of regents of the ~~U~~niversity of Idaho, a board of trustees of a community college established pursuant to the provisions of section 33-2106, Idaho Code, or the state board for professional-technical education~~;~~

~~(b)--"Independent--colleges--and-universities"-means~~ or any educational organization which is operated privately and not for profit under the control of an independent board and not directly controlled or administered by a public or political subdivision. A public or private educational organization becomes eligible to participate in category B grant awards if the organization agrees to match awards granted to each eligible category B student. If an institution declines to match awards, an eligible student will

receive the state portion of the award to that institution.

(2) "Educational costs" means student costs for tuition, fees, room and board, or expenses related to reasonable commuting, books and such other expenses reasonably related to attendance at a post-secondary educational institution.

(3) "~~Resident-s~~Student" means an individual resident student as defined in section 33-3717 or 33-2110B, Idaho Code, enrolled full-time and carrying a sufficient number of credit hours, or their equivalent, to secure an individual's first degree, certificate, diploma or less, toward which the individual is working, in no more than the number of semesters, or equivalent, normally required by the eligible post-secondary institution in the program in which the individual is enrolled and provided that the baccalaureate degree, certificate, diploma or lesser program requires at least six (6) months or equivalent of consecutive attendance. A student engaged in a four (4) year baccalaureate program shall not be terminated from this scholarship program by having earned an intermediate degree, certificate or diploma.

~~(4) "Full-time-student" means an individual who is enrolled in and is carrying a sufficient number of credit hours, or their equivalent, to secure an individual's first degree, certificate, diploma, or less, toward which the individual is working in no more than the number of semesters, or equivalent, normally required by the post-secondary educational institution in the program in which the individual is enrolled.~~

~~(5) "Undergraduate student" means an individual who is enrolled in a postsecondary educational institution which leads to or is directly creditable toward the individual's first baccalaureate degree, certificate, diploma, or less, provided such baccalaureate degree, certificate, diploma or less program requires at least six (6) months or equivalent of consecutive attendance. A student engaged in a four (4) year baccalaureate program shall not be terminated by having earned an intermediate degree, certificate, or diploma.~~

~~(6)~~ "Enrollment" means the establishment and maintenance of an individual's status as a student in an eligible postsecondary ~~educational~~ institution, regardless of the term used at the institution to describe such status.

(~~7~~5) "Eligible category A student" means any graduate of an accredited secondary school in the state of Idaho who declares his intention to matriculate in an eligible postsecondary institution in the state of Idaho during the educational year immediately following such graduation.

(6) "Eligible category B student" means any student, having completed secondary school or its equivalent in the state of Idaho and who enrolls as a student in an eligible postsecondary institution in the state of Idaho prior to reaching twenty-two (22) years of age. To maintain eligibility a student must achieve and maintain a 2.5 cumulative grade point average while enrolled in an eligible postsecondary institution. Students meeting the requirements of this subsection who were not eligible for a grant in the first term of postsecondary education and who achieve and maintain a 2.5 cumulative grade point average based on a 4.0 system in an eligible postsecondary institution will become eligible for grant payments in subsequent school terms.

(~~8~~7) "Grant" means an award to an eligible student for matriculation in an eligible postsecondary institution in the state of Idaho.

(~~9~~8) "Educational year" means the period from July 1 of a year through June 30 of the succeeding year.

(~~10~~9) "Competitive examination" means standardized examination(s) measuring achievement administered annually on a voluntary basis on a specified date and at specified locations announced publicly.

(~~11~~10) "High school record," means for category A students, will be defined by the state board of education and the board of regents of the university of Idaho and may include, but need not be limited to, an individual's rank in his secondary school class, grade point average, and difficulty of course load taken as certified by an official of such secondary school, and ~~an~~ the individual's secondary school deportment as evaluated by at least two (2) officials of such secondary school.

(11) "High school record," for category B students, shall be defined by the state board of education and the board of regents of the university of Idaho and may include, but need not be limited to, an individual's secondary school cumulative grade point average or a composite score on the American college test (ACT).

(12) "Cumulative grade point average" is defined as a student's cumulative grade point average for all courses taken in grades nine (9) through twelve (12) and calculated on a grade of A equals 4.0 points, a grade of B equals 3.0 points, a grade of C equals 2.0 points, a grade of D equals 1.0 point and a grade of F equals 0.0 points.

SECTION 4. That Section 33-4307, Idaho Code, be, and the same is hereby amended to read as follows:

33-4307. ELIGIBILITY -- MAXIMUM AMOUNTS -- CONDITIONS. A grant may be awarded to an eligible student for matriculation at an eligible postsecondary educational institution in the state of Idaho if:

(1) The individual is accepted for enrollment as a full-time undergraduate or professional-technical student, as follows:

(a) In the case of an individual beginning his first year or freshman year of postsecondary education, he has satisfied the requirements for admission and has enrolled in an eligible postsecondary institution.

(b) In the case of an individual enrolled in an eligible postsecondary institution following the successful completion of the first term, he continues to meet the requirements of this act and has maintained such high standards of performance as may be required. Provided that high academic standards are maintained in accordance with requirements of this chapter, a student continues to be eligible when transferring from one (1) major program to another.

(c) In the case of an individual transferring from one (1) eligible postsecondary institution in Idaho to another eligible postsecondary institution in Idaho, he continues to meet the requirements of this act, is accepted and enrolled at the eligible postsecondary institution to which he is transferring, and has maintained such high standards of performance as may be required.

(2) The grant for category A students is ~~in amounts~~ as follows:
(a) The grant payment to an individual per educational year for attendance on a full-time basis is not in excess of an amount determined annually by the state board of education or in excess of the total educational costs as certified by an official of the eligible postsecondary institution to be attended by the individual receiving the grant, whichever is less.
(b) The total grant payments over a period of six (6) years to an individual may not exceed four (4) annual grants or the total educational costs for four (4) educational years completed as certified by an official of the eligible postsecondary institution or institutions attended by the individual receiving the grant, whichever is less.
(~~3~~c) The individual receiving such a grant signs an affidavit stating that the grant will be used for educational costs only.
(~~4~~d) The grant is awarded on the basis of extraordinary performance in standardized, unweighted competitive examination and high school record.
(~~5~~e) The individual receiving the grant is not precluded from receiving other financial aids, awards, or scholarships, provided the total of the grant and such other financial aids, awards or scholarships does not exceed the total educational costs for attendance at an eligible postsecondary institution as certified by an official of the eligible postsecondary institution to be attended by the individual receiving the grant.
(~~6~~f) Grant payments shall correspond to academic terms, semesters, quarters or equivalent time periods at an eligible postsecondary institution; in no instance may the entire amount of a grant for an educational year, as defined in section 33-4306(~~9~~10), Idaho Code, be paid to or on behalf of such student in advance.
(~~7~~g) The individual has complied with such rules ~~and regulations~~ as may be necessary for the administration of this act.
(3) The grant for category B students is as follows:
(a) The grant payment to an individual per educational year for attendance on a full-time basis is not in excess of an amount determined annually by the state board of education and the board of regents of the university of Idaho and not to exceed one thousand dollars ($1,000) per year including the required match.
(b) The total grant payments over a period of four (4) years to an individual may not exceed two (2) annual grants.
(c) The individual receiving such a grant signs an affidavit stating that the grant will be used for educational costs only.
(d) The grant is awarded on the basis of a high school record of a 3.0 grade point average or an ACT composite score of 20 or better and other criteria as may be established by the state board of education and the board of regents of the university of Idaho.
(e) The individual receiving the grant is not precluded from receiving other financial aid, awards or scholarships except that category A student award recipients are not eligible for category B awards.
(f) Grant payments shall correspond to academic terms, semesters, quarters or equivalent time periods at an eligible postsecondary institution; in no instance may the entire amount of a grant for

an educational year, as defined in section 33-4306(8), Idaho Code, be paid to or on behalf of such student in advance. The first grant payments pursuant to this section for category B students shall be made in the fall of 2001 or in the first fall academic term following an appropriation and when moneys are available to implement the category B scholarship program whichever date is later.

(g) The individual has complied with such rules as may be necessary for the administration of this chapter.

(h) All eligible postsecondary institutions will report annually to the state board of education and the board of regents of the university of Idaho the number of students for each term receiving a grant award and the number of awards that were matched by the institution.

SECTION 5. That Section 33-4308, Idaho Code, be, and the same is hereby amended to read as follows:

33-4308. MAXIMUM NUMBER OF GRANTS. (1) The total number of grants to eligible category A students shall not exceed one hundred (100) per year, nor a cumulative total number of grants of four hundred (400) outstanding at any given time.

(2) The total number of grants to category B students will be determined annually by the state board of education and the board of regents of the university of Idaho based on the number of eligible students, the individual award amount and the availability of funds.

SECTION 6. That Section 33-4309, Idaho Code, be, and the same is hereby amended to read as follows:

33-4309. REMITTANCE IN CASE OF DISCONTINUED ATTENDANCE. A grant may be made annually for a period not to exceed an educational year. If the student discontinues attendance before the end of any semester, quarter, term, or equivalent, covered by the grant after receiving payment under this act, the eligible postsecondary institution shall remit, up to the amount of any payments made under this grant, any prorated tuition, fees or room and board balances to the state board of education and the board of regents of the ~~U~~university of Idaho. The student shall be required to remit, up to the amount of any other reasonable grant balances, such grant balances to the state board of education and the board of regents of the ~~U~~university of Idaho. In the event of extreme hardship as determined by the state board of education and the board of regents of the university of Idaho, a student may request waiver of remittance.

SECTION 7. That Section 33-4313, Idaho Code, be, and the same is hereby amended to read as follows:

33-4313. DUTIES OF BOARD. The state board of education and the board of regents of the ~~U~~university of Idaho shall be responsible for:

(1) Supervision of the issuance of public information concerning the provisions of this act.

(2) Determination of recipients of grants made pursuant to the

provisions of this act.

(3) Adoption of rules ~~and regulations~~ necessary for processing and approving applications from students.

(4) Determination of the procedures for payment of grants to recipients.

(5) Maintenance of fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement of funds.

(6) Submission of annual reports to the governor and legislature.

(7) Establishment of a reasonable and fair appeal procedure for those students and institutions who may have been adversely affected by the application procedures.

(8) Holding a public hearing, prior to the adoption of rules, ~~and regulations,~~ for the purpose of providing interested parties with the opportunity of discussing such rules. ~~and regulations.~~

(9) Acceptance of funds from public and private sources, and such funds may be expended pursuant to appropriation to the state board of education and the board of regents of the university of Idaho for expenditure consistent with the purposes of this chapter.

(10) In the event funds from the millennium fund are used for category B scholarships, the state board of education and the board of regents of the university of Idaho may establish additional eligibility criteria for scholarship recipients.

SECTION 8. This act shall be in full force and effect on and after January 1, 2001.

Approved April 5, 2000.

CHAPTER 207
(H.B. No. 468)

AN ACT

RELATING TO SALES TAX DISTRIBUTIONS; AMENDING SECTION 63-316, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 63-3638, IDAHO CODE, TO REVISE THE FORMULA BY WHICH SIX PERCENT OF SALES TAX COLLECTIONS ARE APPROPRIATED TO THE SEVERAL COUNTIES FOR DISTRIBUTION TO CITIES, COUNTIES AND SPECIAL PURPOSE TAXING DISTRICTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-6211, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-316, Idaho Code, be, and the same is hereby amended to read as follows:

63-316. ADJUSTMENT OF ASSESSED VALUE -- COMPLETION OF ASSESSMENT PROGRAM BY STATE TAX COMMISSION -- PAYMENT OF COSTS. (1) Whenever the state tax commission, after a hearing, determines that any county assessor or the county commissioners in assessing property in the county subject to taxation have failed to abide by, adhere to and con-

form with the laws of the state of Idaho and the rules of the state tax commission in determining market value for assessment purposes, the state tax commission shall order the county assessor and county commissioners of such county to make the necessary changes or corrections in such assessments and if the county assessor and the county commissioners refuse or neglect to comply with such order, the state tax commission is authorized to and shall forthwith adjust or change the property roll in such county.

(2) In lieu of the hearings and actions permitted in subsection (1) of this section, the state tax commission shall monitor each county's implementation of the continuing appraisal required in section 63-314, Idaho Code, and may require each county to file such reports of its progress at implementation of such continuing appraisals as the commission may find necessary. In the event that the commission finds that any county is failing to meet the requirements of section 63-314, Idaho Code, the commission may order that county's indexing or appraisal or reappraisal programs be conducted under the exclusive and complete control of the state tax commission and the results of such programs shall be binding upon the county officers of the county for which ordered. Payments for the actual cost of such programs shall be made from the sales tax distribution created in section 63-3638, Idaho Code, and the amount of such payments shall be withheld from the payments otherwise made under the provisions of section 63-3638~~(e)~~ (8)(c) and ~~(g)~~ (8)(d), Idaho Code, to the county for which indexing, appraisal or reappraisal has been ordered, and this subsection shall constitute the necessary appropriation to accomplish such payments, any other provision of law notwithstanding.

SECTION 2. That Section 63-3638, Idaho Code, be, and the same is hereby amended to read as follows:

63-3638. SALES TAX -- DISTRIBUTION. All moneys collected under this chapter, except as may otherwise be required in section 63-3203, Idaho Code, shall be distributed by the tax commission as follows:

(~~a~~1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(~~b~~2) Five hundred thousand dollars ($500,000) per year is continuously appropriated and shall be distributed to the permanent building account, provided by section 57-1108, Idaho Code.

(~~c~~3) Four million eight hundred thousand dollars ($4,800,000) per year is continuously appropriated and shall be distributed to the water pollution control account established by section 39-3605, Idaho Code.

(~~d~~4) ~~(1)~~ An amount equal to the sum required to be certified by the chairman of the Idaho housing and finance association to the state tax commission pursuant to section 67-6211, Idaho Code, in each year is continuously appropriated and shall be paid to any capital reserve fund, established by the Idaho housing and finance association pursuant to section 67-6211, Idaho Code. Such amounts, if any, as may be appropriated hereunder to the capital reserve fund of the Idaho housing and finance association shall be repaid for distribution under the

provisions of this section, subject to the provisions of section 67-6215, Idaho Code, by the Idaho housing and finance association, as soon as possible, from any moneys available therefor and in excess of the amounts which the association determines will keep it self-supporting.

(~~2~~5) An amount equal to the sum required by the provisions of section 63-709, Idaho Code, is continuously appropriated and shall be paid as provided by section 63-709, Idaho Code.

(~~3~~6) An amount required by the provisions of chapter 53, title 33, Idaho Code.

~~(e)--Six--percent-(6%)-is-hereby-appropriated-and-shall-be-paid-to the-county-treasurer-of-each-county-in-amounts--to--be--determined--as follows:~~

~~(1)--Each--taxing--district--other--than-school-districts-shall-be entitled-to-a-base-share-of-sales-tax-moneys-equal-to--the--amount distributed--to--that--district-for-the-fourth-calendar-quarter-of 1979.-The-computation-shall-not-include-any-distributions-made--to the--credit--of--either-the-former-county-school-levy-or-the-state water-pollution-control-levy.-The--percentage--so--determined--for each--taxing--district--shall-be-applied-each-quarter-to-the-above percentage-of-sales-tax.-The-resulting-sums-shall-be-paid--to--the county--treasurer--of--each-county-for-distribution-to-each-taxing district,-except-school-districts,-which-received-sales-tax-moneys in-1979.-Whenever-a-taxing-district-is--dissolved,--the--dissolved district's-share-of-sales-moneys-shall-be-credited-continuously-to the-county-current-expense-fund.~~

~~(2)--Whenever--the--amount--of-nonschool-district-sales-tax-moneys distributed-exceeds-in-any-quarter-the-total-amount-of-moneys-distributed-to-nonschool-districts-for-the-base-quarter,-which-is-the fourth-calendar-quarter-of-1979,-by-ten-percent--(10%),--or--more, the--excess--of-the-base-quarter-shall-be-paid-to-the-county-treasurer-of-each-county-for-distribution-to-each-taxing--district--in the-county,-except-school-districts,-in-the-following-manner.~~

~~The--state--tax--commission-shall-compute-the-percentage-that the-average-amount-of-taxes-collected--from--assessments--for--the years--1965,--1966--and-1967-on-the-personal-property-described-as business-inventory-in-subsections-(1)-and-(2)-of-section--63-602W, Idaho--Code,--for-each-county-bears-to-the-average-total-amount-of taxes-collected-from-assessments-for-said-years--on--the--personal property--described--as--business-inventory-in-subsections-(1)-and (2)-of-section-63-602W,-Idaho-Code,-for-all-counties-in-the-state. The-percentage-so-determined-for-each-county-shall-be--applied--to the--sales-tax-distributed-under-this-subsection-and-the-resulting sum-shall-be-paid-to-the-county-treasurer-of-each-county-for--distribution-to-each-taxing-district,-except-school-districts,-in-the county-as-follows:~~

~~(i)---Each-year-the-county-commissioners-in-each-county-shall take--the-tax-charge,-applicable-to-the-current-property-roll equalized-by-county--commissioners--sitting--as--a--board--of equalization,--of--each--taxing--district--within-the-county, except-school-districts,-and-divide-it-by-the--total--current tax--charges--applicable--to-the-current-property-roll-of-all taxing-districts,-except-school-districts,-within-said-county~~

~~and--the--resulting--percentages--shall--be--applied--to--the county's-proportionate-share-of-said-sales--tax--account--and the-resulting-amount-shall-be-distributed-to-each-taxing-district-in-the-county-periodically-but-not-less-frequently-than quarterly--by--the--county-auditor-and-applied-by-such-taxing districts-in-the-same-manner-and-in-the-same--proportions--as revenues-from-property-taxation.~~

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

~~(3)--All-moneys-distributed-pursuant-to-subsection--(e)--shall--be subject--to-the-redistribution-provisions-of-section-40-801,-Idaho Code,-where-applicable.~~

(~~f~~7) One dollar ($1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, ~~allterrain~~ all-terrain vehicle or other vehicle processed by the county assessor or the Idaho transportation department excepting those applications in which any sales or use taxes due have been previously collected by a retailer, shall be a fee for the services of the assessor of the county or the Idaho transportation department in collecting such taxes, and shall be paid into the current expense fund of the county or state highway account established in section 40-702, Idaho Code.

(g8) ~~Seven~~ Thirteen and three-quarters percent (~~7~~13.75%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state ~~operating-fund~~ treasury, and the moneys in the revenue sharing account will be paid by the tax commission as follows:

(~~1~~a) ~~One-half--(1/2)~~ Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as follows:

(i) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the population of that city bears to the population of all cities within the state; and

(ii) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the preceding year's market value for assessment purposes for that city bears to the preceding year's market value for assessment purposes for all cities within the state.

(~~2~~b) ~~One-half-(1/2)~~ Twenty-eight and two-tenths percent (28.2%) shall be paid to the ~~state's-general-account-or-to-the~~ various counties as follows:

(i) One million three hundred twenty thousand dollars ($1,320,000) shall be distributed one forty-fourth (1/44) to each of the various counties; and

(ii) The balance of such amount shall be paid to the various counties, and each county shall be entitled to an amount in the proportion that the population of that county bears to the population of the state;

(c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this subsection (8) shall be paid to the several counties for distribution to the cities and counties as follows:

(i) Each city and county which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (8)(c) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each city's and county's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (8)(c) in any quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each city and county shall be entitled to a proportionately increased payment, but such increase shall not exceed one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999.

(iv) If the dollar amount of money available under this subsection (8)(c) in any quarter exceeds one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999, any amount over and above such one hundred five percent (105%) shall be paid fifty percent (50%) to the various cities in the proportion that the population of the city bears to the population of all cities within the state, and fifty percent (50%) to the various counties in the proportion that the population of a county bears to the population of the state; and

(d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection (8) shall be paid to the several counties for distribution to special purpose taxing districts as follows:

(i) Each such district which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (8)(d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (8)(d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1)(e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the tax commission shall determine the portion attributable to the special purpose taxing district from each county in which it is situated.

(iii) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(iv) If a special purpose taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received.

(v) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (8)(d).

(vi) For purposes of this subsection (8)(d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(~~h~~9) Any moneys remaining over and above those necessary to meet and reserve for payments under other subsections of this section shall be distributed to the general account.

SECTION 3. That Section 67-6211, Idaho Code, be, and the same is hereby amended to read as follows:

67-6211. ADDITIONAL DEFINITIONS AND CAPITAL RESERVE FUND PROCEDURES. As used in this section, the following words and phrases shall have the following meanings unless the context shall indicate another or different meaning or intent:

(a) "Maximum capital reserve fund requirement" shall mean the amount set forth in the association's resolution or indenture authorizing the bonds or other obligations secured by a capital reserve fund, or, if no amount is stated in such resolution or indenture, then, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current or any future fiscal year of the association, of annual debt service of the association, such annual debt service for any fiscal year being the amount of money equal to the aggregate of:

(1) All interest payable during such fiscal year on all bonds secured by such capital reserve fund of the association outstanding on said date of computation, plus

(2) The principal amount of all bonds of the association secured by such capital reserve fund, outstanding on said date of computation which matures during such fiscal year, plus

(3) The amount of all annual sinking fund payments payable during such fiscal year with respect to any bonds of the association secured by such capital reserve fund, outstanding on said date of computation.

(b) "Annual sinking fund payment" shall mean the amount of money specified in the resolution authorizing term bonds as payable into a sinking fund during a particular fiscal year for the retirement of term bonds which mature after such fiscal year, but shall not include any amount payable by reason only of the maturity of a bond.

(c) "Available operating revenues" shall mean all amounts received on account of rentals and fees and other charges imposed by the association, if any, and income or interest earned or added to funds of the association due to the investment thereof and not required under the terms or provisions of any covenant or agreement with holders of any bonds or notes of the association to be applied to

any purposes other than payment of expenses of the association.

(d) "Amortized value," when used with respect to securities purchased at a premium above or a discount below par, shall mean the value as of any given date obtained by dividing the total premiums or discount at which such securities were purchased by the number of interest payments remaining to maturity on such securities after such purchase, and by multiplying the amount so calculated by the number of interest payment dates having passed since the date of such purchase; and

(1) In the case of securities purchased at a premium, by deducting the product thus obtained from the purchase price, and

(2) In the case of securities purchased at a discount, by adding the product thus obtained to the purchase price.

(e) The association shall create and establish one (1) or more special funds (herein referred to as "capital reserve funds"), and shall credit each such capital reserve fund:

(1) Any proceeds of sale of notes or bonds, to the extent provided in the resolution or resolutions of the association authorizing the issuance thereof,

(2) Any funds directed to be transferred by the association to such fund, and

(3) Any other moneys which may be made available to the association for the purpose of such fund from any other source or sources.

(f) All moneys held in or credited to each such capital reserve fund, except as hereinafter provided, shall be used, as required, solely for the payment of the principal of bonds or of the sinking fund payments hereinafter mentioned with respect to such bonds, the purchase or redemption of bonds, the payment of interest on bonds or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however:

(1) That moneys in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the maximum capital reserve fund requirement, except for the purposes of making payment, when due, with respect to such bonds, of principal or redemption price of, interest and the sinking fund payments, as the same become due, and for the payment of which other moneys of the association are not available.

(2) Any income or interest earned by, or increment to, any capital reserve fund due to the investment thereof may be transferred by the association to other funds or accounts of the association to the extent it does not reduce the amount of such capital reserve fund below the maximum capital reserve fund requirement.

(g) Within sixty (60) days after the close of the association's fiscal year, the chairman of the association shall certify to the state tax commission the amount, if any, required to maintain the capital reserve funds established pursuant to this section at the maximum capital reserve fund requirement, but only for any capital reserve fund of the association which is required by a resolution of the association to be maintained by a continuing appropriation from the sales tax account. The chairman of the association shall not be entitled to so certify to the state tax commission for any capital reserve fund of the association for bonds issued by the association after January 1,

1996.

(h) The association shall not issue bonds at any time if upon issuance there will be created a capital reserve fund and the amount in the capital reserve fund securing such bonds will be less than the maximum capital reserve fund requirement, unless the association, at the time of issuance of such bonds, shall deposit in such fund, from the proceeds of the bonds so to be issued, or sources other than the state sales tax fund, an amount which, together with the amount then in such fund, will not be less than the maximum capital reserve fund requirement.

(i) Moneys in a capital reserve fund not required for immediate use or disbursement may be invested in obligations of the state or the United States of America or obligations the principal of and interest on which are guaranteed by the state or the United States of America or obligations of agencies of the United States of America or any obligations which may from time to time be legally purchased by banks under title 26, Idaho Code, as investment of funds belonging to them or in their control. In computing the amount of a capital reserve fund for the purposes of this section, securities in which all or a portion of such fund are invested shall be valued at par if purchased at par or, if purchased at other than par, at amortized value.

(j) The association shall create and establish such other fund or funds as may be necessary or desirable for its corporate purposes.

(k) In the event of the dissolution of the association, any funds or assets of the association remaining after paying its bonds, notes or other obligations shall revert to the state.

(l) The total principal amount of the association's outstanding bonds secured by a capital reserve fund entitled to appropriation from the state sales tax account pursuant to section 67-6211(g), Idaho Code, and section 63-3638~~(d)(1)~~(4), Idaho Code, shall not exceed the sum of eighty-nine million dollars ($89,000,000).

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved April 5, 2000.

CHAPTER 208
(H.B. No. 510)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1308, IDAHO CODE, TO PROVIDE FOR ONE OR MORE SUPPLEMENTAL BENEFIT PLANS TO BE USED FOR ALLOCATION OF EXTRAORDINARY GAINS OF THE RETIREMENT FUND AND VOLUNTARY CONTRIBUTIONS OF ACTIVE MEMBERS, TO PROVIDE FOR ESTABLISHMENT OF TAX-DEFERRED PLANS AND FOR STAFF AND CONSULTANTS TO ADMINISTER SUCH PLANS, TO PROVIDE FOR INVESTMENT OPTIONS, TO PROVIDE FOR EDUCATIONAL OPPORTUNITIES RELATED TO SUPPLEMENTAL BENEFIT PLANS AND RETIREMENT SAVINGS, TO PROVIDE FOR ACTIVE MEMBER ACCOUNTS FOR EXTRAORDINARY GAINS TRANSFERS AND VOLUNTARY CONTRIBUTIONS, TO PROVIDE FOR COORDINATION OF CONTRIBUTIONS

BETWEEN MULTIPLE PLANS, TO PROVIDE DUTIES OF THE EMPLOYER, TO EXEMPT INVESTMENT RELATED EXPENSES FROM APPROPRIATION, TO PROVIDE FOR DISTRIBUTION OF FUNDS HELD IN SUPPLEMENTAL BENEFIT PLAN ACCOUNTS, TO PROVIDE THAT FUNDS ACCRUED IN A SUPPLEMENTAL BENEFIT PLAN ACCOUNT SHALL NOT BE CONSIDERED IN DETERMINING ANY OTHER RETIREMENT BENEFITS, TO PROVIDE FOR CONFIDENTIALITY AND INALIENABILITY OF SUPPLEMENTAL BENEFIT PLANS, TO PROVIDE THAT A COURT-ORDERED ASSIGNMENT OF ALL OR PART OF A SUPPLEMENTAL BENEFIT PLAN ACCOUNT TO A PARTICIPANT'S SPOUSE OR FORMER SPOUSE SHALL BE DISTINCT FROM AN APPROVED DOMESTIC RETIREMENT ORDER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1309, IDAHO CODE, TO PROVIDE FOR ALLOCATION OF EXTRAORDINARY GAINS TO RETIREES, ACTIVE MEMBERS AND EMPLOYERS, TO DEFINE EXTRAORDINARY GAINS, TO PROVIDE FOR ALLOCATIONS BETWEEN RETIREES, ACTIVE MEMBERS AND EMPLOYERS, TO PROVIDE THE MANNER AND TIMING OF ALLOCATIONS TO RETIREES, TO DEFINE RETIREES, TO PROVIDE THE FORMULA FOR THE RETIREE ALLOCATION, TO PROVIDE FOR ALLOCATIONS TO ACTIVE MEMBERS AND ELIGIBILITY TO RECEIVE ALLOCATIONS, TO PROVIDE THE FORMULA FOR AND TIMING OF ALLOCATIONS TO ACTIVE MEMBERS, TO PROVIDE FOR ALLOCATIONS TO EMPLOYERS AS A CREDIT AGAINST FUTURE CONTRIBUTIONS, TO PROVIDE THE FORMULA FOR EMPLOYER ALLOCATIONS AND APPLICATION OF CREDITS AND TO PROVIDE FOR CARRY OVER OF UNUSED CREDITS; DECLARING AN EMERGENCY AND PROVIDING FOR DELAYED IMPLEMENTATION UNDER SPECIFIED CIRCUMSTANCES.

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

SECTION 1. That Section 59-1308, Idaho Code, be, and the same is hereby amended to read as follows:

59-1308. SUPPLEMENTAL BENEFIT PLAN ~~ESTABLISHED AND FUND CREATED~~ -- CONTRIBUTIONS AND EXPENSES OF THE SUPPLEMENTAL BENEFIT PLAN -- INDEMNIFICATION. (1) ~~As of January 1, 1995, t~~The state shall sponsor and the board shall administer ~~a~~ one (1) or more supplemental benefit plans to be used for allocation of extraordinary gains as provided in section 59-1309, Idaho Code, and for voluntary contributions of active members. The supplemental plans may be established under the qualified requirements of section 401(a) of the Internal Revenue Service Code and with the qualified cash or deferred arrangements under section 401(k) of the Internal Revenue Service Code or any other tax-deferred plan permitted by law, as determined by the retirement board. The board is authorized to secure such qualified staff and consultants as it determines necessary to establish and administer such plans. Employee and employer contributions shall be permitted according to the provisions of ~~this~~ these plans as established by the board. For purposes of this section "employee" shall mean a participant as defined in the supplemental benefit plan documents or board rules.

(2) The board is authorized, but not required, to establish ~~a~~ separate trust funds to hold the assets of the supplemental benefit plans created under this section. The investment options available under supplemental benefit plans shall be determined by the board, and may include, but are not limited to, investment in all or part of the

public employee retirement fund and use of private vendor options.

(3) ~~The s~~Supplemental benefit plans shall be available to ~~employees~~ all active members and shall be in addition to any other retirement or tax deferred compensation system established by the employer. The board may provide educational opportunities related to supplemental benefit plans and retirement savings, as determined by the board.

(4) ~~An employee may participate in the supplemental benefit plan~~ Accounts shall be established in supplemental benefit plans for all active members eligible for an extraordinary gains transfer under section 59-1309, Idaho Code. After receiving an extraordinary gains transfer, an active member may make additional voluntary contributions to his/her account, subject to applicable limitations, by authorizing his/her employer to contribute an amount by payroll deduction to the supplemental benefit plan in lieu of receiving such amount as salary. The amount of such contributions shall be subject to any limitations established by the board, state or federal law. The employer shall provide coordination of contributions between multiple plans to assure that contribution limits are not exceeded. Should aggregate contributions to multiple plans exceed applicable limits, excess contributions shall be deemed to apply exclusively to plans not created by this chapter. In the event a preexisting plan is used as a supplemental plan, voluntary contributions may continue to be made to that plan despite the absence of extraordinary gains transfers.

(5) For ~~the~~ purposes of this section the employer is authorized to make such deductions from salary for any employee who has authorized such deductions in writing. The employer shall forward all contributions under this section to the ~~trustee of the supplemental benefit plan~~ board by the fifth working day after each payroll, in addition to reports as directed by the board. Any costs incurred by the board, whether direct or indirect, due to an employer's failure to properly withhold, transfer, limit and report contributions, shall be the responsibility of the employer and shall be immediately due and payable upon notice from the board. This includes, but is not limited to, costs associated with plan corrections. Such costs shall be treated as delinquent contributions under section 59-1325, Idaho Code.

(6) The board may enter into agreements with employers or require participation to implement ~~a~~ the supplemental benefit plans and the board may designate administrative agents to execute all necessary agreements pertaining to the supplemental benefit plans.

(7) All contributions received from participants in the supplemental benefit plans shall be deposited with a trustee designated by the board. All such funds are hereby perpetually appropriated to the board, shall not be included in the department's budget, and may be invested or used to pay for investment and administrative expenses of the supplemental benefit plans. Inactive members may be required to transfer supplemental benefit plan account balances as determined by the board.

(8) The board may establish rules to implement and administer ~~this section~~ supplemental benefit plans. Costs of administration shall be appropriated by the legislature and may be paid from the interest earnings of the funds accrued as a result of the deposits or as an assessment against each account, to be decided by the board. Investment related expenses are exempt from appropriation.

(9) Contributions and investment earnings under the supplemental benefit plans ~~in addition to investment earnings,~~ shall be exempt from federal and state income taxes until the ultimate distribution of such contributions. Distributions of funds held in supplemental benefit plan accounts are subject to federal law limitations. The board may provide for retirement disbursement options other than lump sum payments.

(10) All additional contributions made by the employee under this section shall continue to be included as regular compensation for the purpose of computing the employer and employee retirement contributions and pension benefits earned by an employee under this chapter, but such sum shall not be included in the computation of any income taxes withheld on behalf of any employee. However, funds accrued in a supplemental benefit plan account shall not be considered in determining any other benefits under this chapter.

(11) The provisions of sections 59-1316 and 59-1317(1), (2) and (5), Idaho Code, shall also apply to the supplemental benefit plans created under this section. Should a court order that an assignment be made to a participant's spouse or former spouse of all or part of an account created under this section, the assignment shall be separate and distinct from any approved domestic retirement order required by section 59-1317(4), Idaho Code. Requirements for assignments of supplemental accounts may be set forth in rule or other plan documents.

(1~~1~~2) Members of the retirement board or retirement system staff, jointly or individually, shall be indemnified from all claims, demands, judgments, costs, charges and expenses, including court costs and attorney's fees, and against all liability losses and damages of any nature whatsoever that the retirement board or retirement system staff shall or may at any time sustain by reason of any decision made in the scope or performance of their duties pursuant to the provisions of this section, except as may result from their willful and intentional malfeasance. The venue of all actions in which the retirement board or retirement staff is a party shall be in Ada county, Idaho.

SECTION 2. 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 59-1309, Idaho Code, and to read as follows:

59-1309. ALLOCATION OF EXTRAORDINARY GAINS. (1) At the close of each fiscal year, the board shall determine whether the fund has experienced extraordinary gains. If extraordinary gains exist the board may allocate all or part of them as set forth in this section. In determining whether extraordinary gains should be allocated, the board shall exercise its fiduciary discretion.

(2) Extraordinary gains are defined as the excess, if any, at the close of the fiscal year of plan assets over the plan's accrued actuarially determined liabilities plus a sum necessary to absorb a one (1) standard deviation market event without increasing contribution rates, as determined by the board.

(3) If the board determines that extraordinary gains should be allocated, the gains shall be allocated to retirees, to active members, and to employers in such proportion as determined by the board.

The board shall determine no later than the first day of December following the close of the fiscal year the amount of extraordinary gains to be allocated, if any.

(4) Retirees shall receive their allocation in the form of a one-time payment made in addition to their regular monthly benefit payments. For purposes of this section, "retirees" include retired members, members receiving a disability retirement allowance, contingent annuitants, and surviving spouses who elected the annuity option under section 59-1361(5), Idaho Code. To participate in the retiree allocation, a retiree must be receiving a regular monthly allowance at the close of the fiscal year and on the date of distribution. The retiree allocation shall be distributed proportionally based on the final monthly retirement allowance of the fiscal year divided by the total of all monthly retirement allowances paid for the same month. The date of distribution shall be no later than the first day of February following the close of the fiscal year.

(5) Active members shall receive their allocation as a transfer of funds to a supplemental retirement account established by the board. Funds transferred to or held in supplemental retirement accounts shall be accounted for separately and shall not be considered in determining any other benefits under this chapter. To participate in the active member allocation, the member must have been an active member on the last day of the fiscal year and have accrued at least twelve (12) months of service on that date. Any member who has withdrawn contributions from the fund prior to the date of transfer is not eligible to receive a transfer under this section. The active member allocation shall be distributed proportionally based on accumulated contributions at the close of the fiscal year divided by the total accumulated contributions of all active members at the close of the fiscal year, not to exceed the amount that would result by applying the limits imposed by rule or by section 415(c)(1) of the Internal Revenue Code to compensation earned during the fiscal year. The transfer of funds shall occur in the following calendar year but shall be subject to reduction and forfeiture, based on the application of limits imposed by rule or by section 415 of the Internal Revenue Code for that year.

(6) Employers shall receive their allocation as a credit against future contributions required by section 59-1325, Idaho Code. Credits are not available to any employer who has withdrawn from participation in the fund prior to the transfer date. The employer allocation shall be credited proportionally based on employer contribution liability accrued during the fiscal year as provided in section 59-1322, Idaho Code, divided by the total employer contribution liability for the fiscal year. The credits shall be established no later than the first day of February following the close of the fiscal year. The credits shall be applied thereafter in the same manner as provided in section 59-1325, Idaho Code, until exhausted. If, after twelve (12) months of remittances, an employer's credits have not been exhausted, and the employer has not withdrawn from participation in the fund, the value of the remaining credits shall carry over to the next year, together with an interest payment equal to regular interest on the remaining credits.

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; provided however, that the retirement board may delay implementation of any or all of these provisions to obtain assurances concerning federal income tax treatment of contributions and distributions or to complete system changes necessary to accurate and complete implementation of this act.

Approved April 5, 2000.

CHAPTER 209
(H.B. No. 511)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1342, IDAHO CODE, TO PROVIDE AN ADJUSTMENT IN THE PERCENTAGE OF AVERAGE MONTHLY SALARY TO BE USED IN THE COMPUTATION OF SERVICE RETIREMENT ALLOWANCES AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 59-1342, Idaho Code, be, and the same is hereby amended to read as follows:

59-1342. COMPUTATION OF SERVICE RETIREMENT ALLOWANCES -- MINIMUM BENEFITS. (1) The annual amount of accrued retirement allowance for each month of credited service for which a member was not classified as a police member or firefighter shall equal one and two-thirds ~~per cent~~ <u>percent</u> (1 2/3%) of the member's average monthly salary. Effective October 1, 1992, the annual amount of accrued retirement allowance for all service for which a member was not classified as a police member or firefighter shall equal one and seventy-five hundredths ~~per cent~~ <u>percent</u> (1.75%) of the member's average monthly salary; effective October 1, 1993, the annual amount of accrued retirement allowance shall equal one and eight hundred thirty-three thousandths ~~per-cent~~ <u>percent</u> (1.833%) of the member's average monthly salary; ~~and~~ effective October 1, 1994, the annual amount of accrued retirement allowance shall equal one and nine hundred seventeen thousandths ~~per-cent~~ <u>percent</u> <u>(1.917%); and effective June 30, 2000, the annual amount of accrued retirement allowance shall equal two percent (2%)</u> of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect on the date of the final contribution by the member. The annual amount of initial service retirement allowance of such a member shall equal (a) or (b), whichever is greater:

(a) the member's accrued retirement allowance; or

(b) five dollars ($5.00) multiplied by the number of months of credited service and by the bridging factor, as provided in sec-

tion 59-1355, Idaho Code, between July 1, 1974 and the first of the month following the member's final contribution.

(2) The annual amount of accrued retirement allowance for each month of credited service for which a member was classified as a police member or firefighter shall equal two ~~per-cent~~ percent (2%) of the member's average monthly salary. Effective October 1, 1992, the annual amount of accrued retirement allowance for all service for which a member was classified as a police member or firefighter shall equal two and seventy-five thousandths ~~per-cent~~ percent (2.075%) of the member's average monthly salary; effective October 1, 1993, the annual amount of accrued retirement allowance shall equal two and fifteen hundredths ~~per-cent~~ percent (2.15%) of the member's average monthly salary; ~~and~~ effective October 1, 1994, the annual amount of accrued retirement allowance shall equal two and two hundred twenty-five thousandths ~~per--cent~~ percent (2.225%); and effective June 30, 2000, the annual amount of accrued retirement allowance shall equal two and three-tenths percent (2.3%) of the member's average monthly salary. Entitlement to an annual amount of accrued retirement allowance shall not vest until the effective date of that annual amount of accrued retirement allowance. The retirement benefits shall be calculated on the amounts, terms and conditions in effect on the date of the final contribution by the member. The annual amount of initial service retirement allowance of such a member shall equal (a) or (b), whichever is greater:

(a) the member's accrued retirement allowance; or

(b) six dollars ($6.00) multiplied by the number of months of credited service and by the bridging factor, as provided in section 59-1355, Idaho Code, between July 1, 1974 and the first of the month following the member's final contribution.

(3) Provisions of this section shall be applicable to members and contingent annuitants of the retirement system and to members, annuitants and beneficiaries of the teachers and city systems. In any recomputation of an initial retirement allowance for a person not making a final contribution subsequent to 1974, the bridging factor referred to in subsections (1) and (2) shall be 1.000. Any recomputed retirement allowance shall be payable only prospectively from July 1, 1974.

(4) Benefits payable to a person who became a member prior to July 1, 1974, or to the member's beneficiaries shall never be less than they would have received under this chapter as in effect on June 30, 1974; provided, however, that the member shall have accrued the amount of accumulated contributions required thereby prior to payment of an initial retirement allowance.

(5) If the majority of a member's credited service is as an elected official or as an appointed official, except as a member of the Idaho legislature, and that official was normally in the administrative offices of the employer less than twenty (20) hours per week during the term of office, or was normally not required to be present at any particular work station for the employer twenty (20) hours per week or more during the term of office, and that member's initial service retirement allowance for service credited only during that period would be computed under subsection (1)(b) and/or (2)(b) of this section, without consideration of any other credited service, then it

will be so computed for that period of service. If that member has credited service from any other employment, the accrued service retirement allowance for the credited service from such other employment shall be computed from an average monthly salary for salary received during the period of such other employment. The initial service retirement allowance of members of the Idaho legislature will be computed under subsection (1) and/or (2) of this section, on the basis of their total months of credited service.

(6) In no case, however, will a member's initial service retirement benefit be equal to more than the member's accrued benefit as of May 1, 1990, or one hundred ~~per-cent~~ percent (100%) of the member's average compensation for the three (3) consecutive years of employment which produce the greatest aggregate compensation, whichever is greater. If the benefit is calculated to exceed one hundred ~~per-cent~~ percent (100%) of the member's average compensation, the member shall be eligible for and may choose either:

(a) an annual service retirement allowance equal to the member's average annual compensation for the three (3) consecutive years of employment which produced the greatest aggregate compensation; or

(b) a separation benefit.

(7) The annual amount of initial service retirement allowance of a member who is over age seventy (70) on the effective date of the member's retirement shall be a percentage of the member's initial service retirement allowance. Such percentage shall be one hundred ~~per cent~~ percent (100%) increased as determined by the board to compensate for each month that the member's retirement is deferred beyond age seventy (70).

(8) A member's accrued retirement allowance, as otherwise provided in subsections (1), (2), (3), (4) and (5) of this section, shall not be less than the minimum accrued retirement allowance provided in this subsection. The determination of the initial service retirement allowance provided in subsections (1) and (2) of this section, and the application of the provisions in subsections (6) and (7) of this section, will be made after the determination of the minimum accrued retirement allowance provided in this subsection.

This subsection shall apply to members who have at least two (2) separate periods of employment covered under this chapter where each separate period of employment would otherwise be eligible for a separation benefit described in section 59-1359, Idaho Code. For purposes of this subsection, if a separation of employment occurs that does not exceed sixty (60) consecutive calendar months then the member's period of employment shall be considered a continuous period of employment. For purposes of this subsection, date of last contribution is the date of final contribution for each period or periods of employment.

For each separate period of employment considered under this subsection, the member must not have received a separation benefit for that period, or if he has received such a separation benefit under section 59-1359, Idaho Code, he must have completed reinstatement of all previous credited service associated with all separation benefits for all periods of employment as permitted under section 59-1360, Idaho Code.

The minimum accrued retirement allowance shall be equal to the largest accrued retirement allowance calculated at each date of last

contribution based upon the benefit and eligibility provisions in effect as of the date of the last contribution made during such separate period of employment. For purposes of determining the accrued retirement allowance for each date of last contribution:

(a) the member must have at least sixty (60) months of credited service at the date of last contribution;

(b) the member's months of credited service and average monthly salary are determined based ~~soley~~ solely on all periods of employment up to that date of last contribution, ignoring later periods of employment; and

(c) the accrued retirement allowance computed for each period is multiplied by the bridging factor as provided in section 59-1355(3), Idaho Code, between the date of the last contribution made during that separate period of employment and the date of the member's final contribution made during the last period of employment prior to retirement.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 5, 2000.

CHAPTER 210
(H.B. No. 543)

AN ACT

RELATING TO EMPLOYER LIABILITY FOR ACTS OF AN EMPLOYEE; PROVIDING LEGISLATIVE INTENT; AND AMENDING CHAPTER 16, TITLE 6, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 6-1607, IDAHO CODE, TO LIMIT THE LIABILITY OF AN EMPLOYER FOR THE TORTIOUS ACTS OF AN EMPLOYEE.

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

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature that the potential liability of an employer for the acts of a former employee committed when the employee no longer works for the employer be limited to cases in which the former employer's acts were grossly negligent or reckless, willful and wanton. It further is the intent of the Legislature that the potential liability of an employer for the acts of a current employee committed while the employee is "off the clock" also be limited.

This act creates a limited immunity for an employer for acts of a former employee. It also creates a presumption that an employer is not liable for the acts of a current employee "off the clock." Because an employer has no legal right to restrict or control an employee's actions when that employee is not working for the employer, absent unusual circumstances an employer ought not be liable for the actions of an employee committed on the employee's "own" time. This act attempts to distinguish between acts of an employee while the employee is working for the employer and acts of an employee as a "private citizen." If a person is acting as an employee, or reasonably appears to

be doing so, an employer may be found liable under ordinary rules of negligence and respondeat superior. This includes circumstances in which an employee is wholly or partially engaged in the employer's business such as when an employee commits an act which he is not employed to commit, during work hours or at a time when an employer or a third party reasonably believes the employee is engaged in the employer's business.

SECTION 2. That Chapter 16, 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 6-1607, Idaho Code, and to read as follows:

6-1607. EMPLOYER LIABILITY FOR EMPLOYEE TORTS. (1) No employer shall be directly or indirectly liable in tort based upon an employer/employee relationship for any act or omission of an employee which occurs after the termination of the employee's employment unless it is shown by clear and convincing evidence that the acts or omissions of the employer itself constitute gross negligence or reckless, willful and wanton conduct as those standards are defined in section 6-904C, Idaho Code, and were a proximate cause of the damage sustained.

(2) There shall be a presumption that an employer is not liable in tort based upon an employer/employee relationship for any act or omission of a current employee unless the employee was wholly or partially engaged in the employer's business, reasonably appeared to be engaged in the employer's business, was on the employer's premises when the allegedly tortious act or omission of the employee occurred, or was otherwise under the direction or control of the employer when the act or omission occurred. This presumption may be rebutted only by clear and convincing evidence that the employer's acts or omissions constituted gross negligence or, reckless, willful and wanton conduct as those standards are defined in section 6-904C, Idaho Code, and were a proximate cause of the damage sustained.

(3) In every civil action to which this section applies, an employer shall have the right (pursuant to pretrial motion and after opportunity for discovery) to a hearing before the court in which the person asserting a claim against an employer must establish a reasonable likelihood of proving facts at trial sufficient to support a finding that liability for damages should be apportioned to the employer under the standards set forth in this section. If the court finds that this standard is not met, the claim against the employer shall be dismissed and the employer shall not be included on a special verdict form.

(4) Nothing in this section shall be construed to expand any rights of recovery under the common law or to limit any person's rights under any other statute including, but not limited to, chapter 59, title 67, Idaho Code, and title 72, Idaho Code.

Approved April 5, 2000.

CHAPTER 211
(H.B. No. 699)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-104, IDAHO CODE, TO PROVIDE FOR FEES; AMENDING SECTION 36-106, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR MAY DEFINE ACTIVITIES OR FACILITIES THAT PROVIDE A BENEFIT; TO PROVIDE LEGISLATIVE INTENT; AMENDING SECTION 36-111, IDAHO CODE, TO INCREASE THE AMOUNT FROM EACH STEELHEAD TROUT OR ANADROMOUS SALMON PERMIT DEPOSITED INTO THE FISH AND GAME SET-ASIDE ACCOUNT AND TO DELETE REFERENCES TO HOW MONEYS ARE TO BE USED; AMENDING SECTION 36-306, IDAHO CODE, TO PROVIDE PROPER REFERENCE FOR LICENSES AND TO DELETE A REFERENCE TO DEER, ELK AND BEAR "PAK"; AMENDING SECTION 36-401, IDAHO CODE, TO REMOVE A REFERENCE TO RESIDENT MILITARY PERSONNEL; AMENDING SECTION 36-404, IDAHO CODE, TO PROVIDE FOR NONRESIDENT COMBINATION LICENSES; AMENDING SECTION 36-405, IDAHO CODE, TO PROVIDE FOR FEES; AMENDING SECTION 36-406, IDAHO CODE, TO PROVIDE FOR FEES, TO ADJUST CERTAIN AMOUNTS DEPOSITED FROM SALES OF LICENSES OF THE EIGHTH CLASS, TO DELETE REFERENCES TO WHAT CERTAIN MONEYS SHALL BE USED FOR AND TO PROVIDE FOR DISABLED PERSON LICENSES AND MILITARY FURLOUGH LICENSES; AMENDING SECTION 36-406A, IDAHO CODE, TO PROVIDE FOR FEES; AMENDING SECTION 36-407, IDAHO CODE, TO PROVIDE FOR FEES, TO PROVIDE FOR NONRESIDENT SMALL GAME HUNTING LICENSES AND TO PROVIDE FOR NONRESIDENT COMBINATION LICENSES; AMENDING SECTION 36-409, IDAHO CODE, TO PROVIDE FOR HUNTING OF SANDHILL CRANES, TO PROVIDE FOR FEES, TO PROVIDE THAT THE COMMISSION MAY MAKE RULES TO ALLOW A NONRESIDENT DEER TAG TO BE USED FOR OTHER PURPOSES, TO PROVIDE FOR RESIDENT AND NONRESIDENT HOUND HUNTER PERMITS, TO PROVIDE FOR A BEAR BAITING PERMIT, TO PROVIDE FOR A MIGRATORY BIRD HARVEST INFORMATION PROGRAM PERMIT AND TO PROVIDE FOR A DOG FIELD TRIAL PERMIT; AMENDING SECTION 36-410, IDAHO CODE, TO PROVIDE FOR FEES AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 36-414, IDAHO CODE; AMENDING CHAPTER 4, TITLE 36, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 36-416, IDAHO CODE, TO PROVIDE A SCHEDULE OF LICENSE FEES; AMENDING SECTION 36-501, IDAHO CODE, TO PROVIDE FOR FEES; AMENDING SECTION 36-502, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 36-601, IDAHO CODE, TO REQUIRE CERTAIN PERSONS TO OBTAIN A TAXIDERMIST AND FUR BUYER'S LICENSE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-602, IDAHO CODE, TO PROVIDE FOR RESIDENT AND NONRESIDENT TAXIDERMIST AND FUR BUYER'S LICENSES, TO PROVIDE FEES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 36-603, IDAHO CODE, TO REQUIRE RECORD-KEEPING; AMENDING SECTION 36-701, IDAHO CODE, TO REQUIRE PERMITS FOR IMPORT AND EXPORT OF WILDLIFE AND TO PROVIDE FOR FEES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-703, IDAHO CODE, TO PROVIDE FOR FEES; AMENDING SECTION 36-706, IDAHO CODE, TO REQUIRE FEES FOR PARK PERMITS AND POND PERMITS, TO PROVIDE FOR PERMITS FOR LIVE FISH TRANSPORTATION AND TO PROVIDE FOR FEES; AMENDING SECTION 36-712, IDAHO CODE, TO PROVIDE FOR FEES; AMENDING

SECTION 36-713, IDAHO CODE, TO REMOVE LANGUAGE REGARDING FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-802, IDAHO CODE, TO PROVIDE FOR FEES AND TO REDUCE THE SIZE OF CERTAIN NETS FOR WHICH FEES ARE REQUIRED; REPEALING SECTION 36-904, IDAHO CODE; AMENDING SECTION 36-1102, IDAHO CODE, TO PROVIDE FOR ELECTRONICALLY ISSUED UNEXPIRED VALIDATION FOR MIGRATORY BIRD HUNTING, TO PROVIDE FOR FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-1104, IDAHO CODE, TO PROVIDE FOR FEES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-1104A, IDAHO CODE, TO PROVIDE FOR FEES; AMENDING SECTION 36-1401, IDAHO CODE, TO PROHIBIT HUNTING OF MIGRATORY GAME BIRDS WITHOUT A LICENSE VALIDATED FOR THE FEDERAL MIGRATORY BIRD HARVEST INFORMATION PROGRAM PERMIT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 36-2205, IDAHO CODE, TO PROVIDE FOR FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-2206, IDAHO CODE, TO PROVIDE FOR FEES; AMENDING SECTION 36-2207, IDAHO CODE, TO PROVIDE FOR FEES; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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 with-

out endangering the supply thereof, then it shall make a rule or proclamation 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 landowners of property valuable for habitat or propagation purposes of deer, elk or antelope, or the landowner's designated agent(s) to hunt deer, elk or antelope in controlled hunts containing the eligible property owned by those landowners in units where any permits for deer, elk or antelope are limited.

(C) A nonrefundable fee ~~of five dollars ($5.00)~~ as specified in section 36-416, Idaho Code, 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~~. Successful applicants for controlled hunt permits shall be charged the fee as specified in section 36-416, Idaho Code. 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)~~ nonrefundable application 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),--t~~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 purchase 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. The fee for each permit shall be as provided for in section 36-416, Idaho Code.

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 36-106, 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 management of the wildlife resources of the state. The director shall not hold any other public office, nor any office in any political party organization, and shall devote his entire time to the service of the state in the discharge of his official duties, under the direction of the commission.

(b) 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 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 chapter 53, title 67, Idaho Code, and rules promulgated pursuant thereto, 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 rules 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 rules 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 private 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 penal-

ties 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.

12. The director may define activities or facilities that primarily provide a benefit: to the department; to a person; for personal use; to a commercial enterprise; or for a commercial purpose.

SECTION 3. LEGISLATIVE INTENT. It is the intent of the Legislature that: the upland game and waterfowl habitat improvement programs initiated with the upland game permit and waterfowl stamp be continued by the commission and department; and the department and commission budget for these programs through the normal budget process.

SECTION 4. That Section 36-111, Idaho Code, be, and the same is hereby amended to read as follows:

36-111. FISH AND GAME SET-ASIDE ACCOUNT. (1) There is hereby established the fish and game set-aside account in the dedicated fund. The account shall have paid into it moneys as follows:

(a) ~~Three~~ Four dollars ($~~3~~4.00) of each steelhead trout or anadromous salmon permit sold. Moneys from this source shall be used for the acquisition, development and maintenance of parking areas, access sites, boat ramps and sanitation facilities in salmon and steelhead fishing areas, for management of and research on steelhead trout and anadromous salmon problems, and for technical assistance with litigation concerning steelhead and anadromous salmon originating in Idaho.

(b) Two dollars ($2.00) from each combination hunting and fishing license, or each hunting license sold, as provided in sections 36-406 and 36-407, Idaho Code, except that class 4 licenses shall

be exempt from this provision. Moneys from this source shall be used for the purposes of acquiring access to and acquiring and rehabilitating big game ranges and upland bird and waterfowl habitats. Unless it is inconsistent with the goals of the commission, it is the intent of the legislature that the commission negotiate lease arrangements as compared with outright purchase of private property.

(c) One dollar and fifty cents ($1.50) from each antelope, elk and deer tag sold as provided in section 36-409, Idaho Code. Not less than seventy-five cents (75¢) of each one dollar and fifty cents ($1.50) collected shall be placed in a separate account to be designated as a feeding account. Moneys in this account shall be used exclusively for the purposes of winter feeding of and rehabilitation of winter range for antelope, elk and deer. The balance of moneys realized from this source may be used for the control of depredation of private property by antelope, elk and deer and control of predators affecting antelope, elk and deer. Moneys in the feeding account shall not be used for any purpose other than winter feeding as herein specified until the total funds in the account, including any interest earnings thereon, equal or exceed four hundred thousand dollars ($400,000). Moneys in the feeding account may not be expended except upon the declaration of a feeding emergency by the director of the department of fish and game. Such emergency need not exist on a statewide basis but can be declared with respect to one (1) or more regions of the state. The department shall by rule establish the criteria for a feeding emergency.

(d) Those amounts designated by individuals in accordance with section 63-3067A(c)(i), Idaho Code, and from fees paid under the provisions of section 49-417, Idaho Code. Moneys from these sources shall be used for a nongame management and protection program under the direction of the fish and game commission.

(e) ~~All--moneys--received--from--the-sale-of-upland-game-permits. Moneys-from-this-source-shall--be--used--as--provided--by--section 36-409(h),-Idaho-Code.~~

~~(f)--Moneys--received-from-the-sale-of-migratory-waterfowl-stamps. Moneys-received-from-this-source-shall-be-used-as-provided-by-section-36-414,-Idaho-Code.~~

~~(g)~~ Money derived from the assessment of processing fees. Moneys derived from this source shall be used as provided in section 36-1407, Idaho Code.

(2) Moneys in the fish and game set-aside account and the feeding account established in subsection (1)(c) of this section are subject to appropriation, and the provisions of section 67-3516, Idaho Code. Moneys in the fish and game set-aside account and the feeding account shall be invested by the state treasurer in the manner provided for investment of idle state moneys in the state treasury by section 67-1210, Idaho Code, with interest earned on investments from each account to be paid into that account.

SECTION 5. That Section 36-306, Idaho Code, be, and the same is hereby amended to read as follows:

36-306. VENDOR FEE. All persons authorized to issue licenses shall charge a vendor issuance fee of one dollar and fifty cents ($1.50) upon all licenses issued, not less than one-half (1/2) to be retained by them as compensation for the issuance of such licenses as may be specified by contract between the license vendor and the department for license issuance services performed by the vendor; provided that the vendor fee for an eighth class license as that license is provided for in section 36-406(f), Idaho Code, ~~or the deer, elk and bear--"pak" as provided for in section 36-409(c), Idaho Code,~~ shall be equal to one-half (1/2) the total vendor fee had each license, tag, permit or stamp been separately issued. The amount of the vendor fee retained by the department shall be deposited in the fish and game account and shall be used to help offset the cost of the computerized licensing system. Such vendor fee shall be charged in addition to the regular cost of the license. However, in the case of crayfish or minnow traps, beaver, bobcat or lynx tags the vendor fee shall be charged for each issuance of tags for each species regardless of the number of tags issued in said transaction. Proceeds from department issued licenses may be set aside for the department's special operations program, including citizens against poaching.

SECTION 6. That Section 36-401, Idaho Code, be, and the same is hereby amended to read as follows:

36-401. HUNTING, TRAPPING, FISHING -- LICENSE REQUIREMENT -- EXCEPTIONS. No person shall hunt, trap, or fish for or take any wild animal, bird or fish of this state, without first having procured a license as hereinafter provided. Provided that no license shall be required:

(a) 1. For children under the age of fourteen (14) years who are residents of this state to fish during the open season therefor.

2. For nonresident children under the age of fourteen (14) years to fish during the open season therefor provided they are accompanied by the holder of a valid fishing license, and provided further that any fish caught by such nonresident children shall be included in the bag and possession limit of such license holder.

3. For resident children under the age of twelve (12) years to hunt, take or kill predatory, unprotected birds and animals by means other than with firearms.

4. For resident children under the age of fourteen (14) years to trap muskrats from irrigation ditches or property on which they live during the open season.

5. For children under the age of eighteen (18) years who are residents of a licensed foster home, a foster group home, or a child welfare institution to fish during the open season therefor, provided they are accompanied and supervised by the director, officer, or other employee of the facility where the child resides.

(b) For any person to fish on a "free fishing day" as may be designated by the commission.

(c) Institutional Inmates. For any inmate of the state hospital north, state hospital south, Idaho state school and hospital, and state veterans homes to fish during open seasons, provided said inmate has a permit therefor from the director. The director is authorized to

issue such permits upon the request of the head of the respective institution having custody of said inmate upon a showing that the institution recommends the issuance of such permit and will assume full responsibility for and control over said inmate while using said permit.

(d) ~~Resident-Military-Personnel.-For-resident-persons-engaged--in the-military-service-of-the-United-States,-while-on-temporary-furlough or--leave,--upon--receipt--of-a-temporary-permit-from-the-director,-to hunt-and-fish-during-the-open-season.~~

~~(e)~~ State Juvenile Corrections Center Students. For students of the state juvenile corrections center, under the supervision of an officer of the center, to fish during the open season.

(~~f~~e) Boy Scouts. For boy scouts who are official participants in attendance at national or international encampments at Farragut State Park to take fish during the encampment period from Lake Pend Oreille in such areas and such numbers as may be designated by the commission.

(~~g~~f) Participants in Fish and Game Sponsored Functions. For persons who are official participants in attendance at official department sponsored functions including clinics, courses or other educational events, while under the supervision of a department approved instructor for the function, to fish during any open season, provided that the instructor has been issued an educational fishing permit by the director.

(~~h~~g) Nothing contained herein shall be construed to prohibit citizens of the United States who are residents of the state of Idaho from carrying arms for the protection of life and property.

SECTION 7. 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(s) and (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 Combination -- 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(s) and (t), Idaho Code.

SECTION 8. That Section 36-405, Idaho Code, be, and the same is hereby amended to read as follows:

36-405. APPLICATION FOR LICENSE -- DUPLICATE LICENSE -- UNLAWFUL PURCHASE, POSSESSION, AND USE OF LICENSE. (a) Application Required.

1. Any person making application for a senior resident license, or resident license shall provide his Idaho driver's license number as proof of residence, or in the case of nondrivers, other suitable proof of residency, and state the class of license applied for, the name of the applicant, the age of the applicant, his date of birth, his length of residence, his current address, and such other information as may be required by the director.

2. Any person making application for a duplicate license shall state the type and class of license originally purchased and such other information as may be required by the director.

3. No person shall willfully make a false statement as to:

(A) Name, age, his date of birth, length of residence or current address when such statement is made for the purpose of obtaining any license.

(B) Type and class of original license purchased when applying for a duplicate license.

(b) Loss of License -- New One Required. In case of loss of a license, a new one shall be required to entitle the person who lost the same to hunt, fish or trap. Such person may upon application:

1. Purchase a new license at the regular fee; or

2. Replace a lost license with a duplicate license for which a fee ~~of two dollars ($2.00)~~ as specified in section 36-416, Idaho Code, shall be charged.

3. When a duplicate license has been issued the original license shall become null and void.

(c) Unlawful Purchase, Possession and Use of License.

1. Every person buying a license must buy a license of the proper type or class according to his residence and age. No person shall purchase or possess a license of the wrong class and such license shall be void and of no effect from the date of issuance.

2. No person shall:

(A) Acquire more than one (1) regular controlled hunt permit per species or more tags per species than the commission has set a bag limit for that species except as provided in subsection (b) of this section or to have said permits or tags in his possession.

(B) Transfer any fishing, hunting, or trapping license to any other person or for any person to make use of such license issued to any other person.

SECTION 9. That Section 36-406, Idaho Code, be, and the same is hereby amended to read as follows:

36-406. RESIDENT FISHING, HUNTING AND TRAPPING LICENSES -- FEES. (a) Adult Licenses -- Combination -- Fishing -- Hunting -- Trapping. A license of the first class may be had by a person possessing the qualifications therein described on payment of ~~twenty-dollars-($20.00)~~ a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to hunt and fish for game animals, game birds, unprotected and predatory animals and fish of the state, ~~fifteen-dollars-($15.00)~~ a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to fish in the public waters of the state, ~~six-dollars-($6.00)~~ a fee as specified in section 36-416, Idaho Code, for a hunting license entitling the purchaser to hunt game animals, game birds, unprotected and predatory animals of the state, and ~~twenty-five-dollars-($25.00)~~ a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to trap furbearers, unprotected and predatory animals of the state.

(b) Youth Licenses -- Hunting -- Trapping. A license of the second class may be had by a person possessing the qualifications therein described on payment of ~~four-dollars-($4.00)~~ a fee as specified in section 36-416, Idaho Code, for a hunting license, and ~~five--dollars ($5.00)~~ a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(c) Youth Combination -- Fishing Licenses. A license of the third class may be purchased by a person possessing the qualifications therein described on payment of ~~ten-dollars-($10.00)~~ a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and ~~seven--dollars--($7.00)~~ a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(d) Senior Resident Combination. A license of the fourth class may be had by a person possessing the qualifications therein described on payment of ~~three--dollars--($3.00)~~ a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(e) Lifetime Licenses -- Combination -- Hunting -- Fishing. A license of the fifth class may be obtained at no additional charge by a person possessing the qualifications therein described for a com-

bined hunting and fishing license, for a hunting license, or for a fishing license, entitling the person to the same privileges as the corresponding license of the first class provides. Lifetime licensees must be certified under the provisions of section 36-411, Idaho Code, before being issued a license to hunt.

(f) A license of the eighth class may be had by a person possessing the qualifications therein described on payment of ~~eighty-one dollars--($81.00)~~ a fee as specified in section 36-416, Idaho Code, entitling the purchaser to hunt and fish for game animals, game birds, fish, and unprotected and predatory animals of the state. With payment of the required fee, a person shall receive with this license a deer tag, an elk tag, a bear tag, a turkey tag, a mountain lion tag, an archery hunt permit, a muzzleloader permit, ~~an upland game permit, a migratory waterfowl validation,~~ a steelhead trout permit and an anadromous salmon permit. The director shall promptly transmit to the state treasurer all moneys received pursuant to this subsection for deposit as follows:

(i) ~~Three~~ Four dollars ($~~3~~4.00) in the set-aside account for the purposes of section 36-111(1)(a), Idaho Code;

(ii) Two dollars ($2.00) in the set-aside account for the purposes of section 36-111(1)(b), Idaho Code;

(iii) One dollar and fifty cents ($1.50) in the set-aside account for the purposes of section 36-111(1)(c), Idaho Code; and

(iv) ~~Five--dollars--($5.00)-in-the-set-aside-account-for-the-purposes-of-section-36-111(1)(e),-Idaho-Code;~~

~~(v)---Two-dollars-($2.00)-in-the-set-aside-account--for--the--purposes-of-section-36-111(1)(f),-Idaho-Code;-and~~

~~(vi)~~ The balance in the fish and game account.

All persons purchasing a license pursuant to this subsection shall observe and shall be subject to all rules of the commission regarding the fish and wildlife of the state.

If the purchaser of this license does not meet the archery education requirements of section 36-411(b), Idaho Code, then, notwithstanding the provisions of section 36-304, Idaho Code, the archery hunt permit portion of this license is invalid. The fee for this license will not change and the ~~issuer of the~~ license must ~~indicate on the face of the license that~~ be issued without the archery permit ~~is invalidated~~ validation.

(g) Disabled Persons Licenses -- Combination -- Fishing. A license of the first class may be had by any resident disabled person on payment of ~~three dollars ($3.00)~~ a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license, entitling the purchaser to the same privileges as the corresponding license of the first class provides. A disabled person means a person who is certified as eligible for federal supplemental security income (SSI); social security disability income (SSDI); a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability.

(h) Military Furlough Licenses -- Combination -- Fishing. A license of the first class may be had by a resident person engaged in the military service of the United States, while on temporary furlough or leave, possessing the qualifications therein described on payment

of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and as specified in section 36-416, Idaho Code, for a fishing license.

SECTION 10. That Section 36-406A, Idaho Code, be, and the same is hereby amended to read as follows:

36-406A. TWO POLE VALIDATION. The commission is authorized to promulgate rules specifying seasons and waters where a resident or nonresident may apply for a validation to be placed on their fishing license authorizing the person to use two (2) poles on waters that have been designated as "two pole" waters by commission rule subject to payment of a ~~seven-dollar-and-fifty-cent-($7.50)~~ fee as specified in section 36-416, Idaho Code. A person who has a validation may utilize two (2) poles to fish with during the season so specified by commission rule and on the waters so specified by commission rule. ~~The fee-imposed-by-this-section-shall-be-deposited-in-the--fish--and--game account.~~

SECTION 11. That Section 36-407, Idaho Code, be, and the same is hereby amended to read as follows:

36-407. NONRESIDENT COMBINATION, 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)~~ a fee as specified in section 36-416, Idaho Code.

(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)~~ a fee as specified in section 36-416, Idaho Code.

(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)~~ a fee as specified in section 36-416, Idaho Code, 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)~~ a fee as specified in section 36-416, Idaho Code. This license shall be valid only during the period of Jan-

uary 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 Small Game 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 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)~~ a fee as specified in section 36-416, Idaho Code.

(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)~~ a fee as specified in section 36-416, Idaho Code. 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)~~ a fee as specified in section 36-416, Idaho Code, for the first effective day and ~~three dollars ($3.00)~~ a fee as specified in section 36-416, Idaho Code, 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 any fish, including steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of ~~thirty dollars ($30.00)~~ a fee as specified in section 36-416, Idaho Code. The three (3) day license holder may fish for ~~and take one (1)~~ any species of fish, 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 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~~ a fee as specified in section 36-416, Idaho Code.

(j) Nonresident Combination Licenses. A license entitling the person to hunt and fish for game animals, game birds, fish and unprotected and predatory animals of the state may be had by a person twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. A license may be issued to a qualified

person who is eleven (11) years of age to allow the application for a controlled hunt permit; however, the person shall not hunt until he is twelve (12) years of age.

SECTION 12. 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, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further, that any person seventy (70) years of age or older who holds a senior resident combination license or any person who holds a youth combination or hunting license or any disabled American veteran who holds a disabled combination license, may be issued a bear, deer or elk tag ~~without charge~~ for a fee as specified in section 36-416, Idaho Code; provided further, that resident game tags may be issued only to those persons who meet residency requirements of subsection (s) of section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a ~~hunting~~ license to hunt, 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, or a resident who 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 nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, sandhill crane 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~~	~~21.00~~	~~331.00~~
~~Deer~~	~~15.00~~	~~231.00~~
~~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"~~	~~41.00~~	~~not applicable~~

~~(d)~~ Game Tags Required. 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. Provided further, that the commission may promulgate rules to allow a nonresident deer tag to be used to hunt and kill either a bear or a mountain lion during the open season for deer in that area, unit or zone as may

be specified by the commission. All of said tags are to bear and have serial numbers.

(~~e~~d) 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~~ rule.

(~~f~~e) 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)~~ as specified in section 36-416, Idaho Code.

(~~g~~f) 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)~~ as specified in section 36-416, Idaho Code.

~~(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~~g) Hound Hunter Permit -- Resident -- Nonresident. 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 by resident and nonresident license holders for a fee ~~of-ten-dollars ($10.00)~~ as specified in section 36-416, Idaho Code.

(~~j~~h) 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)~~ as specified in section 36-416, Idaho Code, 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~~i) 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)~~ as specified in section 36-416, Idaho

Code.

(j) Bear Baiting Permit. The commission may, under rules as it may prescribe, issue a bear baiting permit. Any person placing or using bait as may be allowed by rule for the purpose of attracting bear must have in his possession a valid bear baiting permit which may be purchased by a license holder for a fee as specified in section 36-416, Idaho Code.

(k) Migratory Bird Harvest Information Program Permit. The commission may, as provided by federal laws or regulations and under rules as it may prescribe, issue a migratory bird harvest information program permit that must be purchased by all persons prior to hunting migratory game birds as required by federal law or regulations. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(l) Dog Field Trial Permit. The commission may, under rules as it may prescribe, issue a dog field trial permit to any person using birds for dog field trials or training as may be allowed by rule. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

SECTION 13. That Section 36-410, Idaho Code, be, and the same is hereby amended to read as follows:

36-410. STEELHEAD TROUT -- ANADROMOUS SALMON PERMITS. No person shall fish for steelhead trout or anadromous salmon except as herein provided:

(a) Permits Required -- Fee. Any person holding a valid fishing or combined fishing and hunting license of a class and kind mentioned in section 36-406 or in subsection (b) of section 36-407, Idaho Code, may purchase one (1) steelhead trout permit or one (1) anadromous salmon permit at a fee ~~of five dollars ($5.00)~~ as specified in section 36-416, Idaho Code, for each kind of permit. The person to whom such permits are issued shall then be entitled to fish for and take steelhead trout and/or anadromous salmon subject to the limitations prescribed in this title and ~~regulations~~ rules promulgated by the commission. Permits shall be valid only during the period of time that the corresponding basic license is valid.

(b) Unlicensed Resident. Bona fide residents of Idaho who are expressly exempt from license requirements to fish in the public waters of the state may choose one (1) of the following options:

1. Purchase and use such permits as an individual; or
2. May fish for and take steelhead trout and/or anadromous salmon without having permits therefor if accompanied by a properly licensed permit holder, provided that any such fish caught shall be included in the daily, seasonal and possession limit of the accompanying licensed permit holder.

(c) Unlicensed Nonresident Children. Unlicensed nonresident children under the age of fourteen (14) years shall not be eligible to obtain a steelhead trout or anadromous salmon permit, but may take such fish if accompanied by a holder of a valid license and permit, provided that any steelhead trout or anadromous salmon caught by such children shall be included in the daily, seasonal and possession limit of the accompanying licensed permit holder.

SECTION 14. That Section 36-414, Idaho Code, be, and the same is hereby repealed.

SECTION 15. That Chapter 4, Title 36, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 36-416, Idaho Code, and to read as follows:

36-416. SCHEDULE OF LICENSE FEES.

(a) Sport Licenses

License	Resident	Non-Resident
Combination License	$ 29.00	$ 180.00
Hunting License	10.00	127.00
Fishing License	22.00	73.00
Sr. Combination License (65 and Older)	3.00	N/A
Sportsman's Pak License	99.50	N/A
Jr. Combination License	14.50	N/A
Jr. Hunting License	5.00	N/A
Jr. Fishing License	11.00	36.50
Disabled Combination License	3.00	N/A
Disabled Fishing License	3.00	N/A
Military Furlough Combination License	14.50	N/A
Military Furlough Fishing License	14.50	N/A
Small Game Hunting License	N/A	72.00
Daily Fishing (1st-day) License	9.00	9.00
Consecutive Day Fishing License	4.00	4.00
3 Day Fishing with Salmon/Steelhead Permit	N/A	27.00
Non-Game Hunting License	N/A	25.00
(b) Sport Tags		
Deer Tag	$ 16.50	$ 233.50
Jr. or Sr. or Disabled American Veteran Deer Tag	8.25	N/A
Elk Tag	27.00	337.00
Jr. or Sr. or Disabled American Veteran Elk Tag	13.50	N/A
Bear Tag	9.00	233.50
Jr. or Sr. or Disabled American Veteran Bear Tag	4.50	N/A
Turkey Tag	16.50	60.00
Mountain Lion Tag	9.00	233.50
Antelope Tag	27.00	233.50
Moose Tag	150.00	1,500.00
Sheep Tag	150.00	1,500.00
Goat Tag	150.00	1,500.00
Sandhill Crane Tag	16.50	60.00
(c) Sport Permits		
Bear Baiting Permit	$ 10.00	$ 10.00
Hound Hunter Permit	10.00	127.00
WMA Pheasant Permit	20.00	20.00
Archery Permit	15.00	15.00
Muzzleloader Permit	15.00	15.00
Salmon Permit	10.00	10.00
Steelhead Permit	10.00	10.00

Federal Migratory Bird Harvest Info. Permit	0.00	0.00
Handicapped Archery Permit	0.00	0.00
2-Pole Fishing Permit	11.00	11.00
Controlled Hunt Permit	5.00	5.00
(d) Commercial		
Raptor Captive Breeding Permit	$ 60.00	$ 60.00
Falconry Permit	25.00	N/A
Falconry Capture Permit	N/A	127.00
Jr. Trapping License	5.00	N/A
Trapping License	25.00	250.00
Taxidermist - Fur Buyer License	35.00	125.00
Shooting Preserve Permit	300.00	N/A
Commercial Wildlife Farm License	125.00	N/A
Commercial Fishing License	100.00	200.00
Wholesale Steelhead License	150.00	150.00
Retail Steelhead Trout Buyer's License	30.00	30.00
(e) Commercial Tags		
Bobcat Tag (Not to exceed)	$ 7.50	$ 7.50
Lynx Tag (Not to exceed)	7.50	7.50
Beaver Tag (Not to exceed)	5.00	5.00
Net Tag	50.00	50.00
Crayfish/Minnow Tag	1.00	1.00
(f) Miscellaneous-Other Licenses		
Duplicate License	$ 5.00	$ 5.00
Shooting Preserve License	10.00	10.00
Captive Wolf License	20.00	N/A
(g) Miscellaneous-Other Tags		
Duplicate Tag	$ 5.00	$ 5.00
Wild Bird Shooting Preserve Tag	5.00	5.00
(h) Miscellaneous-Other Permits		
Falconry In-State Transfer Permit	$ 5.00	$ N/A
Falconry Meet Permit	N/A	20.00
Private Park Permit	20.00	20.00
Private Pond Permit	20.00	20.00
Wildlife Import Permit	20.00	20.00
Wildlife Export Permit	10.00	10.00
Wildlife Release Permit	10.00	10.00
Captive Wildlife Permit	20.00	20.00
Fishing Tournament Permit	20.00	20.00
Dog Field Trial Permit	30.00	30.00
Live Fish Transport Permit	20.00	20.00
Controlled Hunt Application Fee	5.00	5.00

SECTION 16. That Section 36-501, Idaho Code, be, and the same is hereby amended to read as follows:

36-501. SALE AND PURCHASE OF WILDLIFE -- RESTRICTIONS -- EXCEPTIONS. No person shall sell or buy any species of wildlife or parts thereof except as hereinafter provided.

(a) Sale of Unprotected Wildlife. The sale of legally taken species of wildlife classified as unprotected by law shall be lawful.

(b) Sale of Game Animals. The sale of legally taken hides, horns, or heads of game animals, when detached from the carcass, and mounted

wildlife, where sale is not specifically prohibited by federal statute or regulation or state statutes, shall be lawful only when the wildlife to be sold is accompanied by a statement showing that the animals were lawfully taken. It shall be lawful to possess or sell naturally shed antlers or horns of deer, elk, moose, antelope and mountain goat, and antlers or horns of deer, elk, moose, antelope and mountain goat which have died from natural causes.

(c) Sale of Furbearers. The sale of pelts and parts of furbearers when legally taken shall be lawful.

(d) Sale of Seized Wildlife. The sale and purchase of court confiscated, abandoned, or unclaimed wildlife shall be lawful when made in accordance with the provisions of section 36-1304, Idaho Code.

(e) Sale of Commercially Raised or Harvested Wildlife. The sale of wildlife legally raised or harvested commercially by properly licensed commercial operations, if required to be licensed, shall be lawful except as provided by rules promulgated pursuant to section 36-104(b)6., Idaho Code. The provisions of this section shall not apply to domestic fur-bearing animals as defined in chapter 30, title 25, Idaho Code.

(f) Sale of Steelhead Trout.

1. Any person holding a wholesale steelhead trout buyer's license may purchase or sell steelhead trout in the state of Idaho that have been taken by Indian fishermen lawfully exercising fishing rights reserved by federal statute, treaty or executive order, provided that the Indian fisherman is an enrolled member of the tribe holding such rights and the code of such tribe authorizes such sales. A wholesale license is necessary to purchase steelhead trout directly from Indian fishermen or from any other seller whose principal place of business is located outside of the state of Idaho.

2. Any person holding a retail steelhead trout buyer's license may purchase steelhead trout in the state of Idaho from an Idaho licensed wholesale steelhead trout buyer, or from any Indian fisherman lawfully exercising fishing rights authorized by federal statute, treaty, or executive order. A licensed retail steelhead trout buyer may sell steelhead trout directly to the consumer or to an establishment that prepares steelhead trout for consumption.

3. Establishments that prepare steelhead trout for consumption must possess a wholesale or retail steelhead trout buyer's license; however, these licensed establishments may purchase steelhead trout from either wholesale or retail licensed steelhead trout buyers.

4. The fee for a wholesale license shall be ~~fifty dollars ($50.00)~~ as specified in section 36-416, Idaho Code, per year. The fee for a retail license shall be ~~ten dollars ($10.00)~~ as specified in section 36-416, Idaho Code, per year. ~~All fees collected pursuant to this subsection shall be deposited in the fish and game account created pursuant to section 36-107, Idaho Code.~~ These licenses shall expire December 31 of the year for which they are valid.

5. No license is required for any person purchasing steelhead trout for personal consumption from a licensed wholesale or retail steelhead trout buyer or from an Indian fisherman lawfully exer-

cising fishing rights authorized by federal statute, treaty, executive order, or tribal code or regulation.

6. Purchases or sales under this section shall be made under conditions and reporting requirements prescribed by commission regulation, provided that said conditions and reporting requirements are limited to those necessary to identify the source of steelhead purchased.

Any person violating the provisions of this subsection shall be found guilty as provided in section 36-1401, Idaho Code, and shall be punished as set forth in section 36-1402, Idaho Code.

(g) Commission May Permit Sales. The commission may, by rule, permit the sale of other parts of wildlife when such sale will not injuriously affect the species permitted.

SECTION 17. That Section 36-502, Idaho Code, be, and the same is hereby amended to read as follows:

36-502. POSSESSION -- TRANSPORTATION -- SHIPMENT OF WILDLIFE -- RESTRICTIONS -- EXCEPTIONS. No person shall possess, transport or ship in any manner, or accept for transportation or shipment any wildlife except as hereinafter provided.

(a) Possession and Transportation.

1. The possession and transportation of any legally taken wildlife shall be lawful when the same is in the possession of or is being transported by the taker of said wildlife and is accompanied by the appropriate licenses, tags, and/or permits attached and/or validated in the manner prescribed by the provisions of sections 36-409(~~e~~d) and 36-410(a), Idaho Code.

2. Possession or transportation of any legally taken wildlife by any person other than the taker shall be lawful when such wildlife is accompanied by a written statement prepared and signed by the taker showing the number, kind, and date taken and the name, address and license number of the taker and other such information as may be specified by the commission. In addition to such statements said wildlife shall be accompanied by the appropriate validated tag therefor and/or such permits as may be required under the provisions of this title except, for anadromous fish, the permit need not accompany the fish so long as the permit number is written on the proxy statement. Provided, however, that no person may lawfully claim, be granted or assume ownership of more game animals, game birds, or game fish taken within the state than allowed by possession limits established by the commission.

3. It shall be lawful for a person to ship or a common carrier to accept for shipment any legally taken wildlife provided that all packages containing such wildlife shall be plainly labeled designating numbers, sex and species of wildlife contained therein and the name and address of the consignor and consignee.

4. No person shall give another person wildlife to possess or transport unless they also give the transporter a proxy statement as provided in subsection 2. of this section.

(b) Unlawful Possession. No person shall have in his possession any wildlife or parts thereof protected by the provisions of this title and the taking or killing of which is unlawful.

SECTION 18. That Section 36-601, Idaho Code, be, and the same is hereby amended to read as follows:

36-601. TAXIDERMIST AND FUR BUYER'S ~~MUST--PROCURE~~ LICENSE REQUIRED. (~~a~~1) ~~Taxidermy----License-Required.~~ Any person who at any time within the state of Idaho desires to mount, preserve or prepare for preservation any of the dead bodies of any wildlife or any part thereof not personally taken by him in compliance with the provisions of this title, ~~must-obtain-a-taxidermist-license.--Without--paying--an additional---fee---for---a--fur--buyer's--license,--the--holder--of--a taxidermist's-license-shall-be-entitled-to-engage-in-purchases-as-provided-in-subsection-(b)-of-this-section.~~

~~(b)--Purchase-of-Hides,-Skins-or-Pelts-----License--Required.--Any person~~ or who engages in the business of buying raw black bear skins, raw cougar skins or parts of black bears or cougars, or the raw hides, skins, or pelts of any of the fur bearers of this state must obtain a taxidermist and fur buyer's license.

(~~c~~2) ~~Said-t~~Taxidermist and fur buyer's licenses shall be obtained from the director for a fee and subject to the limitations ~~hereinafter provided~~ of this chapter.

SECTION 19. That Section 36-602, Idaho Code, be, and the same is hereby amended to read as follows:

36-602. LICENSE FEES -- EXPIRATION. (a) Resident Taxidermist and Fur Buyer's License. A fee ~~of-ten-dollars-($10.00)~~ as specified in section 36-416, Idaho Code, shall be charged for a resident taxidermist and fur buyer's license.

(b) Nonresident Taxidermist and Fur Buyer's License. Nonresidents shall pay an amount equal to that charged Idaho residents in the state of the applicant for ~~a-nonresident-fur-buyer's~~ the license. In cases where the state of the applicant requires more than one (1) license, the cost shall be the total of all licenses required of an Idaho resident to engage in similar activities in the state of the applicant. In no case shall this amount be less than ~~forty--dollars ($40.00)~~ the fee as specified in section 36-416, Idaho Code. The department shall promulgate rules implementing the provisions of this section.

(c) ~~Resident--Fur--Buyers--License.-A-fee-of-five-dollars-($5.00) shall-be-charged-for-a-resident-fur-buyers-license.~~

~~(d)--Nonresident-Fur-Buyers-License.--Nonresidents--shall--pay--an amount--equal--to--that--charged--Idaho--residents-in-the-state-of-the applicant-for-a-nonresident-fur-buyer's-license.-In-no-case-shall-this amount-be-less-than-twenty-dollars-($20.00).-The-department-shall-promulgate-rules-implementing-the-provisions-of-this-section.~~

~~(e)~~ The expiration date for ~~such~~ taxidermist and fur buyer's licenses shall be June 30 next following the date of issuance.

SECTION 20. That Section 36-603, Idaho Code, be, and the same is hereby amended to read as follows:

36-603. ~~TAXIDERMISTS'--AND--FUR--BUYERS'~~ RECORDS. Any person licensed under the provisions of this chapter shall keep a record for

two (2) years last past of wildlife ~~or--the--hides,--skins,--or--pelts thereof~~ received for ~~preserving-or-sale~~ mounting or preserving and fur bearers purchased. Records may be written or may be retained on media other than paper, provided that the form or medium complies with the standards set forth in section 9-328, Idaho Code. ~~Such~~ The record shall be made upon a form provided by the department which sets forth such information as may be required by the director and shall be subject to his inspection at any time.

SECTION 21. That Section 36-701, Idaho Code, be, and the same is hereby amended to read as follows:

36-701. WILDLIFE HELD CAPTIVE WITHOUT LICENSE OR PERMIT UNLAWFUL -- EXCEPTIONS. (a) No person shall engage in any propagation or hold in captivity any species of big game animal found wild in this state, unless the person has been issued a license or permit by the director as hereinafter provided.

(b) All other species of mammals, birds or reptiles that are found in the wild in this state and are not species of special concern or threatened and endangered species, may be held in captivity without permit so long as the possessor retains proof that such wildlife was lawfully obtained. Such proof shall be maintained and presented to department representatives in accordance with section 36-709, Idaho Code.

(c) Exceptions.

1. No such license or permit shall be required of any municipal, county, state or other publicly owned zoo or wildlife exhibit or of any traveling circus, menagerie or trained act of wild animals not permanently located within the state of Idaho nor of any bona fide pet store displaying lawfully acquired wildlife for sale nor of any fur farm regulated and inspected pursuant to chapter 30, title 25, Idaho Code, nor of any domestic cervidae farm regulated and inspected pursuant to chapter 35, title 25, Idaho Code.

2. Except for the provisions of ~~paragraph~~ subsection (d) ~~below~~ of this section and section 36-709, Idaho Code, relating to inspection and records of same, nothing in this chapter shall be so construed as to apply to any exotic wildlife, or domestic fur farm operated under the provisions of title 25, Idaho Code, or any tropical fish or other aquaria or ornamental fish which the commission determines do not pose a threat to native fish if released into the public waters of the state.

3. Except for the provisions of section 36-709(b), Idaho Code, relating to inspection of facilities, nothing in this chapter shall be so construed as to apply to any domestic cervidae farm.

(d) Wildlife Import -- Export -- Release Permits -- Fees. No person shall import into this state or export out of this state or release in the wild any species of wildlife except by permit issued by the director and in accordance with rules promulgated by the commission. The fee per occurrence for each permit shall be as specified in section 36-416, Idaho Code. No fee shall be charged for a department benefit permit.

SECTION 22. That Section 36-703, Idaho Code, be, and the same is

hereby amended to read as follows:

36-703. COMMERCIAL WILDLIFE FARMS -- RESTRICTIONS -- LICENSE. No person shall obtain, possess, preserve, or propagate any species of big game animals found wild in this state for the purpose of selling the same unless he has first secured a commercial wildlife farm license from the director.

(a) License Provisions. Such license may be issued by the director upon his finding that:

1. Such commercial wildlife farm is located entirely on private property owned or leased by the applicant.
2. Said farm is constructed so as not to contain any land where wild big game animals naturally abound.
3. Said farm is so enclosed as to prevent escape of big game commercial farm animals therefrom and prevent entry thereon of the same species of publicly owned big game animals.
4. The application for such license is made upon a form provided by the department which sets forth such information as may be required by the director.
5. The property boundaries are posted as being a commercial wildlife farm in at least three (3) separate, conspicuous places in addition to all entrance roadways.
6. The approved application is accompanied by a license fee ~~of twenty-five dollars ($25.00)~~ as specified in section 36-416, Idaho Code.

(b) Separate Locations to Be Licensed. A license must be had for each and every separate location. Said license shall expire June 30 in each ~~even-numbered~~ year.

(c) Records of Transactions Required. A current record shall be made by the licensee of each and every sale, purchase or shipment and such records shall be kept for two (2) years and shall be subject to inspection by the director upon his request.

(d) Receipt Required. A receipt shall be issued to each purchaser identifying the wildlife farm source and specifying the number and kinds of animals and the date of sale.

SECTION 23. That Section 36-706, Idaho Code, be, and the same is hereby amended to read as follows:

36-706. PRIVATE PARKS AND PONDS -- NONCOMMERCIAL -- PERMIT REQUIRED. No person shall establish and maintain a private park or pond on premises owned or leased by him and obtain, possess, transport, propagate and process for his own personal pleasure and use any fish approved by the commission, or any big game animals found wild in this state unless he has first obtained a permit from the director.

(a) Permit Requirements. Such permit may be issued by the director upon his finding that:

1. Such private park or pond is not constructed in or across any natural stream bed, lake, or other watercourse containing wild fish, or on lands where wildlife abounds, except when it has been determined by the commission that the water flow and volume of wildlife concerned in such proposed private ponds, waters or parks are not a significant part of the wildlife resource of the state.

2. The private park or pond is located entirely on private property owned or leased by the applicant.

3. Any dam constructed to divert water into such private pond meets all requirements as provided in section 36-906(a), Idaho Code.

4. All inlets to such private pond are screened at the point of diversion as provided in section 36-906(b), Idaho Code, to prevent the entrance of wild fish into the private pond.

5. The application for such permit is made upon a form provided by the department which sets forth such information as may be required by the director.

6. The lands proposed for use as a park are so fenced as to prevent the escape of private wildlife therefrom and prevent the entry thereon of publicly owned big game animals.

7. Said park or pond shall be posted in three (3) separate conspicuous places and all entrance roads.

(b) Separate Locations -- Permits Required. Such a park or pond permit must be had for each and every location. A park permit may be had upon payment of a fee as specified in section 36-416, Idaho Code. Said permit shall expire June 30 in each ~~even-numbered~~ year. A pond permit may be had upon payment of a fee as specified in section 36-416, Idaho Code. The permit shall expire on June 30 of the fifth fiscal year after the date of issue.

(c) Live Fish Transportation Permit. The commission may, under rules as it may prescribe, issue a live fish transportation permit. The permit may be had upon payment of a fee as specified in section 36-416, Idaho Code.

SECTION 24. That Section 36-712, Idaho Code, be, and the same is hereby amended to read as follows:

36-712. TATTOOING OF WOLVES -- WHEN REQUIRED. (a) Any wolf that is captured alive to be later released or which is born or held in captivity for any purpose must be reported to the department within three (3) days of the capture or commencement of captivity. Any person found guilty of capturing or holding in captivity and failing to report the animal as required in this section, shall be punished by a fine not in excess of one thousand dollars ($1,000) for each animal the person possesses which has not been reported as required in this section.

(b) Each animal reported as required in subsection (a) of this section shall be permanently tattooed in a manner that will provide positive individual identification of the animal. No tattoo is required under this section if the animal is subject to a permanent individual identification process by another state or federal agency.

(c) Any person holding a wolf in captivity shall immediately report to the department any death, escape, release, transfer of custody or other disposition of the animal.

(d) Any canine exhibiting primary wolf characteristics shall be classified as a wolf for the purpose of identification. All such canines shall be tattooed, registered and licensed by the department of fish and game. ~~The department shall be responsible for collection of fees to administer this program as outlined by rule and regulation~~

The fee for the license shall be as specified in section 36-416, Idaho Code.

SECTION 25. That Section 36-713, Idaho Code, be, and the same is hereby amended to read as follows:

36-713. RECORDS. ~~(a)~~ The department shall maintain a record of each animal reported to it, pursuant to section 36-712, Idaho Code. The record shall indicate:

(1~~.~~) The person by whom the animal was captured or is held in captivity;

(2~~.~~) The location of the capture or captivity;

(3~~.~~) The date the animal was tattooed;

(4~~.~~) The purpose of the captivity or capture; and

(5~~.~~) Any death, escape, release, transfer of custody, or other disposition of the animal.

~~(b)--The--department--shall-establish-by-rule-and-regulation-a-fee to-be-charged,-which-may-not-exceed-the-administrative-cost--of--maintaining-the-record-required-under-this-section.~~

SECTION 26. That Section 36-802, Idaho Code, be, and the same is hereby amended to read as follows:

36-802. COMMERCIAL FISHING AUTHORIZED. The commission shall at such times and in such amounts as, through investigations it deems proper, allow commercial fishing for fish or crustacea in the waters under the jurisdiction of the state. Commercial fishing shall mean the taking or attempting to take fish or crustacea for the purpose of selling, bartering, exchanging, offering, or exposing for sale. No person shall conduct, operate or manage a commercial fishing operation without obtaining a commercial fishing license and commercial gear tags from the director prior to engaging in such commercial fishing operation. Fishermen using five (5) or fewer traps or a single minnow ~~or-seine~~ net and having annual gross retail sales of five hundred dollars ($500) or less, are exempt from purchasing a commercial license. Either the licensed commercial operator or a licensed employee must be present whenever the commercial gear is operated, lifted, or fished. The director shall charge the ~~sum-of-one-hundred-dollars-($100)~~ fee as specified in section 36-416, Idaho Code, for each resident license and the ~~sum-of-two-hundred-dollars-($200)~~ fee as specified in section 36-416, Idaho Code, for each nonresident license. Said licenses shall expire on June 30 next following date of issuance. The director shall charge the following fees for the commercial gear tags: for each crayfish or minnow trap, ~~one-dollar-($1.00)~~ the fee as specified in section 36-416, Idaho Code; ~~for-each-seine-net-one-hundred-(100)--feet long--or--less,--twenty-five--dollars-($25.00);~~ and for each ~~seine~~ net longer than ~~one-hundred~~ four (~~100~~4) feet, ~~fifty-dollars-($50.00);--for each--trawl--net,-fifty-dollars-($50.00);-and-for-each-item-of-experimental-gear-approved-by-the-commission,-ten-dollars-($10.00)~~ the fee as specified in section 36-416, Idaho Code.

SECTION 27. That Section 36-904, Idaho Code, be, and the same is hereby repealed.

SECTION 28. 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 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 ~~F~~federal ~~M~~migratory ~~B~~bird ~~T~~treaty ~~A~~act, as amended, and in accordance with related rules and proclamations promulgated by the commission.

2. No person subject to the ~~F~~federal ~~M~~migratory ~~B~~bird ~~H~~hunting ~~S~~stamp ~~A~~act tax shall hunt any migratory waterfowl unless at the time of such hunting he carries on his person an unexpired ~~F~~federal ~~M~~migratory ~~B~~bird ~~H~~hunting ~~S~~stamp validated by his signature in ink across the face of the stamp or an electronically issued unexpired validation on a valid license while hunting such birds.

(c) Falconry. The commission is authorized to establish a falconry program and to promulgate rules and proclamations governing same. As may be required by commission rule, the fees for a falconry permit, raptor captive breeding permit and raptor in-state transfer permit shall be as specified in section 36-416, Idaho Code. The falconry and the raptor captive breeding permit shall expire three (3) years from date of issue.

SECTION 29. That Section 36-1104, Idaho Code, be, and the same is hereby amended to read as follows:

36-1104. SPECIAL BEAVER TAGS -- FEE -- USE. (a) Commission to Regulate Issuance and Fee. Whenever the commission declares an open season on beaver, said commission may pursuantly regulate the issuance of special beaver tags to licensed trappers, including the maximum number to be issued to any one (1) person and the price to be paid for each of same, provided that the fee for such tag shall not exceed ~~two dollars ($2.00)~~ the fee as specified in section 36-416, Idaho Code.

(b) Tag to be Attached -- Authority for Sale of. When a properly licensed person kills a beaver, for which a tag is required, such a person shall immediately affix such tag in the manner prescribed by ~~regulation~~ rule of the commission. After any beaver pelt has been so tagged, the same shall become the property of the trapper and may be sold, transferred or shipped in ordinary trade.

(c) Tag Must be Carried on Person. No person shall take, trap or kill any beaver for which such a tag is required unless he has the tag on his person and any such tag so issued shall at all times be subject to the inspection of the director.

(d) Beaver Unlawfully Taken, Possessed -- Subject to Seizure. The possession of any beaver or pelt therefrom taken in contravention to

the provisions of this section is prima facie evidence that the same has been unlawfully taken and any such beaver or pelt so taken shall remain the property of the state of Idaho. The director may at any time seize as contraband any beaver or pelt therefrom which may have been taken, killed, trapped or held in possession unlawfully; such seized beaver or pelts therefrom shall be sold by the director and the proceeds derived therefrom shall be credited to the fish and game fund.

SECTION 30. That Section 36-1104A, Idaho Code, be, and the same is hereby amended to read as follows:

36-1104A. SPECIAL BOBCAT OR LYNX EXPORT TAGS -- FEE. The commission may provide for, and regulate the issuance of, a special tag to be attached to the hide of any bobcat or any lynx legally taken in the state of Idaho. A tag shall be authority to export bobcat or lynx hides taken in Idaho as provided by regulation of the U.S. fish and wildlife service.

The commission may set the price to be charged for such tags, at a cost not to exceed ~~seven dollars and fifty cents ($7.50)~~ the fee as specified in section 36-416, Idaho Code, per tag.

No export tag shall be issued for any bobcat or lynx hide not taken in Idaho.

SECTION 31. 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 or proclamations 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~~ game birds without having in possession a license validated for the federal migratory

~~waterfowl~~ bird harvest information program permit as set forth in section ~~36-414(2)~~ 36-409(k), Idaho Code.

~~(I) Hunt upland game birds without having in possession 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~~J) 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 32. 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 the 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)~~ as specified in section 36-416, Idaho Code, 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 rules and proclamations of the Idaho fish and game commission.

SECTION 33. That Section 36-2206, Idaho Code, be, and the same is hereby amended to read as follows:

36-2206. FEES. Fees for shooting preserve permits shall be ~~one hundred fifty dollars ($150)~~ the fee as specified in section 36-416, Idaho Code, per year.

SECTION 34. That Section 36-2207, Idaho Code, be, and the same is

hereby amended to read as follows:

36-2207. LICENSE TO SHOOT IN A PRESERVE. Every person taking game birds upon a shooting preserve must secure an appropriate hunting license of the proper class authorizing the hunting of upland game birds or a license entitling the person to whom issued to hunt upland game birds on a licensed shooting preserve only. A license of this kind may be had by any person upon payment of ~~five dollars ($5.00)~~ the fee as specified in section 36-416, Idaho Code.

SECTION 35. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after May 1, 2000.

Approved April 5, 2000.

CHAPTER 212
(H.B. No. 489)

AN ACT

RELATING TO THE SOLEMNIZATION OF MARRIAGE; AMENDING SECTION 32-303, IDAHO CODE, TO PROVIDE THAT A FORMER GOVERNOR CAN SOLEMNIZE A MARRIAGE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 32-303, Idaho Code, be, and the same is hereby amended to read as follows:

32-303. BY WHOM SOLEMNIZED. Marriage may be solemnized by either a current or retired justice of the supreme court, a current or retired court of appeals judge, a current or retired district judge, any federal judge, the current or a former governor, lieutenant governor, a current or retired magistrate of the district court, mayor, priest or minister of the gospel of any denomination. To be a retired justice of the supreme court, court of appeals judge, district judge or magistrate judge of the district court, for the purpose of solemnizing marriages, a person shall have served in one (1) of those offices and shall be receiving a retirement benefit from either the judges retirement system or the public employee retirement system for service in the judiciary.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 213
(H.B. No. 627)

AN ACT

RELATING TO A COLLEGE SAVINGS PROGRAM; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 54, TITLE 33, IDAHO CODE, TO DEFINE TERMS, TO ESTABLISH AND PROVIDE POWERS AND DUTIES TO THE STATE COLLEGE SAVINGS PROGRAM BOARD REGARDING THE COLLEGE SAVINGS PROGRAM, TO PROVIDE THE USE OF A CONTRACTOR OR CONTRACTORS AS ACCOUNT DEPOSITORY AND MANAGER, TO PROVIDE PROGRAM REQUIREMENTS, TO PROVIDE FOR TAXATION, TO PROVIDE SCHOLARSHIP AND FINANCIAL AID PROVISIONS, TO PROVIDE LIMITATIONS AND TO PROVIDE AN ANNUAL REPORT; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE A DEDUCTION WITH A LIMITATION TO COLLEGE SAVINGS PROGRAMS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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 designated as Chapter 54, Title 33, Idaho Code, and to read as follows:

CHAPTER 54
COLLEGE SAVINGS PROGRAM

33-5401. DEFINITIONS. As used in this chapter, the following terms have the following meanings unless the context clearly denotes otherwise:

(1) "Account" means an individual trust account or savings account established as prescribed in this chapter.

(2) "Account owner" means the person designated at the time an account is opened as having the right to withdraw moneys from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) "Board" means the state college savings program board created in section 33-5402, Idaho Code.

(4) "Designated beneficiary," except as provided in section 33-5404, Idaho Code, means, with respect to an account, the person designated at the time the account is opened as the person whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with section 33-5404, Idaho Code, the replacement beneficiary.

(5) "Financial institution" means any state bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm or other similar entity that is authorized to do business in this state.

(6) "Higher education institution" means any of the following:

(a) An institution described in the higher education act of 1965 (P.L. 89-329; 79 Stat. 1219; 20 U.S.C. sections 1001 et seq.);

(b) An area vocational educational school as defined in 20 U.S.C. section 2471(4);

(c) An institution regulated by the state board of education.

(7) "Member of the family" means any of the following:

(a) A son or daughter of a person or a descendant of the son or daughter of the person;

(b) A stepson or stepdaughter of a person;

(c) A brother, sister, stepbrother or stepsister of a person. For purposes of this paragraph, "brother" and "sister" include a brother or sister by the half-blood;

(d) The father or mother of a person or the ancestor of the father or mother of a person;

(e) A stepfather or stepmother of a person;

(f) A son or daughter of a person's brother or sister. For purposes of this paragraph, "brother" and "sister" include a brother or sister by the half-blood;

(g) A brother or sister of the person's father or mother. For purposes of this paragraph, "brother" and "sister" include a brother or sister by the half-blood;

(h) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law of a person;

(i) The spouse of a person or the spouse of any individual described in this paragraph;

(j) Any individual who meets the criteria for family membership described in this subsection as a result of legal adoption.

(8) "Nonqualified withdrawal" means a withdrawal from an account other than one (1) of the following:

(a) A qualified withdrawal;

(b) A withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) A withdrawal that is made on the account of a scholarship, or the allowance or payment described in section 135(d)(1)(B) or (C) of the Internal Revenue Code, and that is received by the designated beneficiary, but only to the extent of the amount of this scholarship, allowance or payment;

(d) A rollover or change of the designated beneficiary.

(9) "Program" means the college savings program established under this chapter.

(10) "Qualified higher education expenses" means tuition, fees, books, supplies, room and board, and equipment required for enrollment or attendance of a designated beneficiary at a higher education institution.

(11) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this chapter.

33-5402. STATE COLLEGE SAVINGS PROGRAM BOARD -- COLLEGE SAVINGS PROGRAM -- POWERS AND DUTIES. There is hereby created the state college savings program board. The board shall consist of the state treasurer or his designee who shall serve as chair, the governor or designee, the state controller or designee, the attorney general or designee, the superintendent of public instruction or designee, and the secretary of state or designee. A quorum shall be necessary to transact business. Members of the board shall be compensated by their appointing entity. The state college savings program board shall:

(1) Develop and implement the program in a manner consistent with this chapter through the adoption of rules, guidelines and procedures;

(2) Retain professional services, if necessary, including accountants, auditors, consultants and other experts;

(3) Seek rulings and other guidance from the United States department of the treasury, the internal revenue service and the state tax commission relating to the program;

(4) Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended.

(5) Interpret, in rules, policies, guidelines and procedures, the provisions of this chapter broadly in light of its purpose and objectives;

(6) Charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;

(7) Select the financial institution or institutions to act as the depository and manager of the program in accordance with this chapter.

33-5403. USE OF CONTRACTOR AS ACCOUNT DEPOSITORY AND MANAGER. (1) The board shall implement the program through the use of one (1) or more financial institutions to act as the depositories and managers. Under the program, persons may establish accounts through the program at the depository.

(2) The board shall solicit proposals from financial institutions to act as the depositories and managers of the program. Financial institutions that submit proposals must describe the financial instruments that will be held in accounts.

(3) The board shall select as program depositories and managers the financial institution or institutions from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and this state, of the following factors:

(a) Financial stability and integrity;

(b) The safety of the investment instruments being offered, taking into account any insurance provided with respect to these instruments;

(c) The ability of the investment instruments to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;

(d) The ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(e) The financial institution's plan for promoting the program and the investment it is willing to make to promote the program;

(f) The fees, if any, proposed to be charged to persons for maintaining accounts;

(g) The minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution to accept contributions through payroll deduction plans and other deposit plans;

(h) Any other benefits to this state or its residents included in the proposal, including an account opening fee payable to the board by the account owner and an additional fee from the financial institution for statewide program marketing by the board.

(4) The board shall enter into a contract with a financial institution or, except as provided in subsection (5) of this section, contracts with financial institutions, to serve as program managers and depositories.

(5) The board may select more than one (1) financial institution and investment for the program if both of the following conditions exist:

(a) The United States internal revenue service has provided guidance that giving a contributor a choice of two (2) investment instruments under a state plan will not cause the plan to fail to qualify for favorable tax treatment under section 529 of the Internal Revenue Code;

(b) The board concludes that the choice of instrument vehicles is in the best interest of college savers and will not interfere with the promotion of the program.

(6) A program manager shall:

(a) Take all action required to keep the program in compliance with the requirements of this chapter and all action not contrary to this chapter or its contract to manage the program so that it is treated as a qualified state tuition plan under section 529 of the Internal Revenue Code;

(b) Keep adequate records of each account, keep each account segregated from each other account and provide the board with the information necessary to prepare statements required by section 33-5404, Idaho Code, or file these statements on behalf of the board;

(c) Compile and total information contained in statements required to be prepared under section 33-5404, Idaho Code, and provide these compilations to the board;

(d) If there is more than one (1) program manager, provide the board with this information to assist the board to determine compliance with section 33-5404, Idaho Code;

(e) Provide representatives of the board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract;

(f) Hold all accounts in trust for the benefit of this state and the account owner.

(7) Any contract executed between the board and a financial institution pursuant to this section shall be for a term not to exceed five (5) years.

(8) If a contract executed between the board and a financial institution pursuant to this section is not renewed, all of the following conditions apply at the end of the term of the nonrenewed contract:

(a) Accounts previously established and held in investment instruments at the financial institution shall not be terminated;

(b) Additional contributions may be made to the accounts;

(c) No new accounts may be placed with that financial institu-

tion.

(9) The board may terminate a contract with a financial institution at any time for good cause on the recommendation of the board. If a contract is terminated pursuant to this subsection, the board shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment instruments as similar to the original investments as is possible.

33-5404. PROGRAM REQUIREMENTS. (1) The program shall be operated through the use of accounts. An account may be opened by any person who desires to save to pay the qualified higher education expenses of a person by satisfying each of the following requirements:

(a) Completing an application in the form prescribed by the board. The application shall include the following information:

(i) The name, address and social security number or employer identification number of the contributor;

(ii) The name, address and social security number of the account owner if the account owner is not the contributor;

(iii) The name, address and social security number of the designated beneficiary;

(iv) The certification relating to no excess contributions required by subsection (17) of this section;

(v) Any other information that the board may require;

(b) Paying the one-time application fee established by the board;

(c) Making the minimum contribution required by the board or by opening an account;

(d) Designating the type of account to be opened if more than one (1) type of account is offered.

(2) Any person may make contributions to an account after the account is opened.

(3) Contributions to accounts may be made only in cash.

(4) Account owners may withdraw all or part of the balance from an account on sixty (60) days' notice, or a shorter period as may be authorized by the board, under rules prescribed by the board. These rules shall include provisions that will generally enable the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may, but need not, require one (1) or more of the following:

(a) Account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses or other supporting material;

(b) Qualified withdrawals from an account shall be made only by a check payable as designated by the account owner;

(c) Withdrawals not meeting certain requirements shall be treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner must seek refunds of penalties directly from the board.

(5) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the board.

(6) On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

(7) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate either of the following provisions of this section relating to excess contributions or to investment choice.

(8) In the case of any nonqualified withdrawal from an account, an amount equal to ten percent (10%) of the portion of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the Internal Revenue Code shall be withheld as a penalty and paid to the board for use in operating and marketing the program and for state student financial aid.

(9) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (8) of this section or change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a penalty that is more than a de minimis penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code.

(10) The board may decrease the percentage of the penalty prescribed in subsection (8) of this section if it determines that both of the following conditions exist:

(a) The penalty is greater than is required to constitute a penalty that is more than a de minimis penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code;

(b) The penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating and marketing the program and to recover any costs not previously recovered.

(11) If an account owner makes a nonqualified withdrawal and no penalty amount is withheld pursuant to subsection (8) of this section or the amount withheld is less than the amount required to be withheld under that subsection for nonqualified withdrawals, the account owner shall pay the unpaid portion of the penalty to the state tax commission on or before April 15 of the following tax year.

(12) Each account shall be maintained separately from each other account under the program.

(13) Separate records and accounting shall be maintained for each account for each designated beneficiary.

(14) No contributor to, account owner of or designated beneficiary of any account may direct the investment of any contributions to an account or the earnings from the account.

(15) If the board terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the board shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are current contractors would not cause a plan to cease to be a qualified state tuition plan.

(16) Neither an account owner nor a designated beneficiary may use

an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(17) The board shall adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules shall address the following:

(a) Procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(b) The establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(c) The board shall review the quarterly reports received from participating financial institutions and certify that the balance in all qualified state tuition programs, as defined in section 529 of the Internal Revenue Code, of which that person is the designated beneficiary does not exceed the lesser of:

(i) A maximum college savings amount established by the board from time to time;

(ii) The cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;

(d) Requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section.

(18) If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution shall be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

(19) The financial institution shall provide statements to each account owner at least once each year within thirty-one (31) days after the twelve (12) month period to which they relate. The statement shall identify the contributions made during a preceding twelve (12) month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period and any other matters that the board requires be reported to the account owner.

(20) Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.

(21) A state or local government or organization described in section 501(c)(3) of the Internal Revenue Code may open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

(22) In the case of any account described in subsection (21) of this section, the requirement that a designated beneficiary be designated when an account is opened does not apply and each person who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.

(23) Any social security numbers, addresses or telephone numbers of individual account holders and designated beneficiaries that come into the possession of the board are confidential, are not public records and shall not be released by the board.

33-5405. TAXATION TO BENEFICIARY. The designated beneficiary, as defined in section 529(e)(1) of the Internal Revenue Code, from an individual trust account or savings account established under this chapter is liable for taxes that may accrue under chapter 30, title 63, Idaho Code, when a qualified withdrawal is made by the designated beneficiary.

33-5406. SCHOLARSHIPS AND FINANCIAL AID PROVISIONS. (1) Any student loan program, student grant program or other financial assistance program established or administered by this state shall treat the balance in an account of which the student is a designated beneficiary as if it were an asset of the parent of the designated beneficiary and not as a scholarship or grant or as an asset of the student for determining a student's or parent's income, assets or financial need.

(2) Subsection (1) of this section applies to any financial assistance program administered by a state-supported college or university.

(3) Subsections (1) and (2) of this section do not apply if any of the following conditions exist:

(a) Federal law requires all or a portion of the amount in an account to be taken into account in a different manner;

(b) Federal benefits could be lost if all or a portion of the amount in an account is not taken into account in a different manner;

(c) A specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into account.

33-5407. LIMITATIONS OF CHAPTER. (1) Nothing in this chapter shall be construed to:

(a) Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

(b) Guarantee that a designated beneficiary will be admitted to a higher education institution or be allowed to continue enrollment at or graduate from a higher education institution located in this state after admission;

(c) Establish state residency for a person merely because the person is a designated beneficiary;

(d) Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(2) Nothing in this chapter establishes any obligation of this state or any agency or instrumentality of this state to guarantee for the benefit of any account owner, contributor to an account or designated beneficiary any of the following:

(a) The return of any amounts contributed to an account;

(b) The rate of interest or other return on any account;

(c) The payment of interest or other return on any account;

(d) Tuition rates or the cost of related higher education expenditures.

(3) Under rules adopted by the board, every contract, application, deposit slip or other similar document that may be used in con-

nection with a contribution to an account shall clearly indicate that the account is not insured by this state and neither the principal deposited nor the investment return is guaranteed by this state.

33-5408. ANNUAL REPORT. The board shall submit an annual report to the speaker of the house of representatives and the president pro tempore of the senate by February 1 that summarizes the board's findings and recommendations concerning the program established by this chapter.

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 63-3022M, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(a) 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.

(b) Add the net operating loss deduction used in arriving at taxable income.

(c) (1) A net operating loss for any taxable year commencing on and after January 1, 1999, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars ($100,000) to the two (2) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the two (2) preceding years may be subtracted in the next twenty (20) 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 two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) 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 (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. However, if at least one (1) corporation within a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred, then the net operating loss may be subtracted. Net operating losses incurred by a person, other than a corporation, in business activities not taxable by Idaho may not be subtracted.

(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.

(e) In the case of a corporation, subtract an amount determined under section 78 of the Internal Revenue Code to be taxable as dividends.

(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.

(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.

(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.

(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.

(j) In the case of a corporation, including any corporation included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, add any capital loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. However, do not add any capital loss deducted if a corporation, including any corporation in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. 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 (c) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(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) The standard deduction as defined in section 63, Internal Revenue Code.

(2) 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.

(l) 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.

(m) 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.

(n) 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.

(o) In the case of an individual, deduct the amount contributed to a college savings program pursuant to chapter 54, title 33, Idaho Code, but not more than four thousand dollars ($4,000) per tax year.

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, 2000.

Approved April 12, 2000.

CHAPTER 214
(H.B. No. 643)

AN ACT

RELATING TO DRIVER'S LICENSES AND INSTRUCTION PERMITS; AMENDING SECTION 33-1702, IDAHO CODE, TO CLARIFY THAT PUBLIC SCHOOL DRIVER TRAINING PROGRAMS SHALL INCLUDE SIX HOURS OBSERVATION TIME IN A DRIVER TRAINING CAR AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-1703, IDAHO CODE, TO CHANGE THE MINIMUM AGE OF ELIGIBILITY FOR DRIVER'S TRAINING FROM FOURTEEN YEARS TO FOURTEEN AND ONE-HALF YEARS; AMENDING SECTION 49-110, IDAHO CODE, TO DEFINE THE TERMS "CLASS A, B OR C INSTRUCTION PERMIT," "CLASS D DRIVER'S TRAINING INSTRUCTION PERMIT," "CLASS D INSTRUCTION PERMIT," AND "CLASS D SUPERVISED INSTRUCTION PERMIT"; AMENDING SECTION 49-303, IDAHO CODE, TO CLARIFY THAT A DRIVER'S TRAINING INSTRUCTION COURSE SHALL INCLUDE COMPLETING THE REQUIREMENTS OF A CLASS D SUPERVISED INSTRUCTION PERMIT AND TO PROVIDE AN EXCEPTION; AMENDING SECTION 49-303A, IDAHO CODE, TO CLARIFY THAT PERSONS UNDER EIGHTEEN YEARS OF AGE MAY BE ISSUED A CLASS D DRIVER'S TRAINING INSTRUCTION PERMIT OR A CLASS D SUPERVISED INSTRUCTION PERMIT; AMENDING SECTION 49-305, IDAHO CODE, TO CLARIFY CONDITIONS FOR ISSUING A CLASS D INSTRUCTION PERMIT AND A CLASS A, B OR C INSTRUCTION PERMIT AND TO DELETE OBSOLETE PROVISIONS; AMENDING SECTION 49-306, IDAHO CODE, AS AMENDED BY SECTION 9, CHAPTER 81, LAWS OF 1999, SECTION 1,

CHAPTER 317, LAWS OF 1999, SECTION 1, CHAPTER 318, LAWS OF 1999, SECTION 1, CHAPTER 319, LAWS OF 1999 AND SECTION 2, CHAPTER 360, LAWS OF 1999, TO PROVIDE THAT INFORMATION REQUIRED ON AN APPLICATION FOR A DRIVER'S LICENSE SHALL ALSO BE REQUIRED ON AN APPLICATION FOR ANY INSTRUCTION PERMIT, TO PROVIDE A FEE FOR A CLASS D SUPERVISED INSTRUCTION PERMIT AND TO MAKE TECHNICAL CORRECTIONS AND TO CORRECT CODIFIER ERRORS; AMENDING SECTION 49-307, IDAHO CODE, TO PROHIBIT ATTENDANCE OR PARTICIPATION IN A CLASS D DRIVER'S TRAINING COURSE UNTIL A CLASS D DRIVER'S TRAINING INSTRUCTION PERMIT HAS BEEN OBTAINED, TO REQUIRE THAT A PERMITTEE SHALL OPERATE A MOTOR VEHICLE UNDER THE TERMS AND CONDITIONS OF A CLASS D SUPERVISED INSTRUCTION PERMIT FOLLOWING SUCCESSFUL COMPLETION OF A CLASS D DRIVER'S TRAINING COURSE AND TO PROVIDE RESTRICTIONS AND REQUIREMENTS OF A CLASS D SUPERVISED INSTRUCTION PERMIT WHICH MUST BE SATISFIED BEFORE A PERMITTEE MAY APPLY FOR A CLASS D DRIVER'S LICENSE; AMENDING SECTION 49-310, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE AND TO PROVIDE THAT A PERSON SIGNING AN APPLICATION FOR THE DRIVING PRIVILEGES OF A PERSON UNDER EIGHTEEN YEARS OF AGE SHALL ATTEST THAT THE CONDITIONS REQUIRED ON A CLASS D SUPERVISED INSTRUCTION PERMIT SHALL HAVE BEEN SATISFIED WHEN THE PERMITTEE APPLIES FOR A CLASS D DRIVER'S LICENSE; AMENDING SECTION 49-313, IDAHO CODE, TO DELETE OBSOLETE PROVISIONS RELATING TO APPLICATION FOR A DRIVER'S LICENSE FOLLOWING COMPLETION OF A DRIVER'S TRAINING COURSE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-322, IDAHO CODE, TO PROVIDE AUTHORITY TO THE IDAHO TRANSPORTATION DEPARTMENT TO CANCEL INSTRUCTION PERMITS UNDER SPECIFIED CONDITIONS; AMENDING SECTION 49-326, IDAHO CODE, TO PROVIDE AUTHORITY TO THE IDAHO TRANSPORTATION DEPARTMENT TO SUSPEND THE DRIVER'S LICENSE OF A PERSON UNDER SEVENTEEN YEARS OF AGE FOR THIRTY DAYS FOR A SECOND CONVICTION AND FOR SIXTY DAYS FOR A THIRD OR SUBSEQUENT CONVICTION INVOLVING A MOVING TRAFFIC VIOLATION, TO DENY RESTRICTED DRIVING PRIVILEGES DURING SUCH PERIOD OF SUSPENSION AND TO PROVIDE A CODE REFERENCE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 transportation department 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, six (6) hours observation time in a driver training car, 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~~ rules, 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 2. That Section 33-1703, Idaho Code, be, and the same is hereby amended to read as follows:

33-1703. ELIGIBLE PUPILS -- TIME COURSES OFFERED. Reimbursable programs shall be open to all residents of the state, of the ages fourteen and one-half (14 1/2) through twenty-one (21) years whether or not they are enrolled in a public, private or parochial school. Residents living within any school district operating, or participating in the operation of, an authorized driver training program, shall enroll, when possible, in the training program offered in the school district of residence.

No charge or enrollment fee, not required to be paid by public school pupils for driver training, shall be required to be paid by residents not then attending public schools.

Driver training programs herein authorized may, at the discretion of the board of trustees, be conducted after school hours, or on Saturdays, or during regular school vacations.

SECTION 3. That Section 49-110, Idaho Code, be, and the same is hereby amended to read as follows:

49-110. DEFINITIONS -- I.

(1) "Identifying number" means:

(a) Motor number. That identifying number stamped on the engine of a vehicle.

(b) Vehicle identification number. The numbers and letters, if any, placed on a vehicle by the manufacturer for the purpose of identifying the vehicle.

(2) "Implements of husbandry" means every vehicle including self-propelled units, designed or adapted and used exclusively in agricultural, horticultural, dairy and livestock growing and feeding operations when being incidentally operated. Such implements include, but are not limited to, combines, discs, dry and liquid fertilizer spreaders, cargo tanks, harrows, hay balers, harvesting and stacking equipment, pesticide applicators, plows, swathers, mint tubs and mint wagons, and farm wagons. A farm tractor when attached to or drawing any implement of husbandry shall be construed to be an implement of husbandry. "Implements of husbandry" do not include semitrailers, nor do they include motor vehicles or trailers, unless their design limits their use to agricultural, horticultural, dairy or livestock growing and feeding operations.

(3) "Incidentally operated" means the transport of the implement of husbandry from one (1) farm operation to another.

(4) "Individual record" means a record containing personal information about a designated person who is the subject of the record as identified in a request for information.

(5) "Infraction" means a civil public offense, not constituting a crime, which is not punishable by incarceration and for which there is no right to a trial by jury or right to court-appointed counsel, and which is punishable by only a penalty not exceeding one hundred dollars ($100) and no imprisonment.

(6) "Instruction permits":

(a) "Class A, B or C instruction permit" means a temporary privilege to operate a motor vehicle for which a commercial driver's license is required; is available only to a person who is eighteen (18) years of age or older; is issued pursuant to the provisions of section 49-305, Idaho Code; and the permittee is subject to the conditions specified therein.

(b) "Class D driver's training instruction permit" means a temporary privilege to operate a class D motor vehicle while attending classes as an enrollee of a public or private driver's training course only; is available to a person aged fourteen and one-half (14 1/2) years; is issued to the instructor of the driver's training course; expires one (1) year from the date of issue; is issued pursuant to the provisions of section 49-307, Idaho Code; and the permittee is subject to the conditions specified therein.

(c) "Class D instruction permit" means a temporary privilege to operate a class D motor vehicle which is available to a person under the age of seventeen (17) years who has successfully completed an approved driver's training course and has satisfied the requirements of a class D supervised instruction permit, or to any person seventeen (17) years of age or older; is valid for a period of one hundred eighty (180) days; privileges are limited to driving with a person who is at least eighteen (18) years of age who holds a valid class D driver's license and is actually occupying a seat beside the permittee; is issued pursuant to the provisions of section 49-305, Idaho Code; and the permittee is subject to the conditions specified therein.

(d) "Class D supervised instruction permit" means a temporary privilege to operate a class D motor vehicle which is available to a person who is at least fourteen and one-half (14 1/2) years of age who has successfully completed an approved driver's training course, and is valid for a minimum of four (4) months. No person may apply for a class D driver's license until he has attained the age of at least fifteen (15) years and has successfully satisfied the requirements of this permit, as specified and issued pursuant to the provisions of section 49-307, Idaho Code.

(7) "Instructor" means any person, whether acting for himself as operator of a commercial driver training school or for such a school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises practice of, persons learning to operate or drive motor vehicles.

(~~7~~8) "Insurer" means any insurer, public or private, which shall include, but not be limited to, insurance companies domiciled in the

state of Idaho, agents, adjuster or any other person acting on behalf of any insurance not domiciled in the state of Idaho and any self-insured entity operating under Idaho insurance laws or rules.

(~~8~~9) "Intersection" means:

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two (2) roadways thirty (30) feet or more apart, then every crossing of each roadway of the divided highway by an intersecting highway shall be regarded as a separate intersection. In the event an intersecting highway also includes two (2) roadways thirty (30) feet or more apart, then every crossing of two (2) roadways of the highways shall be regarded as a separate intersection.

(c) The junction of an alley with a street or highway shall not constitute an intersection.

SECTION 4. 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, any 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, has completed the requirements of a class D supervised instruction permit, 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. If a person who is at least fifteen (15) years but is under seventeen (17) years of age has successfully completed an approved driver's training course and has been issued a driver's license in another state, he may be issued a class D driver's license in this state.

(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 and has not satisfied the requirements of a class D supervised instruction permit.

(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 previous driver's license shall not be issued a class A, B or C driver's license or a class A, B or C instruction permit.

(5) As a driver has had his license, class D instruction permit, ~~driver-training-permit,~~ privileges or right to drive suspended for the

duration of the suspension, nor to any person who has had his class D driver's training instruction permit or class D supervised instruction permit cancelled for the duration of the cancellation, nor to any person whose license has been 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.

(13) Is not a resident of the state of Idaho.

SECTION 5. That Section 49-303A, Idaho Code, be, and the same is hereby amended to read as follows:

49-303A. DRIVER'S LICENSE OR PERMITS ISSUED TO CERTAIN PERSONS UNDER THE AGE OF EIGHTEEN YEARS. (1) Attendance requirements. The department may issue a driver's license, a class D driver's training instruction permit, a class D supervised instruction permit, or a class D 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 <u>any instruction</u> 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 requirements 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 6. That Section 49-305, Idaho Code, be, and the same is hereby amended to read as follows:

49-305. INSTRUCTION PERMITS -- TEMPORARY LICENSES -- 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 class A, B or C instruction permit for the type of vehicle(s) the person will be operating, or a class D instruction permit for a class D motor vehicle, entitling the applicant, while having the permit in his immediate possession, to drive a motor vehicle upon the highways for a period of up to one hundred eighty (180) days. That person must be accompanied by an adult driver eighteen (18) years of age or older 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~~ seventeen (1~~5~~7) 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 any class D 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, holds a valid Idaho class D driver's license and has at least one (1) year of driving experience, 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-vehicle operators.~~

(2) The department may, 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 class D 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. The certified copy of his birth certificate shall be required before a class D driver's license or class D instruction permit will be issued.

(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, 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. 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 7. That Section 49-306, Idaho Code, as amended by Section 9, Chapter 81, Laws of 1999, Section 1, Chapter 317, Laws of 1999, Section 1, Chapter 318, Laws of 1999, Section 1, Chapter 319, Laws of

1999 and Section 2, Chapter 360, Laws of 1999, 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 any 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 - 21 years and older $28.50

(b) Class A, B, C license with endorsements - under 21 years $17.50

(c) Class D license - under 18 years $17.50

(d) Class D license - 18 to 21 years $17.50

(e) Four-year Class D license - 21 years and older $24.50

(~~c~~f) Eight-year Class D license $41.00

(~~df~~g) Class A, B, C instruction permit $19.50

(~~eg~~h) Class D instruction permit or supervised instruction permit $11.50

(~~fh~~i) Duplicate driver's license or permit issued under section 49-318, Idaho Code $11.50

(~~gi~~j) Driver's license extension issued under section 49-319, Idaho Code ..... $ 6.50

(~~hj~~k) License classification change (upgrade) $15.50

(~~ik~~l) Endorsement addition $11.50

(~~jl~~m) Class A, B, C skills tests ..... not more than $55.00

(~~km~~n) Class D skills test $15.00

(~~ln~~o) Motorcycle endorsement skills test .....$ 5.00

(~~mo~~p) Knowledge test ..... $ 3.00

(~~np~~q) Seasonal driver's license..... $27.50

(~~oq~~r) One time motorcycle "M" endorsement $11.50

(~~pr~~s) Motorcycle endorsement instruction permit $11.50

(~~qs~~t) Restricted driving permit $35.00

(2) Every application shall state the true and full name, date of birth, sex, declaration of Idaho residency, Idaho residence address and mailing address, if different, of the applicant, height, weight, hair color, and eye color, and the applicant's social security number as verified by the applicant's social security card or by the social security administration.

(a) The requirement that an applicant provide a social security number as verified by his social security card or by the social security administration shall apply only to applicants who have been assigned a social security number.

(b) An applicant who has not been assigned a social security number shall:

(i) Present written verification from the social security administration that the applicant has not been assigned a social security number; and

(ii) Submit a birth certificate, passport or other documen-

tary evidence issued by an entity other than a state or the United States; and

(iii) Submit such proof as the department may require that the applicant is lawfully present in the United States.

A driver's license or <u>any</u> 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 acceptable to the examiner or the department and date of birth as set forth in a certified copy of his birth certificate when obtainable, or another document which provides satisfactory evidence of a person's date of birth acceptable to the examiner or the department.

(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 four-year driver's license or <u>any class D</u> instruction permit application fees, application for a duplicate driver's license or permit, classification change, seasonal driver's license and additional endorsement, and ten dollars ($10.00) from each eight-year class D driver's license, 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; and

(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 four-year driver's license or seasonal driver's license, and four dollars ($4.00) of each fee for an eight-year class D driver's license, and one dollar and fifty cents ($1.50) of each fee charged for driver's licenses pursuant to subsections (1)(b), (c) and (d) of this section, shall be deposited in the emergency medical services account II created in section 39-146A, Idaho Code, and four dollars ($4.00) of each such fee shall be deposited in the emergency medical services account III created in section 39-146B, 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, and ten dollars ($10.00) of each fee charged for a license pursuant to subsection (1)(b) of this section, 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) Four dollars ($4.00) of each fee for a class A, B, or C instruction permit shall be deposited in the emergency medical services account III created in section 39-146B, Idaho Code; and

(e) 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

(f) 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

(g) Five dollars and thirty cents ($5.30) of each fee for a four-year class D driver's license, and ten dollars and sixty cents ($10.60) of each fee for an eight-year class D driver's license, and four dollars ($4.00) of each fee charged for a license pursuant to subsections (1)(c) and (d) of this section, shall be deposited in the driver training account; and

(h) Seven dollars and twenty cents ($7.20) of each fee for a four-year class D driver's license, and fourteen dollars and forty cents ($14.40) of each fee for an eight-year class D driver's license, and six dollars ($6.00) of each fee charged for a license pursuant to subsections (1)(c) and (d) of this section, shall be deposited in the highway distribution account; and

(i) 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

(j) 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

(k) 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

(l) One dollar ($1.00) of each fee for a class A, B, C or ~~or~~ four-year D driver's license, and two dollars ($2.00) of each fee for an eight-year class D driver's license, and one dollar ($1.00) of each fee charged for a license pursuant to subsections (1)(b), (c) and (d) of this section, shall be deposited in the motorcycle safety program fund established in section 33-4904, Idaho Code; and

(m) 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 not more than fifty dollars ($50.00) 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.

(12) 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 (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 8. That Section 49-307, Idaho Code, be, and the same is hereby amended to read as follows:

49-307. FEE FOR CLASS D DRIVER'S TRAINING INSTRUCTION PERMIT -- CLASS D SUPERVISED INSTRUCTION PERMIT. (1) Every enrollee of a class D 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 class D 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 class D driver training course shall provide the type of information required for a driver's license or instruction permit, but the class D driver's training instruction permit shall be issued to the instructor of the course, and the class D driver training instruction permit shall expire one (1) year from the issue date. No enrollee of any class D driver training course shall be allowed to attend classes or participate in driving instruction unless he has obtained a class D driver's training instruction permit.

(4) Upon successful completion of the class D driver's training course, the driver's training instructor shall date and sign the class D driver's training instruction permit over to the parent or legal guardian of the permittee, and the parent or legal guardian shall also date and sign the class D driver's training permit and in so doing agrees to assume responsibility for ensuring that the permittee complies with the requirements of operating a vehicle with a class D supervised instruction permit. The signed and dated class D driver's training instruction permit shall then serve as a class D supervised instruction permit.

(5) No permittee may apply for a class D driver's license sooner than fifteen (15) years of age and no sooner than four (4) months after completing a class D driver's training course, during which time the permittee shall satisfy all requirements for operation of a class D vehicle with a class D supervised instruction permit as follows:

(a) The permittee shall not operate a vehicle unless he is accompanied by a driver who holds a valid driver's license, is twenty-one (21) years of age or older, and who is actually occupying a seat beside the permittee driver. The supervising driver and the permittee shall be the only occupants of the front passenger section of the vehicle.

(b) The permittee shall accumulate at least fifty (50) hours of supervised driving time, ten (10) hours of which shall be during hours of darkness.

(c) The permit shall be in the permittee's immediate possession at all times while operating a vehicle.

(d) In addition to the permittee driver and the supervising driver, all other occupants of the vehicle shall wear a seat belt or be restrained by child passenger restraints as required by law.

(e) The permittee is subject to the provisions of sections 18-1502 and 18-8004, Idaho Code, relating to violation of age restrictions on consumption of beer, wine, and alcohol and driving under the influence of alcohol, drugs or any other intoxicating

substances, respectively.

(f) The permittee shall not have been convicted of any moving traffic violation, or have had driving privileges suspended by the department or the court for any offense, or found to be in violation of any of the restrictions on the class D supervised instruction permit, for a period of at least four (4) months from the date the driver's training instructor signed the permit over to the parent or legal guardian, or from the date a cancelled class D supervised instruction permit was reissued, or until the permittee reaches seventeen (17) years of age.

(g) If the permittee is convicted of a violation of any traffic law, or section 18-1502, Idaho Code, or section 18-8004, Idaho Code, or is found to be in violation of any of the restrictions on the class D supervised instruction permit, the department shall cancel the class D supervised instruction permit, and the cancellation shall not be used to establish rates of motor vehicle insurance charged by a casualty insurer. The permittee may reapply for and be issued a new class D supervised instruction permit upon payment of the appropriate fees, and shall again be required to operate with the class D supervised instruction permit for at least four (4) months from the date of reissue without a conviction or suspension, accumulate the required hours of driving time and adhere to the requirements as specified in paragraphs (a) through (f) of this subsection (5).

(6) Upon completion of the requirements in subsection (5) of this section, the permittee shall take the knowledge test and skills test administered by a person certified by the Idaho transportation department to administer knowledge and skills tests.

(7) Upon passage of the knowledge and skills tests, the permittee may apply for a class D driver's license with driving privileges restricted to daylight hours for persons under sixteen (16) years of age, and with full privileges at sixteen (16) years of age or older. 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.

~~(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 9. That Section 49-310, Idaho Code, be, and the same is hereby amended to read as follows:

49-310. APPLICATIONS OF PERSONS UNDER THE AGE OF EIGHTEEN YEARS. (1) The application of any person under the age of eighteen (18) years for any class D instruction permit, restricted driver's license or driver's license shall be signed and verified before a person authorized to administer oaths by either the father or mother of the applicant, if both are living and have custody of him; or if either be dead, then by the surviving parent who has custody of him; or by the Idaho resident host of a foreign exchange student, or in the event neither parent is living, or if living and does not have the custody of the applicant, then by the person or guardian having such custody, with verifiable custody or guardianship documents, or by an employer

of the applicant. In the event there is no guardian or employer then some other responsible person willing to assume the obligation for the applicant may sign the application. Any person who signs the applicant's application shall attest that the applicant is in compliance with the school attendance provisions of section 49-303A, Idaho Code, and when signing for a class D driver's training permit or a class D supervised instruction permit, shall attest that the minor person has satisfied the requirements and conditions applicable to the class D supervised instruction permit pursuant to section 49-307, Idaho Code, when the minor person applies for a class D driver's license. The person willing to assume responsibility for the applicant must be at least eighteen (18) years of age.

(2) Any negligence or willful misconduct of a person under the age of eighteen (18) years when operating a motor vehicle upon a highway shall be imputed to the person who signed the application of that person for a permit or driver's license, and that person shall be jointly and severally liable with the permit or driver's license holder for any damage caused by negligence or willful misconduct, except as otherwise provided by law.

(3) In the event a permit or driver's license holder under the age of eighteen (18) years deposits, or there is deposited upon his behalf, proof of financial responsibility in respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, or by the director if the form and amount is not fixed by law, then the department may accept the application when signed by one (1) parent or guardian of the applicant, and while that proof is maintained the parent or guardian shall not be subject to the liability imposed under subsection (2) of this section.

(4) Any person who has signed the application of a minor for a permit or driver's license shall be liable civilly for the payment of any court penalty imposed because the minor has been found to have committed an infraction violation. The provisions of this section shall not apply or create any civil liability for the person signing the application in connection with any pedestrian or bicycle infraction, and provided this subsection shall not apply to any civil action where the plaintiff is other than the state of Idaho.

SECTION 10. 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. The examination shall include a test of the applicant's eyesight, 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 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 skills 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 skills test for a class A, B, C or D driver's license or for any 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~~5~~) Any person failing to pass a knowledge or skills 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~~6) Any person retaking a knowledge or skills test for a driver's license shall pay the appropriate testing fee as specified in section 49-306, Idaho Code.

(~~8~~7) 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.

(~~9~~8) 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.

(~~10~~9) 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.

(1~~1~~0) 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.

(1~~2~~1) Skill examinations for seasonal driver's licenses shall be waived.

SECTION 11. That Section 49-322, Idaho Code, be, and the same is hereby amended to read as follows:

49-322. AUTHORITY OF DEPARTMENT TO CANCEL DRIVER'S LICENSE OR INSTRUCTION PERMIT. (1) The department shall cancel any driver's license or instruction permit upon determining that the licensee or permittee was not entitled to the issuance of the driver's license or instruction permit, or that the licensee or permittee failed to give the required or correct information in his application, or committed fraud in making the application.

(2) Upon a cancellation, the licensee or permittee shall surrender the cancelled driver's license or cancelled instruction permit to the department.

(3) The department shall cancel a person's commercial driver's license upon determining that the class A, B, or C licensee has falsified information. Upon cancellation of a class A, B, or C driver's license, the licensee shall be disqualified from operating a commercial motor vehicle for a period of sixty (60) days.

(4) When a driver's license has been cancelled for reasons of impairment, incompetence or inability of the licensed driver to operate a motor vehicle safely as provided in section 49-303 or 49-326, Idaho Code, and the licensee has voluntarily surrendered his driver's license, or when a licensed driver requests cancellation of his license for any of the same reasons stated in this subsection and he voluntarily surrenders his license, the licensee may be eligible for a no-fee identification card as provided in section 49-2444, Idaho Code.

SECTION 12. 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 in another state as evidenced by a conviction, court order or administrative action, 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 privi-

leges 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;

(o) Was cited under the age of seventeen (17) years and subsequently received a conviction involving a moving traffic violation, and providing the driver shall receive a written warning from the Idaho transportation department for a first conviction; the driver's license shall be suspended for a period of thirty (30) days for a second conviction; and the driver's license shall be suspended for a period of sixty (60) days for a third or subsequent conviction; and providing further that no restricted driving privileges shall be issued during any period of suspension hereunder.

(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) or (o), 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, 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 13. This act shall be in full force and effect on and after January 1, 2001.

Approved April 11, 2000.

CHAPTER 215
(H.B. No. 606)

AN ACT

RELATING TO LAND USED TO PROTECT WILDLIFE AND WILDLIFE HABITAT; AMENDING SECTION 63-605, IDAHO CODE, TO EXPAND THE DEFINITION OF LAND USED TO PROTECT WILDLIFE AND WILDLIFE HABITAT TO BE APPRAISED, ASSESSED AND TAXED AS AGRICULTURAL PROPERTY, DRY GRAZING LAND OR WASTE, TO DEFINE A TERM AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-605, Idaho Code, be, and the same is hereby amended to read as follows:

63-605. LAND USED TO PROTECT WILDLIFE AND WILDLIFE HABITAT. Land which is either:

(1) O~~o~~wned and used for wildlife habitat by a private, nonprofit corporation which corporation has a recognized tax exempt status under section 501(~~6~~c)(3) of the internal revenue code, and which corporation qualifies for exemption status under section 63-602C, Idaho Code, and which corporation is dedicated to the conservation of wildlife or wildlife habitat; or

(2) Being managed pursuant to a conservation easement or a conservation agreement, as defined in this section and which easement or agreement has been entered into with a private, nonprofit corporation which has a tax exempt status under section 501(c)(3) of the internal revenue code, which corporation qualifies for exemption status under

section 63-602C, Idaho Code, and which land formerly qualified as land actively devoted to agriculture pursuant to section 63-604, Idaho Code, dry grazing land or waste pursuant to rule, shall be eligible for appraisal, assessment and taxation as agricultural property, dry grazing land or waste pursuant to rule. As used in this section, "conservation agreement" means a written document between a private, nonprofit corporation enumerated in subsection (1) of this section and the landowner which defines wildlife, flora or fauna or freshwater biota to be protected and outlines a minimum of a ten (10) year plan to protect target species. The conservation agreement or a copy of the document creating the conservation easement shall be filed with the county assessor by April 15 of the year for which the tax status is claimed.

SECTION 2. This act shall be in full force and effect on and after January 1, 2001.

Approved April 12, 2000.

CHAPTER 216
(H.B. No. 651)

AN ACT

RELATING TO INCOME TAX CREDIT FOR CONTRIBUTIONS TO NONPROFIT SUBSTANCE ABUSE CENTERS; AMENDING SECTION 63-3029C, IDAHO CODE, TO AUTHORIZE A CREDIT AGAINST INCOME TAX FOR CERTAIN CHARITABLE CONTRIBUTIONS TO NONPROFIT SUBSTANCE ABUSE CENTERS LICENSED BY THE DEPARTMENT OF HEALTH AND WELFARE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE 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~~ CERTAIN 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 the anchor house or its foundation, to the children's home society of Idaho, inc., to the Idaho youth ranch or its foundation, to the hope house, inc. or its foundation, to the north Idaho children's home or its foundation, to a center for independent living located within the state of Idaho, to a nonprofit substance abuse center licensed by the department of health and welfare, or to a nonprofit rehabilitation facility located within the state of Idaho or its foundation.

(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.

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, 2000.

Approved April 12, 2000.

CHAPTER 217
(H.B. No. 653)

AN ACT

RELATING TO LOCAL LAND USE PLANNING; AMENDING SECTION 67-6529, IDAHO CODE, TO PROVIDE AUTHORITY TO BOARDS OF COUNTY COMMISSIONERS TO REGULATE THE SITING OF LARGE CONFINED OR CONCENTRATED ANIMAL FEEDING OPERATIONS AND FACILITIES, TO REQUIRE A PUBLIC HEARING AND CONSIDERATION OF COMMENTS, TO PROVIDE AN EXEMPTION FOR COUNTIES WITH AN EXISTING SITING PROCESS AND TO PROVIDE THAT EXEMPT COUNTIES MAY CHOOSE TO REGULATE SITING; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-6529, Idaho Code, be, and the same is hereby amended to read as follows:

67-6529. APPLICABILITY TO AGRICULTURAL LAND -- COUNTIES MAY REGULATE SITING OF CERTAIN ANIMAL OPERATIONS AND FACILITIES. (1) No power granted hereby shall be construed to empower a board of county commissioners to enact any ordinance or resolution which deprives any owner of full and complete use of agricultural land for production of any

agricultural product. Agricultural land shall be defined by local ordinance or resolution.

(2) Notwithstanding any provision of law to the contrary, a board of county commissioners may enact ordinances and resolutions to regulate the siting of large confined animal feeding operations and facilities, as they shall be defined by the board, including the approval or rejection of sites for the operations and facilities. A board of county commissioners may reject a site regardless of the approval or rejection of the site by a state agency. A board of county commissioners undertaking such regulation shall hold at least one (1) public hearing affording the public an opportunity to comment on each proposed site. Several sites may be considered at any one (1) public hearing. Only members of the public with their primary residence within a one (1) mile radius of a proposed site may provide comment at the hearing. However, this distance may be increased by the board. A record of each hearing and comments received shall be made by the board. The comments shall be duly considered by the board when deciding whether to approve or reject a proposed site. A board of county commissioners with a process in place on January 1, 2000, for the siting of large confined animal feeding operations and facilities is exempt from the requirements of this subsection but may choose to operate under this subsection.

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 April 12, 2000.

CHAPTER 218
(H.B. No. 664)

AN ACT

RELATING TO THE CRIME OF RAPE; AMENDING SECTION 18-6101, IDAHO CODE, TO PROVIDE THAT RAPE OCCURS IF THE FEMALE SUBMITS TO PENETRATION OF THE ORAL, ANAL OR VAGINAL OPENING WITH THE PERPETRATOR'S PENIS UNDER THE BELIEF, INSTILLED BY THE ACTOR, THAT IF SHE DOES NOT SUBMIT, THE ACTOR WILL CAUSE PHYSICAL HARM TO SOME PERSON IN THE FUTURE, OR CAUSE DAMAGE TO PROPERTY, OR ENGAGE IN OTHER CONDUCT CONSTITUTING A CRIME, OR ACCUSE ANY PERSON OF A CRIME OR CAUSE CRIMINAL CHARGES TO BE INSTITUTED AGAINST HER, OR EXPOSE A SECRET OR PUBLICIZE AN ASSERTED FACT, WHETHER TRUE OR FALSE, TENDING TO SUBJECT ANY PERSON TO HATRED, CONTEMPT OR RIDICULE.

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

SECTION 1. That Section 18-6101, Idaho Code, be, and the same is hereby amended to read as follows:

18-6101. RAPE DEFINED. Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the

perpetrator's penis accomplished with a female under either of the following circumstances:

1. Where the female is under the age of eighteen (18) years.

2. Where she is incapable, through any unsoundness of mind, whether temporary or permanent, of giving legal consent.

3. Where she resists but her resistance is overcome by force or violence.

4. Where she is prevented from resistance by threats of immediate and great bodily harm, accompanied by apparent power of execution; or by any intoxicating, narcotic, or anaesthetic substance administered by or with the privity of the accused.

5. Where she is at the time unconscious of the nature of the act, and this is known to the accused.

6. Where she submits under the belief that the person committing the act is her husband, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

7. Where she submits under the belief, instilled by the actor, that if she does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against her; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.

Approved April 12, 2000.

CHAPTER 219
(H.B. No. 668)

AN ACT

RELATING TO SAFE SCHOOLS; AMENDING CHAPTER 16, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1613, IDAHO CODE, TO REQUIRE ABATEMENT OF UNSAFE AND UNHEALTHY CONDITIONS IN PUBLIC SCHOOL FACILITIES AND TO PROVIDE THE MECHANISM FOR SUCH ABATEMENT; AMENDING CHAPTER 16, TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-1017, IDAHO CODE, TO CREATE THE SCHOOL SAFETY AND HEALTH REVOLVING LOAN FUND TO BE USED TO ABATE UNSAFE AND UNHEALTHY CONDITIONS IN PUBLIC SCHOOL FACILITIES WHEN THE SCHOOL DISTRICT'S FUNDS ARE INSUFFICIENT AND TO PROVIDE FOR ADMINISTRATION OF THE FUND; DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND PROVIDING THE EFFECT ON CERTAIN LOTTERY MONEYS.

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

SECTION 1. That Chapter 16, 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 33-1613, Idaho Code, and to read as follows:

33-1613. SAFE PUBLIC SCHOOL FACILITIES REQUIRED. (1) Definition.

As used in this section, "public school facilities" means the physical plant of improved or unimproved real property owned or operated by a school district, including school buildings, administration buildings, playgrounds, athletic fields, etc., used by schoolchildren or school district personnel in the normal course of providing a general, uniform and thorough system of public, free common schools, but does not include areas, buildings or parts of buildings closed from or not used in the normal course of providing a general, uniform and thorough system of public, free common schools. The aspects of a safe environment conducive to learning as provided by section 33-1612, Idaho Code, that pertain to the physical plant used to provide a general, uniform and thorough system of public, free common schools are hereby defined as those necessary to comply with the safety and health requirements set forth in this section.

(2) Inspection. It is the duty of the board of trustees of every school district at least once in every school year to require an independent inspection of the district's school facilities to determine whether those school facilities comply with codes addressing safety and health standards for facilities, including electrical, plumbing, mechanical, elevator, fire safety, boiler safety, life safety, structural, snow loading, and sanitary codes, adopted by or pursuant to the Idaho building code advisory act, chapter 41, title 39, Idaho Code, adopted by the state fire marshal, adopted by generally applicable local ordinances, or adopted by rule of the state board of education and applicable to school facilities. The inspection shall be done pursuant to section 39-4130, Idaho Code, or by an independent inspector professionally qualified to conduct inspections under the applicable code. The results of the inspection shall be presented to the board of trustees for their review and consideration.

(3) Abatement required -- Reporting. The board of trustees shall, in their sole discretion, accept or reject the results of the inspection in whole or in part and in so doing shall identify any unsafe or unhealthy conditions in the district. The board of trustees shall require that the unsafe or unhealthy conditions be abated and shall instruct the district's personnel to take necessary steps to abate unsafe or unhealthy conditions. The board of trustees must issue a report in the same school year in which the inspections are made declaring whether any unsafe or unhealthy conditions identified have not been abated. The state board of education may, by rule, provide for uniform reporting of unsafe and unhealthy conditions and for uniform reporting of abatement or absence of abatement of unsafe and unhealthy conditions.

(4) Costs of and plan of abatement. If the school district can abate all unsafe or unhealthy conditions identified with the funds available to the district, it shall do so, and it need not separately account for the costs of abatement nor segregate funds expended for abatement. If the school district cannot abate all unsafe or unhealthy conditions identified with the funds available to it, the board of trustees shall direct that a plan of abatement be prepared. The plan of abatement shall provide a timetable that shall begin no later than the following school year and that shall provide for abatement with all deliberate speed of unsafe and unhealthy conditions identified. The district shall immediately begin to implement its plan of abate-

ment and must separately account for its costs of abatement of unsafe and unhealthy conditions and separately segregate funds for the abatement of unsafe and unhealthy conditions as required by subsection (5) of this section.

(5) Special provisions for implementation of plan of abatement.

(a) Notwithstanding any other provisions of law concerning expenditure of lottery moneys distributed to the school district, all lottery moneys provided to the school district for a school year in which the school district cannot abate unsafe or unhealthy conditions identified and not legally encumbered to other uses at the time and all lottery moneys for following school years shall be segregated and expended exclusively for abatement of unsafe and unhealthy conditions identified until all of the unhealthy and unsafe conditions identified are abated, provided, if the school district has obtained a loan from the safety and health revolving loan fund, the provisions of section 33-1017, Idaho Code, and the conditions of the loan shall determine the use of the district's lottery moneys during the term of the loan.

(b) If the lottery moneys referred to in paragraph (a) of this subsection will, in the board of trustees' estimation, be insufficient to abate the unsafe and unhealthy conditions identified, the plan of abatement shall identify additional sources of funds to complete the abatement of the unsafe and unhealthy conditions. The board of trustees may choose from among the following sources, or from other sources of its own identification, but the plan of abatement must identify sufficient sources of funds for abatement.

(i) If the school district is not levying under chapter 8, title 33, Idaho Code, at the maximum levies allowed by law for levies that may be imposed by a board of trustees without an election, the board of trustees may increase any of those levies as allowed by law for the school year following the school year in which it was unable to abate unsafe or unhealthy conditions identified.

(ii) If the school district is levying under chapter 8, title 33, Idaho Code, at the maximum levies allowed by law for levies that may be imposed by the board of trustees without an election; or, if after increasing those levies to the maximum levies allowed by law for levies that may be imposed by the board of trustees without an election, there will still be insufficient funds to abate unsafe or unhealthy conditions identified, the school district, after giving notice and conducting a hearing, may declare a financial emergency and/or may apply for a loan from the safety and health revolving loan fund as provided in section 33-1017, Idaho Code, to obtain funds to abate the unsafe or unhealthy conditions identified.

(iii) Upon the declaration of a financial emergency, the board of trustees shall have the power to impose a reduction in force, to freeze some or all salaries in the district, and/or to suspend some or all contracts that may be legally suspended upon the declaration of a financial emergency; provided, that when a board of trustees declares a financial emergency, or when a declaration of a financial emergency is

imposed by the state treasurer pursuant to section 33-1017, Idaho Code, and there is a reduction in force, some or all salaries are frozen, or some contracts are suspended, the payments to the school district under the foundation program of chapter 10, title 33, Idaho Code, and in particular the staff allowances under that chapter, shall not be reduced during the duration of the financial emergency as a result of a reduction in force, frozen salaries, or suspended salaries from what the staff allowance would be without the reduction in force, frozen salaries or suspended contracts.

(c) All costs of abatement for a program implementing plans of abatement under subsection (5) of this section must be separately accounted for and documented with regard to abatement of each unsafe or unhealthy condition identified. Funds obtained under section 33-1017, Idaho Code, must be used exclusively to abate unsafe or unhealthy conditions identified. Funds obtained pursuant to section 33-1017, Idaho Code, in excess of funds necessary to abate unsafe or unhealthy conditions identified must be returned as provided in section 33-1017, Idaho Code. Return of these funds shall be judicially enforceable as provided in section 33-1017, Idaho Code.

SECTION 2. That Chapter 10, 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 33-1017, Idaho Code, and to read as follows:

33-1017. SCHOOL SAFETY AND HEALTH REVOLVING LOAN FUND. (1) Fund created. There is hereby created a fund in the state treasury to be known as the school safety and health revolving loan fund to which shall be credited all moneys that may be appropriated, apportioned, allocated and paid back to that fund. Moneys in this fund shall be used exclusively as provided in this section, except that moneys in this fund shall be returned to the budget stabilization fund as provided in this section.

(2) Approval of loan. A school district that does not have the financial resources to abate unsafe or unhealthy conditions identified pursuant to section 33-1613, Idaho Code, and which is eligible to seek additional funds under subsection (5)(b)(ii) of section 33-1613, Idaho Code, may apply to the state treasurer for a loan from the safety and health revolving loan fund. The loan shall be approved if the district's loan application meets the criteria of section 33-1613, Idaho Code, and of this section. If the board of examiners finds that existing and anticipated loans under this section have depleted the school safety and health revolving loan fund to an extent that the fund does not have available sufficient moneys to loan to an eligible district, the board of examiners shall declare that additional loans may be made from the budget stabilization fund in section 57-814, Idaho Code, up to any limits of the use of that fund provided by statute or declared by the governor in time of general revenue shortfalls or major disaster.

(3) Conditions of loan -- Repayment of loan.

(a) The school district's application shall identify the unsafe

or unhealthy conditions that would be abated with the proceeds of the loan and shall propose a method of and timetable for abating those conditions and for repaying the loan.

(b) The state treasurer shall review the application to determine whether the application is for abatement of unsafe or unhealthy conditions as described in section 33-1613, Idaho Code, and to determine whether the estimated costs of abatement and proposed plan of abatement is reasonable. In reviewing the application, the state treasurer may call upon the assistance of the state division of building safety, the state fire marshal, the state department of administration, the state board of education, the state department of education, or other knowledgeable persons to determine whether conditions identified to be abated meet the criteria of section 33-1613, Idaho Code, and to determine whether the plan of abatement, estimated costs of abatement and proposed methods of abatement are reasonable. The state treasurer shall process the application for a loan within thirty-five (35) days after its receipt.

(i) If the state treasurer determines that the application has not identified unsafe or unhealthy conditions as described in section 33-1613, Idaho Code, the state treasurer shall return the application with a written statement that contains reasons why the loan application does not meet the criteria of this section and of section 33-1613, Idaho Code.

(ii) If the state treasurer determines that the application has identified unsafe or unhealthy conditions as described in section 33-1613, Idaho Code, the state treasurer shall then determine whether the application has proposed reasonable methods of and reasonable estimates of costs of abatement. The state treasurer shall approve the plan of abatement if the district has proposed a reasonable method of abatement and if its estimated costs of abatement are reasonable; otherwise, the state treasurer shall return the application with a written statement how the application can be amended to qualify.

(c) The state treasurer may accept the school district's proposed method of and timetable for repaying the loan or may impose reasonable alternative or substitute methods of and timetables for repayment consistent with this subsection, which alternative or substitute methods shall be binding on the school district. At a minimum, the school district shall be required to repay in each fiscal year succeeding the year of the loan an amount no less than the lottery proceeds that the school district would otherwise receive for that fiscal year and additional foundation support moneys, if any, accruing as a result of an initial overestimation of state average daily attendance support units and later distribution of residual amounts resulting from fewer support units than originally estimated. The loan shall provide for the school safety and health revolving loan fund, or the budget stabilization fund, to the extent that it was the source of the loan, to intercept the lottery proceeds that would otherwise go to the district until the loan is fully repaid. In addition, the state treasurer may impose reasonable fiscal conditions on the district during the term of

loan repayment including, but not limited to, restrictions in use of otherwise unrestricted district moneys to assist in repayment of the loan or in abatement of unsafe or unhealthy conditions, the declaration of a financial emergency during some or all of the term of repayment of the loan, or interception by the school safety and health revolving loan fund of a portion of the state foundation program payments under chapter 10, title 33, Idaho Code, that would otherwise go to the district to repay the loan. The initial term of the loan shall not exceed ten (10) years, but may be extended in the state treasurer's discretion for another ten (10) years.

(d) If a loan is approved, the state treasurer shall establish a line of credit for the school district and monthly reimburse the school district for costs incurred to abate the unsafe or unhealthy conditions identified as the reason for the loan. The state treasurer may prescribe forms and procedures for administration of this line of credit.

(e) A school district may repay its loan or any portion of its loan in advance at any time without penalty.

(4) Interest. Loans to school districts under this section shall bear interest at the average rate of interest that would be available to the state treasury were the loan funds retained in the state treasury, as determined by the state treasurer.

(5) Certification of loan funds spent. If a district obtains a loan pursuant to this section, the board of trustees shall certify the total expenditures of loaned funds that were actually spent to abate unsafe and unhealthy conditions.

(6) Excess funds. If any funds loaned pursuant to this section were not spent on abatement of unsafe and unhealthy conditions, they must be returned to the school safety and health loan fund or the budget stabilization fund, as the case may be. This subsection shall be judicially enforceable by the state treasurer, and any amounts due for repayment under this subsection may be recovered by offset from state foundation program moneys that would otherwise be paid to the school district.

(7) Procedures. The state treasurer may prescribe forms for applying for a loan under this section. No actions taken under this section are contested cases or rulemaking subject to chapter 52, title 67, Idaho Code, and none of the contested case or rulemaking procedures of chapter 52, title 67, Idaho Code, apply to actions taken under this section.

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, 2000; provided however, this act shall not apply to any expenditure of lottery moneys during the 1999-2000 school year that were legally encumbered before the time of passage and approval of this act.

Approved April 12, 2000.

CHAPTER 220
(H.B. No. 694)

AN ACT

RELATING TO INDIAN GAMING; PROVIDING A STATEMENT OF BACKGROUND AND PURPOSE AND TO PROVIDE FOR RESOLUTION OF GAMING ISSUES BETWEEN THE SHOSHONE-BANNOCK TRIBES AND THE STATE IN FEDERAL COURT; TO PROVIDE RATIFICATION AND IMPLEMENTATION OF THE GAMING COMPACT BETWEEN THE SHOSHONE-BANNOCK TRIBES AND THE STATE FOR CLASS III GAMING, AUTHORIZING THE GOVERNOR TO WAIVE IMMUNITY PROVIDED BY THE ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION FOR ISSUES ARISING UNDER THE COMPACT AND PROVIDING FOR CONFIDENTIALITY OF RECORDS; AND DECLARING AN EMERGENCY.

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

SECTION 1. BACKGROUND AND PURPOSE. The Indian Gaming Regulatory Act, 25 U.S.C. Section 2701, et seq., provides for gambling on Indian reservations subject to certain limitations. The state of Idaho and the Shoshone-Bannock Tribes have differed as to the application of those limitations in Idaho.

It is the strong public policy of the state of Idaho to forbid all forms of gambling, including casino-style gambling except a state lottery, pari-mutuel betting, and charitable bingo and raffle games. Nothing contained in this act can or should be construed in contravention of that policy. The tribes believe that they are entitled to conduct gaming operations beyond what the state believes is legally permissible.

It is necessary to have a neutral judicial forum available to resolve these issues and to provide a framework for the resolution of future issues that may arise with respect to tribal gaming. To that end, the parties have agreed to resolve these legal disputes in federal court. The resolution of such disputes in federal court requires legislation authorizing the state to waive its Eleventh Amendment immunity from suit by the tribes in federal court. The Shoshone-Bannock Tribes have agreed to adopt a tribal ordinance authorizing the waiver of their claims of sovereign immunity with respect to such disputes.

To address the foregoing matters, the state and tribes, through Governor Dirk Kempthorne and Chairman Duane Thompson, have agreed to a compact dated February 18, 2000, subject to ratification by the Idaho State Legislature and adoption of implementing legislation.

SECTION 2. RATIFICATION AND IMPLEMENTATION PROVISIONS FOR THE SHOSHONE-BANNOCK TRIBES AND THE STATE OF IDAHO COMPACT FOR CLASS III GAMING. (1) The material terms of the Shoshone-Bannock Tribes and the State of Idaho Compact for Class III Gaming, dated February 18, 2000, are hereby ratified.

(2) As contemplated by the Compact, the Governor is hereby authorized to waive Eleventh Amendment immunity on behalf of the state of Idaho with regard to issues arising under this Compact.

(3) The state is authorized to protect the confidentiality of records as provided in the Compact.

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 April 12, 2000.

CHAPTER 221
(H.B. No. 696)

AN ACT

RELATING TO SWINE AND POULTRY FACILITIES; AMENDING SECTION 39-104A, IDAHO CODE, TO REQUIRE FINANCIAL ASSURANCES FOR OPERATION, CLOSURE AND REMEDIATION OF SWINE AND POULTRY FACILITIES REQUIRED TO OBTAIN A PERMIT FROM THE DIVISION OF ENVIRONMENTAL QUALITY, TO PROVIDE REQUIREMENTS, TO PROVIDE FOR A VARIETY OF FINANCIAL ASSURANCES, TO PROVIDE THAT BOARDS OF COUNTY COMMISSIONERS AND GOVERNING BODIES OF CITIES MAY IMPOSE MORE STRINGENT REQUIREMENTS, TO PROVIDE THAT BOARDS OF COUNTY COMMISSIONERS AND GOVERNING BODIES OF CITIES MAY CHOOSE TO DETERMINE IF A FACILITY IS PROPERLY CLOSED, TO REQUIRE COMMUNICATION TO THE DIRECTOR IN WRITING, TO PROVIDE THAT LOCAL DETERMINATIONS REGARDING CLOSURE MAY NOT PERMIT LESSER STANDARDS THAN THOSE IMPOSED BY THE DIVISION AND TO PROVIDE DEFINITIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 39-104A, Idaho Code, be, and the same is hereby amended to read as follows:

39-104A. AUTHORITY TO MAKE RULES REGULATING LARGE SWINE AND POULTRY FEEDING OPERATIONS -- FINANCIAL ASSURANCES. (1) The state of Idaho is experiencing the development of large swine and poultry feeding operations which are inadequately controlled through existing state regulatory mechanisms. If not properly regulated, these facilities pose a threat to the state's surface and ground water resources. Due to existing rulemaking authority, the ~~department of health and welfare,~~ division of environmental quality, is in the best position of all state agencies to modify its present rules and to make new rules to develop an adequate regulatory framework for large swine and poultry feeding operations.

(2) The ~~department of health and welfare~~ division of environmental quality is authorized to modify its existing administrative rules and to make new rules regulating large swine and poultry feeding operations, as they shall be defined by the ~~department~~ division. The ~~department~~ division is authorized to work with the Idaho department of agriculture in the development of such rules.

(3) Owners and operators of swine and poultry facilities required to obtain a permit from the division of environmental quality to con-

struct, operate, expand or close the facilities shall provide financial assurances demonstrating financial capability to meet requirements for operation and closure of the facilities and remediation. Requirements for financial assurances shall be determined by the agency as set forth in rule. Financial assurances may include any mechanism or combination of mechanisms meeting the requirements established by agency rule including, but not limited to, surety bonds, trust funds, irrevocable letters of credit, insurance and corporate guarantees. The mechanism(s) used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must ensure that the funds necessary to meet the costs of closure and remediation will be available whenever the funds are needed. The director may retain financial assurances for up to five (5) years after closure of a facility to ensure proper closure and remediation, as defined by rule.

(4) Nothing in this section prohibits the boards of county commissioners of any county or the governing body of any city from adopting regulations that are more stringent or that require greater financial assurances than those imposed by the division of environmental quality. A board of county commissioners of a county or a governing body of a city in which a swine or poultry facility is located may choose to determine whether the facility is properly closed according to imposed standards or may leave that determination to the division. This choice shall be communicated to the director in writing when closure begins; provided that determinations of closure by a board of county commissioners of a county or a governing body of a city in which the swine or poultry facility is located shall not permit closure under less stringent requirements than those imposed by the division.

(5) As used in this section:

(a) "Animal unit" means a unit equaling two and one-half (2.5) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms, or one hundred (100) poultry. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms multiplied by four-tenths (.4) plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1) plus the number of poultry multiplied by one one-hundredth (.01).

(b) "Facilities" or "facility" means a place, site or location or part thereof where swine or poultry are kept, handled, housed or otherwise maintained and includes, but is not limited to, buildings, lots, pens and animal waste management systems, and which has a one-time animal unit capacity of two thousand (2,000) or more animal units.

(c) "Large swine and poultry feeding operations" means swine facilities and poultry facilities having a one-time animal unit capacity of two thousand (2,000) or more animal units.

(d) "One-time animal unit capacity" means the maximum number of animal units that a facility is capable of housing at any given time.

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 April 12, 2000.

CHAPTER 222
(H.B. No. 794)

AN ACT

RELATING TO RENTAL OF STORAGE WATER TO AUGMENT RIVER FLOWS TO AID SALMON MIGRATION; REPEALING SECTION 42-1763B, IDAHO CODE; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1763B, IDAHO CODE, TO PROVIDE FINDINGS AND INTENT OF THE LEGISLATURE, TO AUTHORIZE THE U.S. BUREAU OF RECLAMATION TO RELEASE FOUR HUNDRED TWENTY-SEVEN THOUSAND ACRE FEET OF WATER FROM ITS PROJECTS UNDER CERTAIN CONDITIONS IN THE YEAR 2000 TO AUGMENT RIVER FLOWS TO AID THE MIGRATION OF SNAKE RIVER SALMON, TO PROVIDE THAT RELEASE OF STORAGE WATER FROM U.S. BUREAU OF RECLAMATION RESERVOIRS TO AID SALMON MIGRATION MUST BE RENTED THROUGH THE WATER BANK OPERATED BY THE WATER RESOURCE BOARD OR THROUGH LOCAL WATER RENTAL COMMITTEES, TO PROVIDE CONDITIONS UPON THE RELEASE OF STORAGE WATER, TO PROVIDE THAT THIS SECTION WILL NOT BECOME EFFECTIVE UNTIL THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES CERTIFIES TO THE GOVERNOR THAT THE BUREAU'S APPLICATIONS TO TRANSFER CERTAIN WATER RIGHTS AND TO AMEND CERTAIN WATER RIGHT PERMITS WILL BE HELD IN ABEYANCE UNTIL JULY 1, 2000, AND TO PROVIDE THAT THIS SECTION SHALL BE NULL AND VOID ON AND AFTER JANUARY 1, 2001; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 42-1763B, Idaho Code, be, and the same is hereby repealed.

SECTION 2. 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 42-1763B, Idaho Code, and to read as follows:

42-1763B. INTERIM AUTHORITY FOR RENTAL OF STORAGE WATER TO AUGMENT FLOWS DURING THE MIGRATION OF SNAKE RIVER SALMON. (1) Legislative findings and intent regarding rental of storage water from U.S. bureau of reclamation projects in the Snake River basin within Idaho to augment lower Snake River flows during the migration of Snake River salmon. The legislature finds that the U.S. bureau of reclamation requested the release of four hundred twenty-seven thousand (427,000) acre feet of water to augment salmon flows in order to satisfy the conditions of the biological opinion issued by the national marine fisheries service on March 2, 1995. The legislature authorizes the U.S. bureau of reclamation to release water from its projects under

the limited conditions of this section in 2000.

(2) Rental of storage water from U.S. bureau of reclamation storage.

(a) Notwithstanding the legislative approval required in section 42-108, Idaho Code, any storage water release from U.S. bureau of reclamation reservoirs within the state of Idaho for use to augment river flows during the migration of Snake River salmon pursuant to this section must be rented through the water bank operated by the Idaho water resource board pursuant to sections 42-1761 through 42-1764, Idaho Code, or through local water rental committees, created pursuant to section 42-1765, Idaho Code, under their respective water bank rules.

(b) For any rental of water pursuant to this section, the director shall not be required to determine under section 42-1763, Idaho Code, whether the water supply is sufficient for the purpose for which it is sought, whether the rental would cause the use of water to be enlarged beyond that authorized under the water right to be rented, whether such use is in the public interest, or whether such use is consistent with the factors enumerated under subsection (3) of section 42-401, Idaho Code.

(3) Conditions on storage water rentals.

(a) Any storage water made available under this section shall be obtained only from willing lessors. Any water rented under this section from reservoirs located within a basin having a local rental pool committee established pursuant to section 42-1765, Idaho Code, shall be rented pursuant to this section only through the local rental pool committee.

(b) Storage water made available under this section shall be limited to four hundred twenty-seven thousand (427,000) acre feet annually. These releases from storage shall be reduced by other water the U.S. bureau of reclamation provides for augmentation of salmon flows from the Snake River and its tributaries.

(c) In no event shall the release of water under this section cause the water surface of Cascade Reservoir to be below the elevation required to maintain a storage volume of three hundred thousand (300,000) acre feet, fifty thousand (50,000) acre feet of which is dead space, which is currently estimated to be at an elevation of four thousand eight hundred nine and two-tenths (4,809.2) feet.

(d) The U.S. bureau of reclamation shall report on the plan for releases for the spring and summer chinook prior to such releases and on the plan for releases for the fall chinook by July 15, 2000. The U.S. bureau of reclamation shall submit a report to the director by January 15, 2001, describing the time, volume and purpose of storage water released for salmon purposes during the year 2000.

(e) All storage water rented from U.S. bureau of reclamation reservoirs under this section must be used for power production purposes within the state of Idaho.

(f) Nothing herein shall entitle the U.S. bureau of reclamation to rent storage water upon termination or expiration of the permission given in this section.

(4) Nothing in this section shall be construed to alter in any

way the existing contractual obligations of the U.S. bureau of reclamation or to constitute a finding by the legislature that the rental or use of storage water for augmentation of flows for salmon migration is a beneficial use of water, that it is in the public interest, or whether such use injures existing water rights.

(5) This section shall not become effective until the director certifies to the governor that the U.S. bureau of reclamation's applications to transfer water right numbers 4616, 4617, 4618, 4623, 4625, 4626, 4627, 4628, 4629, 4630, 4631, 4632, 4633 and 4636, and to amend water right permit numbers 25-07004 and 63-3618 will be held in abeyance until July 1, 2000.

(6) On and after January 1, 2001, this act shall be null, void and of no force and effect.

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 April 12, 2000.

CHAPTER 223
(H.B. No. 811)

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE OFFICE OF SPECIES CONSERVATION FOR THE PERIOD MAY 1, 2000, THROUGH JUNE 30, 2001; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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 Office of Species Conservation the following amounts, to be expended according to the designated expense classes from the listed fund for the period May 1, 2000, through June 30, 2001:

FOR:	
Personnel Costs	$400,000
Operating Expenditures	110,000
TOTAL	$510,000
FROM:	
General Fund	$510,000

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Office of Species Conservation is authorized no more than five (5) full-time equivalent positions at any point during the period May 1, 2000, through June 30, 2001, 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. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after May 1, 2000.

Approved April 12, 2000.

CHAPTER 224
(H.B. No. 815)

AN ACT

RELATING TO THE SALE OR TRANSFER OF ELECTRIC UTILITIES; PROVIDING LEGISLATIVE INTENT; AMENDING SECTION 61-328, IDAHO CODE, TO REQUIRE A FINDING THAT THE TRANSACTION SHALL BE CONSISTENT WITH THE PUBLIC INTEREST, TO REQUIRE INCLUSION OF THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES CONDITIONS REGARDING WATER RIGHTS AND TO PROVIDE THAT THE APPLICANT SHALL BEAR THE BURDEN OF SHOWING THAT THE TRANSFER REQUIREMENTS HAVE BEEN SATISFIED; AMENDING SECTION 42-1701, IDAHO CODE, TO PROVIDE THAT ANY AUTHORIZATION OR ORDER OF THE IDAHO PUBLIC UTILITIES COMMISSION, UNDER THE PROVISIONS OF THE PUBLIC UTILITIES LAW, APPROVING THE SALE, ASSIGNMENT OR TRANSFER OF WATER RIGHTS USED IN THE GENERATION OF ELECTRIC POWER SHALL BE ISSUED ONLY UPON CONDITIONS REQUIRED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES AS NECESSARY TO PREVENT A CHANGE IN THE USE OF WATER UNDER THE RIGHTS HELD FOR HYDROPOWER PURPOSES THAT WOULD CAUSE AN INJURY TO ANY WATER RIGHTS EXISTING ON THE DATE OF THE SALE, ASSIGNMENT OR TRANSFER, THAT ANY SUCH CONDITIONS SHALL ENSURE THAT THE PUBLIC INTEREST, AS IT PERTAINS TO THE USE OF WATER UNDER THE HYDROPOWER WATER RIGHTS, WILL NOT BE ADVERSELY AFFECTED, TO PROVIDE CONDITIONS, TO PROVIDE THE EFFECT OF A CERTAIN AGREEMENT AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. LEGISLATIVE INTENT. The Legislature hereby finds and declares that:

(1) The protection of customers of public utilities that provide electric energy is a matter of fundamental statewide concern.

(2) Any acquisition of a public utility that provides electric energy shall serve the utility's customers in the public interest through some combination of features that could include, but is not limited to, utility service, rates, financial structure, reliability, water rights protection, and valuation of the utility's assets. The duration of benefits shall be considered.

(3) It is therefore the policy of the state of Idaho to regulate acquisitions of public utilities which provide electric energy in a manner that promotes the public interest.

SECTION 2. That Section 61-328, Idaho Code, be, and the same is hereby amended to read as follows:

61-328. ELECTRIC UTILITIES -- SALE OF PROPERTY TO BE APPROVED BY COMMISSION. (1) No electric public utility or electrical corporation as defined in chapter 1, title 61, Idaho Code, owning, controlling or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall merge, sell, lease, assign or transfer, directly or indirectly, in any manner whatsoever, any such property or interest therein, or the operation, management or control thereof, or any certificate of convenience and necessity or franchise covering the same, except when authorized to do so by order of the public utilities commission. ~~of the state of Idaho.~~

(2) ~~Such authorization and order~~ The electric public utility or electrical corporation shall ~~be issued only following public notice and hearing, upon~~ file a verified application ~~of the parties~~ setting forth such facts as the commission shall prescribe or require. ~~, and if t~~The commission shall issue a public notice and shall conduct a public hearing upon the application.

(3) Before authorizing the transaction, the public utilities commission shall find:

(a) ~~T~~that the transaction is consistent with the public interest; ~~will not be adversely affected,~~

(b) ~~T~~that the cost of and rates for supplying service will not be increased by reason of such transaction~~,~~; and

(c) ~~T~~that the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service. ~~; provided, that no such order or authorization shall be issued or granted to any applicant or party coming within the prohibitions set forth in this act.~~

The applicant shall bear the burden of showing that standards listed above have been satisfied.

(4) The commission shall have power to issue said authorization and order as prayed for, or to refuse to issue the same, or to issue such authorization and order with respect only to a part of the property involved. ~~, and~~ The commission shall include in any authorization or order the conditions required by the director of the department of water resources under section 42-1701(6), Idaho Code. The commission may attach to its authorization and order such other terms and conditions as in its judgment the public convenience and necessity may require.

SECTION 3. That Section 42-1701, Idaho Code, be, and the same is hereby amended to read as follows:

42-1701. CREATION OF DEPARTMENT OF WATER RESOURCES -- DIRECTOR -- QUALIFICATIONS -- DUTIES. (1) There is hereby created the department of water resources, which shall, for the purposes of section 20, article IV, of the ~~c~~constitution of the state of Idaho, be an executive department of the state government.

(2) The executive and administrative authority of the department, except such authority as is specifically assigned by law to the water resource board, shall be vested in a director of the department of water resources who shall be a licensed civil or hydraulic engineer, and shall have had not less than five (5) years' experience in the

active practice of such profession, and shall be familiar with irrigation in Idaho.

(3) The director may delegate such duties as are imposed upon him by law to an employee of the department of water resources whenever in the opinion of the director, such delegation is necessary for the efficient administration of his duties.

(4) The director shall organize the department into such divisions and other administrative sub-units as may be necessary in order to efficiently administer the 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.

(5) The director and/or employees of the department of water resources may make reasonable entry upon any lands in the state for the purpose of making investigations and surveys, or for other purposes necessary to carry out the duties imposed by law.

(6) (a) Any authorization or order of the Idaho public utilities commission, under the provisions of section 61-328, Idaho Code, approving the sale, assignment or transfer of hydropower water rights used in the generation of electric power shall be issued only upon such conditions as the director of the department of water resources shall require as necessary to prevent any change in use of water under the water rights held for hydropower purposes that would cause injury to any water rights existing on the date of the sale, assignment or transfer. Any such conditions shall ensure that the public interest, as it pertains to the use of water under the hydropower water rights, will not be adversely affected. Conditions, if any, imposed by the director shall be subject to review under section 42-1701A(4), Idaho Code.

(b) Subsection (6)(a) of this section may be satisfied by a written agreement between the holder of a water right held for hydropower purposes and the governor, which agreement has been ratified by the legislature of the state of Idaho. The agreement between the governor and the Idaho Power Company dated October 15, 1984, and ratified by the legislature of the state of Idaho pursuant to section 42-203B, Idaho Code, and the subordination provisions relating to the Idaho Power Company's water rights satisfy subsection (6)(a) of this section.

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 April 12, 2000.

CHAPTER 225
(H.B. No. 818)

AN ACT

APPROPRIATING AND TRANSFERRING GENERAL FUNDS TO THE SCHOOL SAFETY AND HEALTH REVOLVING LOAN FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby appropriated and the State Controller is hereby directed to transfer the sum of $10,000,000 from the General Fund to the School Safety and Health Revolving Loan Fund, as created in House Bill No. 668, enacted by the Second Regular Session of the Fifty-fifth Idaho Legislature.

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 April 12, 2000.

CHAPTER 226
(S.B. No. 1297)

AN ACT

RELATING TO HOMESTEADS; AMENDING SECTION 55-1001, IDAHO CODE, TO PROVIDE THAT THE DEFINITION OF "OWNER" INCLUDES A PERSON WHO TAKES PROPERTY UNDER A LIFE ESTATE; AND AMENDING SECTION 55-1010, IDAHO CODE, TO PROVIDE THAT THE HOMESTEAD SHALL END AT THE TERMINATION OF THE LIFE ESTATE AND TO PROVIDE A LIMITATION ON LIABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 55-1001, Idaho Code, be, and the same is hereby amended to read as follows:

55-1001. DEFINITIONS. For purposes of this chapter:

(1) "Dwelling house" and "mobile home" include manufactured housing.

(2) "Homestead" means and consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved; or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as a principal home for the owner.

(3) "Net value" means market value less all liens and encumbrances.

(4) "Owner" includes, but is not limited to, a purchaser under a deed of trust, mortgage, or contract, or a person who takes the subject property under a life estate.

SECTION 2. That Section 55-1010, Idaho Code, be, and the same is hereby amended to read as follows:

55-1010. DEVOLUTION AFTER DEATH. If the selection of the homestead was made by a married person from the community property, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this title or in section 56-218, Idaho Code. If the selection of the homestead was made by a person with a life estate in the property, the homestead shall end at the termination of the life estate, subject to no other liability than the liability that exists or has been created under this title.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 227
(S.B. No. 1298, As Amended)

AN ACT

RELATING TO CHILD CUSTODY JURISDICTION; REPEALING CHAPTER 11, TITLE 32, IDAHO CODE; AMENDING TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 11, TITLE 32, IDAHO CODE, TO PROVIDE THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR PROCEEDINGS GOVERNED BY OTHER LAW, TO PROVIDE FOR APPLICATION TO INDIAN TRIBES, TO PROVIDE INTERNATIONAL APPLICATION, TO PROVIDE FOR EFFECT OF CHILD CUSTODY DETERMINATION, TO PROVIDE PRIORITY, TO PROVIDE FOR NOTICE TO PERSONS OUTSIDE THE STATE, TO PROVIDE FOR APPEARANCE AND LIMITED IMMUNITY, TO PROVIDE FOR COMMUNICATION BETWEEN THE COURTS, TO PROVIDE FOR TAKING TESTIMONY IN ANOTHER STATE, TO PROVIDE FOR COOPERATION BETWEEN COURTS AND PRESERVATION OF RECORDS, TO PROVIDE INITIAL CHILD CUSTODY JURISDICTION, TO PROVIDE EXCLUSIVE CONTINUING JURISDICTION, TO PROVIDE JURISDICTION TO MODIFY DETERMINATION, TO PROVIDE TEMPORARY EMERGENCY JURISDICTION, TO PROVIDE FOR NOTICE, OPPORTUNITY TO BE HEARD AND JOINDER, TO PROVIDE FOR SIMULTANEOUS PROCEEDINGS, TO PROVIDE FOR INCONVENIENT FORUMS, TO PROVIDE FOR JURISDICTION DECLINED BY REASON OF CONDUCT, TO PROVIDE

FOR INFORMATION TO BE SUBMITTED TO THE COURT, TO PROVIDE FOR APPEARANCE OF PARTIES AND CHILD, TO PROVIDE FOR ENFORCEMENT UNDER THE HAGUE CONVENTION, TO PROVIDE A DUTY TO ENFORCE, TO PROVIDE FOR TEMPORARY VISITATION, TO PROVIDE FOR REGISTRATION OF CHILD CUSTODY DETERMINATIONS, TO PROVIDE FOR ENFORCEMENT OF REGISTERED DETERMINATIONS, TO PROVIDE FOR SIMULTANEOUS PROCEEDINGS, TO PROVIDE FOR EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATIONS, TO PROVIDE FOR SERVICE OF PETITION AND ORDER, TO PROVIDE FOR HEARING AND ORDER, TO PROVIDE FOR A WARRANT TO TAKE PHYSICAL CUSTODY OF A CHILD, TO PROVIDE FOR COSTS, FEES AND EXPENSES, TO PROVIDE FOR RECOGNITION AND ENFORCEMENT, TO PROVIDE FOR APPEALS, TO PROVIDE THE ROLE OF THE PROSECUTOR, TO PROVIDE THE ROLE OF LAW ENFORCEMENT, TO PROVIDE FOR COSTS AND EXPENSES, TO PROVIDE APPLICATION AND CONSTRUCTION, TO PROVIDE SEVERABILITY AND TO PROVIDE A TRANSITIONAL PROVISION; AMENDING SECTION 39-6306, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 11, Title 32, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 32, Idaho Code, be amended by the addition of a NEW CHAPTER, to be known and designated as Chapter 11, Title 32, Idaho Code, and to read as follows:

CHAPTER 11
UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

PART 1
GENERAL PROVISIONS

32-11-101. SHORT TITLE. This chapter may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act."

32-11-102. DEFINITIONS. In this chapter:

(a) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(b) "Child" means an individual who has not attained eighteen (18) years of age.

(c) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(d) "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under

part 3 of this chapter.

(e) "Commencement" means the filing of the first pleading in a proceeding.

(f) "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

(g) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(h) "Initial determination" means the first child custody determination concerning a particular child.

(i) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(j) "Issuing state" means the state in which a child custody determination is made.

(k) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(l) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(m) "Person acting as a parent" means a person, other than a parent, who:

(1) Has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding; and

(2) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(n) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

(o) "Physical custody" means the physical care and supervision of a child.

(p) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

(q) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(r) "Tribe" means an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(s) "Warrant" means an order issued by a court authorizing law

enforcement officers to take physical custody of a child.

32-11-103. PROCEEDINGS GOVERNED BY OTHER LAW. This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

32-11-104. APPLICATION TO INDIAN TRIBES. A child custody proceeding that pertains to an Indian child as defined in the Indian child welfare act, 25 U.S.C. 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian child welfare act.

32-11-105. INTERNATIONAL APPLICATION OF CHAPTER. (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying parts 1 and 2 of this chapter.

(b) Except as otherwise provided in subsection (c) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3 of this chapter.

(c) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

32-11-106. EFFECT OF CHILD CUSTODY DETERMINATION. A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with section 32-11-108, Idaho Code, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

32-11-107. PRIORITY. If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

32-11-108. NOTICE TO PERSONS OUTSIDE STATE. (a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

32-11-109. APPEARANCE AND LIMITED IMMUNITY. (a) A party to a child

custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

32-11-110. COMMUNICATION BETWEEN COURTS. (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

32-11-111. TAKING TESTIMONY IN ANOTHER STATE. (a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

32-11-112. COOPERATION BETWEEN COURTS -- PRESERVATION OF RECORDS. (a) A court of this state may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a) of this section.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

PART 2
JURISDICTION

32-11-201. INITIAL CHILD CUSTODY JURISDICTION. (a) Except as otherwise provided in section 32-11-204, Idaho Code, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) A court of another state does not have jurisdiction under paragraph (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 32-11-207 or 32-11-208, Idaho Code, and:

(A) The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(3) All courts having jurisdiction under paragraph (1) or (2) of

this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 32-11-207 or 32-11-208, Idaho Code; or

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2) or (3) of this subsection.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

32-11-202. EXCLUSIVE, CONTINUING JURISDICTION. (a) Except as otherwise provided in section 32-11-204, Idaho Code, a court of this state which has made a child custody determination consistent with section 32-11-201 or 32-11-203, Idaho Code, has exclusive, continuing jurisdiction over the determination until:

(1) A court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 32-11-201, Idaho Code.

32-11-203. JURISDICTION TO MODIFY DETERMINATION. Except as otherwise provided in section 32-11-204, Idaho Code, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under section 32-11-201(a)(1) or (2), Idaho Code, and:

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 32-11-202, Idaho Code, or that a court of this state would be a more convenient forum under section 32-11-207, Idaho Code; or

(b) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

32-11-204. TEMPORARY EMERGENCY JURISDICTION. (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 32-11-201 through 32-11-203, Idaho Code, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections 32-11-201 through 32-11-203, Idaho Code, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

32-11-205. NOTICE -- OPPORTUNITY TO BE HEARD -- JOINDER. (a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 32-11-108, Idaho Code, must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

32-11-206. SIMULTANEOUS PROCEEDINGS. (a) Except as otherwise pro-

vided in section 32-11-204, Idaho Code, a court of this state may not exercise its jurisdiction under part 2 of this chapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 32-11-207, Idaho Code.

(b) Except as otherwise provided in section 32-11-204, Idaho Code, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 32-11-209, Idaho Code. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

32-11-207. INCONVENIENT FORUM. (a) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this state;

(3) The distance between the court in this state and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

32-11-208. JURISDICTION DECLINED BY REASON OF CONDUCT. (a) Except as otherwise provided in section 32-11-204, Idaho Code, or by other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code, determines that this state is a more appropriate forum under section 32-11-207, Idaho Code; or

(3) No court of any other state would have jurisdiction under the criteria specified in sections 32-11-201 through 32-11-203, Idaho Code.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 32-11-201 through 32-11-203, Idaho Code.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this state unless authorized by law other than this chapter.

32-11-209. INFORMATION TO BE SUBMITTED TO COURT. (a) In a child custody proceeding each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under

oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subsections (a)(1) through (3) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

32-11-210. APPEARANCE OF PARTIES AND CHILD. (a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section 32-11-108, Idaho Code, include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (b) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

PART 3
ENFORCEMENT

32-11-301. [RESERVED]

32-11-302. ENFORCEMENT UNDER HAGUE CONVENTION. Under this chapter a court of this state may enforce an order for the return of the child made under the Hague convention on the civil aspects of international child abduction as if it were a child custody determination.

32-11-303. DUTY TO ENFORCE. (a) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in this part 3 are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

32-11-304. TEMPORARY VISITATION. (a) A court of this state which does not have jurisdiction to modify a child custody determination, may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subsection (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in part 2 of this chapter. The order remains in effect until an order is obtained from the other court or the period expires.

32-11-305. REGISTRATION OF CHILD CUSTODY DETERMINATION. (a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the office of the clerk of any district court in this state:

(1) A letter or other document requesting registration;

(2) Two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in section 32-11-209, Idaho Code, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a) of this section, the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one (1) copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to subsection (a)(3) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subsection (b)(2) of this section must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) A hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under part 2 of this chapter;

(2) The child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under part 2 of this chapter; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 32-11-108, Idaho Code, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

32-11-306. ENFORCEMENT OF REGISTERED DETERMINATION. (a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with part 2 of this chapter, a registered child custody determination of a court of another state.

32-11-307. SIMULTANEOUS PROCEEDINGS. If a proceeding for enforcement under part 3 of this chapter is commenced in a court of this state and the court determines that a proceeding to modify the deter-

mination is pending in a court of another state having jurisdiction to modify the determination under part 2 of this chapter, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

32-11-308. EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION. (a) A petition under part 3 of this chapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of the child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child custody determination has been registered and confirmed under section 32-11-305, Idaho Code, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under section 32-11-312, Idaho Code, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child custody determination has not been registered and confirmed under section 32-11-305, Idaho Code, and that:

(A) The issuing court did not have jurisdiction under part 2

of this chapter;

(B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under part 2 of this chapter;

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 32-11-108, Idaho Code, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under section 32-11-305, Idaho Code, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under part 2 of this chapter.

32-11-309. SERVICE OF PETITION AND ORDER. Except as otherwise provided in section 32-11-311, Idaho Code, the petition and order must be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

32-11-310. HEARING AND ORDER. (a) Unless the court issues a temporary emergency order pursuant to section 32-11-204, Idaho Code, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child custody determination has not been registered and confirmed under section 32-11-305, Idaho Code, and that:

(A) The issuing court did not have jurisdiction under part 2 of this chapter;

(B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under part 2 of this chapter; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 32-11-108, Idaho Code, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under section 32-11-305, Idaho Code, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under part 2 of this chapter.

(b) The court shall award the fees, costs and expenses authorized under section 32-11-312, Idaho Code, and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under part 3 of this chapter.

32-11-311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD. (a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 32-11-308(b), Idaho Code.

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law enforcement officers to take physical custody of the child immediately; and

(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

32-11-312. COSTS -- FEES -- EXPENSES. (a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs or expenses against a state unless authorized by law other than this chapter.

32-11-313. RECOGNITION AND ENFORCEMENT. A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under part 2 of this chapter.

32-11-314. APPEALS. An appeal may be taken from a final order in a proceeding under this chapter. The court shall make every effort to expedite the appeal. Unless the court enters a temporary emergency order under section 32-11-204, Idaho Code, the enforcing court may not

stay an order enforcing a child custody determination pending appeal.

32-11-315. ROLE OF COUNTY PROSECUTING ATTORNEY. (a) In a case arising under this chapter or involving the Hague convention on the civil aspects of international child abduction, the county prosecuting attorney may take any lawful action, including resort to a proceeding under this chapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

(1) An existing child custody determination;

(2) A request to do so from a court in a pending child custody proceeding;

(3) A reasonable belief that a criminal statute has been violated; or

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague convention on the civil aspects of international child abduction.

(b) The county prosecuting attorney acting under this section acts on behalf of the court and may not represent any party.

32-11-316. ROLE OF LAW ENFORCEMENT. At the request of the county prosecuting attorney acting under section 32-11-315, Idaho Code, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the county prosecuting attorney with responsibilities under section 32-11-315, Idaho Code.

32-11-317. COSTS AND EXPENSES. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the county prosecuting attorney and law enforcement officers under section 32-11-315 or 32-11-316, Idaho Code.

PART 4
MISCELLANEOUS PROVISIONS

32-11-401. APPLICATION AND CONSTRUCTION. In applying and construing this chapter, otherwise known as the uniform child custody jurisdiction and enforcement act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

32-11-402. SEVERABILITY CLAUSE. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

32-11-403. [RESERVED]

32-11-404. [RESERVED]

32-11-405. TRANSITIONAL PROVISION. A motion or other request for relief made in a child custody proceeding or to enforce a child cus-

tody determination which was commenced before the effective date of this chapter as the uniform child custody jurisdiction and enforcement act is governed by the law in effect at the time the motion or other request was made.

SECTION 3. That Section 39-6306, Idaho Code, be, and the same is hereby amended to read as follows:

39-6306. HEARING ON PETITION FOR PROTECTION ORDER -- RELIEF PROVIDED AND REALIGNMENT OF DESIGNATION OF PARTIES. (1) Upon filing of a petition based upon a sworn affidavit for a protection order, the court shall hold a hearing to determine whether the relief sought shall be granted within fourteen (14) days. If either party is represented by counsel at a hearing seeking entry of a protection order, the court shall permit a continuance, if requested, of the proceedings so that counsel may be obtained by the other party. If the court finds that it is necessary for both parties to be represented by counsel, the court shall enter appropriate orders to insure that counsel is retained. The order entered may require either the petitioner or respondent, or both, to pay for costs of counsel. Upon a showing that there is an immediate and present danger of domestic violence to the petitioner the court may, if requested, order for a period not to exceed three (3) months that:

(a) Temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner or respondent if exercise of such jurisdiction is consistent with the provisions of section 32-~~1103~~11-204, Idaho Code, and consistent with prior custody orders entered by a court of competent jurisdiction unless grounds exist pursuant to section 32-717, Idaho Code;

(b) A party be restrained from committing acts of domestic violence;

(c) Exclude the respondent from the dwelling which the parties share or from the residence of the petitioner;

(d) The respondent be ordered to participate in treatment or counseling services. The council on domestic violence, in recognition of the particular treatment requirements for batterers, shall develop minimal program and treatment standards to be used as guidelines for recommending approval of batterer programs to the court;

(e) Other relief be ordered as the court deems necessary for the protection of a family or household member, including orders or directives to a peace officer, as allowed under this chapter;

(f) The respondent be required to pay service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee;

(g) The respondent be restrained from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner; and/or

(h) The respondent be restrained from entering any premises when it appears to the court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the petitioner or the minor children whose custody is awarded to the petitioner.

(2) Immediate and present danger under this section includes, but is not limited to, situations in which the respondent has recently threatened the petitioner with bodily harm or engaged in domestic violence against the petitioner.

(3) No order made under this chapter shall in any manner affect title to real property.

(4) Relief shall not be denied because petitioner used reasonable force in self-defense against respondent, or because petitioner or respondent was a minor at the time of the incident of domestic violence.

(5) Any relief granted by the protection order, other than a judgment for costs, shall be for a fixed period not to exceed three (3) months; provided, that an order obtained pursuant to this chapter may, upon motion and upon good cause shown, be renewed for additional terms not to exceed one (1) year each if the requirements of this chapter are met. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order was entered.

(6) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 228
(S.B. No. 1302)

AN ACT

RELATING TO ADMINISTRATIVE RULEMAKING BY THE BOARD OF CORRECTION; AMENDING SECTION 20-212, IDAHO CODE, TO DELETE OBSOLETE PROVISIONS AND CONFORM THE SECTION TO THE ADMINISTRATIVE PROCEDURE ACT 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 20-212, Idaho Code, be, and the same is hereby amended to read as follows:

20-212. RULES -- AUTHORITY OF BOARD. (1) The state board of correction shall make all necessary rules to carry out the provisions of this chapter not inconsistent with express statutes or the state constitution. The board shall fix the time and place of meetings, the order of business, the form of records to be kept, the reports to be made, and all other rules necessary to the efficient management and control of the state penitentiary and all properties used in connection therewith. All rules of the board shall be subject to review of the legislature pursuant to sections 67-454, 67-5291 and 67-5292,

Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the board, except as otherwise specifically provided by statute. When making rules required by this section, the board or the department shall submit the rules to the office of the state administrative rules coordinator, in a format suitable to the office of the state administrative rules coordinator as provided in section 67-5202, Idaho Code, and the board or department shall pay all the fees provided in section 67-5205, Idaho Code. The office of the state administrative rules coordinator is authorized and shall publish the board or department's rules in the administrative bulletin. Additionally, whenever the board or department desires to amend, modify or repeal any of its rules, it shall follow the procedure provided in this section. All rules, or the amendment or repeal of rules shall be effective thirty (30) days after the date of publication by the office of the administrative rules coordinator. If the board determines that the rules need to be effective at a sooner date, they shall issue a proclamation indicating that the public health, safety and welfare is in jeopardy and, if the governor agrees, the rules shall be effective upon the governor signing the proclamation.

(2) "Rule" as used in this section means the whole or a part of the board of correction or department of correction's statement of general applicability that has been promulgated in compliance with the provisions of this section and that implements, interprets or prescribes:

(a) Law or policy~~,~~; or

(b) The procedure or practice requirements of the board or department. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:

(i) Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or

(ii) Declaratory rulings issued pursuant to statute or the board's rules; or

(iii) Intra-department memoranda; or

(iv) Any written statements given by the department or board which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

(3) At the same time that the proclamation of rulemaking is filed with the coordinator, the board or department shall provide the same notice, accompanied by the full text of the rule under consideration in legislative format, as well as a statement of the substance of the intended action, to the director of legislative services. If the rulemaking is based upon a requirement of federal law or regulation, a copy of that specific federal law or regulation shall accompany the submission to the director of legislative services. The director of legislative services shall analyze and refer the material under consideration to the germane joint subcommittee created in section 67-454, Idaho Code.

(4) ~~If--the-germane-joint-subcommittee-notifies-the-department-or board-within-fourteen-(14)-days-of-the--date--of--publication--of--the proclamation--of--rulemaking--in--the-bulletin-or-within-fourteen-(14) days-prior-to-the-end-of-the-comment-period,-whichever-is-later,--that~~

~~the--subcommittee--intends--to-hold-a-hearing-on-the-rulemaking-within fourteen-(14)-days,-the-agency-shall-extend--the--comment--period--for such--additional-time-as-required-to-receive-comments-from-the-subcommittee.-The-notification-from-the-germane-joint--subcommittee--to--the agency-shall-be-sent-to-the-agency.~~

~~(5)~~ The board or department shall prepare and deliver to the germane joint subcommittee a statement of economic impact with respect to a rule if~~,-within-fourteen-(14)-days-of-the-receipt-of-the-rule,~~ the germane joint subcommittee files a written request with the board or department for such a statement. The statement shall contain an evaluation of the costs and benefits of the rule, including any health, safety, or welfare costs and benefits. The adequacy of the contents of the statement of economic impact is not subject to judicial 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.

Approved April 12, 2000.

CHAPTER 229
(S.B. No. 1303)

AN ACT

RELATING TO RECORDS EXEMPT FROM DISCLOSURE; AMENDING SECTION 9-340F, IDAHO CODE, TO PROVIDE THAT DRAFT CONGRESSIONAL OR LEGISLATIVE REDISTRICTING PLANS PREPARED FOR MEMBERS OF THE COMMISSION FOR REAPPORTIONMENT ARE EXEMPT FROM DISCLOSURE AND PROVIDING FOR DISCLOSURE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 9-340F, Idaho Code, be, and the same is hereby amended to read as follows:

9-340F. RECORDS EXEMPT FROM DISCLOSURE -- DRAFT LEGISLATION AND SUPPORTING MATERIALS, TAX COMMISSION, PETROLEUM CLEAN WATER TRUST FUND. The following records are exempt from disclosure:

(1) 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.

(2) 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 leg-

islative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(3) Records consisting of draft congressional and legislative redistricting plans and documents specifically related to such draft redistricting plans or research requests submitted to the commission staff by a member of the commission for reapportionment for the purpose of placing such draft redistricting plan into form suitable for presentation to the full membership of the commission, unless the individual commission member having submitted or requested such plans or research agrees to waive the provisions of confidentiality provided by this subsection.

(4) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(~~4~~5) Underwriting and claims records of the Idaho petroleum clean water trust fund obtained pursuant to section 41-4904, 41-4908, 41-4910A, 41-4911 or 41-4911A, Idaho Code. Provided however, that this subsection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department of health and welfare, division of environmental quality, or other regulatory agencies of information necessary to satisfy an insured's corrective action requirement under applicable federal or state standards in the event of a release into the environment from a petroleum storage tank; and provided further that nothing in this subsection shall prevent the Idaho petroleum clean water trust fund from providing auditing, reporting, or actuarial information as otherwise required of it pursuant to section 41-4918, 41-4924A, 41-4931, 41-4933, 41-4935, 41-4940 or 41-4941, Idaho Code.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 230
(S.B. No. 1304)

AN ACT

RELATING TO STATE ENDOWMENT LANDS; REPEALING SECTION 67-5779, IDAHO CODE, AS ADDED BY SECTION 60, CHAPTER 256, LAWS OF 1998, SECTION 67-5780, IDAHO CODE, AS ADDED BY SECTION 61, CHAPTER 256, LAWS OF 1998, AND SECTION 67-5781, IDAHO CODE, AS ADDED BY SECTION 62, CHAPTER 256, LAWS OF 1998; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 67-5779, Idaho Code, as added by Section 60, Chapter 256, Laws of 1998, Section 67-5780, Idaho Code, as added by Section 61, Chapter 256, Laws of 1998, and Section 67-5781, Idaho Code, as added by Section 62, Chapter 256, Laws of 1998, be, and the same are hereby repealed.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 231
(S.B. No. 1306)

AN ACT

RELATING TO ENFORCEMENT OF JUDGMENTS IN CIVIL ACTIONS; AMENDING SECTION 8-507C, IDAHO CODE, TO INCREASE AND ADD EXEMPTIONS FROM LEVY TO MAKE THE CODE SECTION CONSISTENT WITH EXISTING LAW AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 11-605, IDAHO CODE, TO CLARIFY THAT AN EXEMPTION FROM ATTACHMENT OR LEVY APPLIES TO AN INDIVIDUAL'S AGGREGATE INTEREST IN TANGIBLE PERSONAL PROPERTY NOT TO EXCEED EIGHT HUNDRED DOLLARS AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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 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~~5,000 gross)
3. Annuity contract payments
4. Bodily injury and wrongful death awards*
5. Books (professional) up to $1,~~0~~500
6. Burial plots
7. Child support payments*
8. Disability or illness benefits*
9. Furnishings (household) ($500 per item, up to $~~4~~5,000 gross)
10. Health aids
11. Homestead, house, mobile home, and related structures
12. Jewelry (up to $~~2~~51,000)
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~~3,000 per person
17. Pension: stock bonus, profit sharing annuity, or similar plans
18. Personal property: ($500 per item, up to $~~4~~5,000 gross) (furnishings, appliances, one firearm, ~~pets~~ animals, 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 $1,0500
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
30. An unmatured life insurance contract other than a credit life insurance contract
31. An aggregate interest, not to exceed $5,000, in any accrued dividend or interest under, or loan value of, an unmatured life insurance contract under which the insured is the individual or a person of whom the individual is a dependent
32. An aggregate interest in any tangible personal property, not to exceed the value of $800

* 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 sheriff, 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 claim an exemption from levy for the following described money and/or property:

a. Money, including money in a bank account, which was paid to me or my family as:

..... 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 entitled "SOME EXEMPTIONS TO WHICH YOU MAY BE ENTITLED." Then check this box only if you believe your employer's calculation is incorrect.)

b. 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~~ animals, musical instruments, books, clothes, family portraits and heirlooms
..... Other property (describe)

.....
Defendant or
Representative

SECTION 2. That Section 11-605, Idaho Code, be, and the same is hereby amended to read as follows:

11-605. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE LIMITATIONS. (1) An individual is entitled to exemption of the following property to the extent of a value not exceeding five hundred dollars ($500) on any one (1) item of property and not to exceed a total value of five thousand dollars ($5,000) for all items exempted under this subsection:

(a) ~~h~~Household furnishings, household goods, and appliances held primarily for the personal, family, or household use of the individual or a dependent of the individual;

(b) ~~i~~If reasonably held for the personal use of the individual or a dependent, wearing apparel, animals, books, and musical instruments; and

(c) ~~f~~Family portraits and heirlooms of particular sentimental value to the individual.

(2) An individual is entitled to exemption of jewelry, not exceeding one thousand dollars ($1,000) in aggregate value, if held for the personal use of the individual.

(3) An individual is entitled to exemption, not exceeding one thousand five hundred dollars ($1,500) in aggregate value, of implements, professional books, and tools of the trade; and to an exemption of one (1) motor vehicle to the extent of a value not exceeding three thousand dollars ($3,000).

(4) All courthouses, jails, public offices and buildings, ~~school houses~~ schoolhouses, lots, grounds and personal property appertaining thereto, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this state, or for the use of schools, and

all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this state. No article or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a mortgage thereon.

(5) All arms, uniforms and accouterments required for the use of an individual as a peace officer, a member of the national guard or military service.

(6) A water right not to exceed one hundred sixty (160) inches of water used for the irrigation of lands actually cultivated by the individual, and the crop or crops growing or grown on fifty (50) acres of land, leased, owned or possessed by an individual cultivating the same, provided, that the amount of the crops so exempted shall not exceed the value of one thousand dollars ($1,000).

(7) An individual is entitled to exemption of one (1) firearm valued at less than five hundred dollars ($500).

(8) Any unmatured life insurance contract owned by an individual, other than a credit life insurance contract.

(9) An individual's aggregate interest, not to exceed five thousand dollars ($5,000) in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the individual under which the insured is the individual or a person of whom the individual is a dependent.

(10) An individual's aggregate interest in any tangible personal property, not to exceed the value of eight hundred dollars ($800).

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 April 12, 2000.

CHAPTER 232
(S.B. No. 1309, As Amended)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-1212, IDAHO CODE, TO REQUIRE THAT MOTOR VEHICLE LIABILITY INSURANCE POLICIES COVERING MOTOR VEHICLE OWNERS SHALL PROVIDE THAT IF NEGLIGENT OPERATION OF A LOANED VEHICLE RESULTS IN DEATH OR INJURY TO A PERSON OR PERSONAL PROPERTY, PRIMARY COVERAGE SHALL BE PROVIDED BY THE INSURED OPERATOR OF THE LOANED VEHICLE, TO DEFINE "LOANED VEHICLE," TO PROVIDE THAT THE OWNER'S INSURANCE COVERAGE WILL BE PRIMARY IF THE VEHICLE IS LOANED FOR CONSIDERATION AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-1212, Idaho Code, be, and the same is hereby amended to read as follows:

49-1212. EXPRESSED, PERMITTED AND IMPLIED PROVISIONS OF MOTOR VEHICLE LIABILITY POLICY. (1) An owner's policy of liability insurance shall:

(a) Designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is to be granted; and

(b) Insure the person named therein and any other person, as insured, using any such described motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as provided in section 49-117, Idaho Code.

(2) An operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth in subsection (1) of this section with respect to an owner's policy of liability insurance.

(3) A motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the ~~premiun~~ premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be indorsed that insurance is provided in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(4) A motor vehicle liability policy shall not insure any liability under any ~~workmen's~~ worker's compensation law as provided in title 72, Idaho Code, nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any described motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(5) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(a) The policy may not be canceled or annulled as to any liability by any agreement between the insurance carrier and the insured after the occurrence of any injury or damage covered by the motor vehicle liability policy.

(b) Satisfaction by the insured of a judgment for injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier shall have the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount shall be deductible from the limits of liability specified in subsection (1)(b) of this section.

(d) The policy and its written application, if any, and any rider or indorsement which does not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

(6) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and any excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants an excess of additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(7) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(8) Any motor vehicle liability policy may provide for the prorating of the insurance with other valid and collectible insurance.

(9) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one (1) or more insurance carriers which policies together meet the requirements of this chapter.

(10) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(11) When the negligent operation of a loaned vehicle results in the death or injury to a person or personal property, except for the loaned vehicle, and at the time of the negligent operation of the loaned vehicle the operator of the loaned vehicle is insured under a motor vehicle liability policy complying with the financial responsibility law of this state, primary coverage for the death of or injury to a person or personal property, except for the loaned vehicle, shall be provided by the operator's motor vehicle liability policy. The insurance policy of the owner of the loaned vehicle shall provide secondary or excess coverage for the death of or injury to a person or personal property, however the loaned vehicle owner's insurance shall provide primary coverage for damage to the loaned vehicle.

(a) For the purpose of this subsection, "loaned vehicle" means a motor vehicle which is provided for temporary use without charge to the operator by an entity licensed under chapter 16, title 49, Idaho Code, for the purpose of demonstrating the vehicle to the operator as a prospective purchaser, or as a convenience to the operator during the repairing or servicing of a motor vehicle for the operator, regardless of whether such repair or service is performed by the owner of the loaned vehicle or by some other person or business.

(b) Should the owner of a motor vehicle receive any compensation from or on behalf of the operator for the temporary use of the motor vehicle, excluding any compensation provided to the owner as a result of the repairing or servicing of a motor vehicle for the operator, the owner's insurance coverage shall be primary and the operator's motor vehicle insurance shall be secondary or excess.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 233
(S.B. No. 1315, As Amended, As Amended in the House)

AN ACT

RELATING TO TERMINATION OF PARENTAL RIGHTS; AMENDING SECTION 16-1615, IDAHO CODE, TO PROVIDE ADDITIONAL CONDITIONS REQUIRING THE DEPARTMENT TO FILE A PETITION FOR TERMINATION WHEN THE PARENT HAS BEEN CONVICTED OF CERTAIN CRIMINAL ACTS AGAINST ANOTHER SIBLING OF THE CHILD; AMENDING SECTION 16-1623, IDAHO CODE, TO PROVIDE THE METHOD FOR DETERMINING THE LENGTH OF TIME A CHILD HAS BEEN IN CARE AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 16-1615, Idaho Code, be, and the same is hereby amended to read as follows:

16-1615. TERMINATION OF PARENT-CHILD RELATIONSHIP. If the child has been placed in the custody of the department or under its protective supervision pursuant to section 16-1610, Idaho Code, the department may petition the court for termination of the parent and child relationship in accordance with chapter 20, title 16, Idaho Code. Unless there are compelling reasons it would not be in the best interest of the child, the department shall be required to file a petition to terminate parental rights within sixty (60) days of a judicial determination that an infant has been abandoned or that reasonable efforts, as defined in section 16-1610(b)(2)(iv), Idaho Code, are not required because the court determines the parent has been convicted of murder or voluntary manslaughter of another sibling of the child or has aided, abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter and/or if the court determines the parent has been convicted of a felony assault or battery which resulted in serious bodily injury to the child or a sibling. The department shall join as a party to the petition if such a petition to terminate is filed by another party; as well as to concurrently identify, recruit, process and approve a qualified family for adoption unless it is determined that such actions would not be in the best interest of the child, or the child is placed with a relative. If termination of parental rights is granted and the child is placed in the guardianship or legal custody of the department of health and welfare the court, upon petition, shall conduct a hearing as to the future status of the child within twelve (12) months of the order of termination of parental rights, and every twelve (12) months subsequently until the child is adopted or is in a placement sanctioned by the court.

SECTION 2. That Section 16-1623, Idaho Code, be, and the same is hereby amended to read as follows:

16-1623. POWERS AND DUTIES OF THE DEPARTMENT. The department, working in conjunction with the court and other public and private agencies and persons, shall have the primary responsibility to implement the purpose of this chapter. To this end, the department is empowered and shall have the duty to do all things reasonably necessary to carry out the purpose of this chapter, including, but not limited to, the following:

(a) The department shall administer treatment programs for the protection and care of neglected, abused and abandoned children, and in so doing may place in foster care, shelter care, group homes or other diagnostic, treatment, or care centers or facilities, children of whom it has been given custody. The department is to be governed by the standards found in chapter 12, title 39, ~~chapter 12,~~ Idaho Code.

(b) On December 1, the department shall make an annual statistical report to the governor covering the preceding fiscal year showing the number and status of persons in its custody and including such other data as will provide sufficient facts for sound planning in the conservation of children and youth. All officials and employees of the state and of every county and city shall furnish the department upon request, such information within their knowledge and control as the department deems necessary. Local agencies shall report in such uniform format as may be required by the department.

(c) The department shall be required to maintain a central registry for the reporting of child neglect, abuse and abandonment information.

(d) The department shall make periodic evaluation of all persons in its custody or under its supervision for the purpose of determining whether existing orders and dispositions in individual cases shall be modified or continued in force. Evaluations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding six (6) months. Reports of evaluation made pursuant to this section shall be filed with the court which vested custody of the person with the department. Reports of evaluation shall be provided to persons having full or partial legal or physical custody of a child. Failure of the department to evaluate a person or to reevaluate him within six (6) months of a previous examination shall not of itself entitle the person to a change in disposition but shall entitle him, his parent, guardian or custodian or his counsel to petition the court pursuant to section 16-1611, Idaho Code.

(e) In a consultive capacity, the department shall assist communities in the development of constructive programs for the protection, prevention and care of children and youth.

(f) The department shall keep written records of investigations, evaluations, prognosis and all orders concerning disposition or treatment of every person over whom it has legal custody. Department records shall be subject to disclosure according to chapter 3, title 9, Idaho Code, unless otherwise ordered by the court, the person consents to the disclosure, or disclosure is necessary for the delivery of services to the person. Notwithstanding the provisions restricting

disclosure or the exemptions from disclosure provided in chapter 3, title 9, Idaho Code, all records pertaining to investigations, the rehabilitation of youth, the protection of children, evaluation, treatment and/or disposition records pertaining to the statutory responsibilities of the department shall be disclosed to any duly elected state official carrying out his official functions.

(g) The department shall establish appropriate administrative procedures for the processing of complaints of child neglect, abuse and abandonment received and for the implementation of the protection, treatment and care of children formally or informally placed in the custody of the department under this chapter.

(h) The department having been granted legal custody of a child, subject to the judicial review provisions of this subsection, shall have the right to determine where and with whom the child shall live, provided that the child shall not be placed outside the state without the court's consent. Provided however, that the court shall retain jurisdiction over the child, which jurisdiction shall be entered on any order or petition granting legal custody to the department, and the court shall have jurisdiction over all matters relating to the child. The department shall not place the child in the home from which the court ordered the child removed without first obtaining the approval of the court.

(i) The department shall give to the court any information concerning the child that the court may at any time require, but in any event shall report the progress of the child under its custody at intervals of not to exceed six (6) months. There shall be a rebuttable presumption that if a child is placed in the custody of the department and was also placed in out of the home care for a period not less than fifteen (15) out of the last twenty-two (22) months from the date ~~of adjudication~~ the child entered shelter care, the department shall initiate a petition for termination of parental rights. This presumption may be rebutted by a finding of the court that the filing of a petition for termination of parental rights would not be in the best interests of the child or reasonable efforts have not been provided to reunite the child with his family, or the child is placed permanently with a relative.

(j) The department shall establish appropriate administrative procedures for the conduct of administrative reviews and hearings as required by federal statute for all children committed to the department and placed in out of home care.

(k) At any time the department is considering a placement pursuant to this act, the department shall make a reasonable effort to place the child in the least disruptive environment to the child and in so doing may consider, without limitation, placement of the child with related persons.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 234
(S.B. No. 1318)

AN ACT

RELATING TO THE EXAMINATION OF A DEFENDANT REGARDING FITNESS TO PROCEED; AMENDING SECTION 18-211, IDAHO CODE, TO PROVIDE FOR EVALUATION OF WHETHER THE DEFENDANT CAN MAKE INFORMED DECISIONS ABOUT TREATMENT; AMENDING SECTION 18-212, IDAHO CODE, TO PROVIDE FOR DETERMINATION OF THE DEFENDANT'S CAPACITY TO MAKE INFORMED DECISIONS ABOUT TREATMENT, TO PROVIDE A TIME LIMIT FOR THE COMMITMENT TO CUSTODY AND TO PROVIDE FOR A HEARING REGARDING INVOLUNTARY TREATMENT; AMENDING SECTION 66-337, IDAHO CODE, TO PROVIDE CORRECT CITATIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 appointed examiner shall also evaluate whether the defendant lacks capacity to make informed decisions about treatment. 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;

(d) an opinion whether the defendant lacks the capacity to make informed decisions about treatment. "Lack of capacity to make informed decisions about treatment" means the defendant's inability, by reason of his mental condition, to achieve a rudimentary understanding of the purpose, nature, and possible significant risks and benefits of treatment, after conscientious efforts at explanation.

(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 (7) of section 66-402, Idaho Code.

(10) If the defendant lacks capacity to make informed decisions about treatment, as defined in section 66-317, 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 (9) 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 2. That Section 18-212, Idaho Code, be, and the same is hereby amended to read as follows:

18-212. DETERMINATION OF FITNESS OF DEFENDANT TO PROCEED -- SUSPENSION OF PROCEEDING AND COMMITMENT OF DEFENDANT -- POSTCOMMITMENT HEARING. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. The court shall also determine, based on the examiner's findings, whether the defendant lacks capacity to make informed decisions about treatment. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 18-211, Idaho Code, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the party who

contests the finding thereof shall have the right to summon and to cross-examine the psychiatrist or licensed psychologist who submitted the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsections (~~4~~5) and (~~5~~6) of this section, and the court shall commit him to the custody of the director of the department of health and welfare, for a period not exceeding ninety (90) days, for care and treatment at an appropriate facility of the department of health and welfare or if the defendant is found to be dangerously mentally ill as defined in section 66-1305, Idaho Code, to the department of correction for a period not exceeding ninety (90) days. The order of commitment shall include the finding by the court whether the defendant lacks capacity to make informed decisions about treatment. For purposes of this section "facility" shall mean a state hospital, institution, mental health center, or those facilities enumerated in subsection (8) of section 66-402, Idaho Code, equipped to evaluate or rehabilitate such defendants. The order of commitment shall require the county sheriff to transport the defendant to and from the facility and require an evaluation of the defendant's mental condition at the time of admission to the facility, and a progress report on the defendant's mental condition. The progress report shall include an opinion whether the defendant is fit to proceed, or if not, whether there is a substantial probability the defendant will be fit to proceed within the foreseeable future. If the report concludes that there is a substantial probability that the defendant will be fit to proceed in the foreseeable future, the court may order the continued commitment of the defendant for an additional one hundred eighty (180) days. If at any time the director of the facility to which the defendant is committed determines that the defendant is fit to proceed, such determination shall be reported to the court.

(3) If during a commitment under this section a defendant who has the capacity to make informed decisions about treatment refuses any and all treatment, or the only treatment available to restore competency for trial, the court shall, within seven (7) days, excluding weekends and holidays, of receiving notice of the defendant's refusal from the facility, conduct a hearing on whether to order involuntary treatment or order such other terms and conditions as may be determined appropriate. The burden shall be on the state to demonstrate grounds for involuntary treatment including, but not limited to: the prescribed treatment is essential to restore the defendant's competency, the medical necessity and appropriateness of the prescribed treatment, no less intrusive treatment alternative exists to render the defendant competent for trial, and other relevant information. If each of these findings is made by the court, treatment shall be ordered consistent with the findings.

(4) Each report 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. Upon receipt of a report, the court shall determine, after a hearing if a hearing is requested, the disposition of the defendant and the proceedings against him. If the court determines that the defendant is fit to proceed, the proceeding shall be resumed. If at the end of the initial ninety (90)

days the court determines that the defendant is unfit and there is not a substantial probability the defendant will be fit to proceed within the foreseeable future or if the defendant is not fit to proceed after the expiration of the additional one hundred eighty (180) days, involuntary commitment proceedings shall be instituted pursuant to either section 66-329 or 66-406, Idaho Code, in the court in which the criminal charge is pending.

(~~4~~5) In its review of commitments pursuant to section 66-337, Idaho Code, the department of health and welfare shall determine whether the defendant is fit to proceed with trial. The department of health and welfare shall review its commitments pursuant to chapter 4, title 66, Idaho Code, and may recommend that the defendant is fit to proceed with trial. If the district court which committed the defendant pursuant to section 66-406, Idaho Code, agrees with the department's recommendation and finds the conditions which justified the order pursuant to section 66-406, Idaho Code, do not continue to exist, criminal proceedings may resume. If the defendant is fit to proceed, the court in which the criminal charge is pending shall be notified and the criminal proceedings may resume. If, however, the court is of the view that so much time has elapsed, excluding any time spent free from custody by reason of the escape of the defendant, since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge.

(~~5~~6) If a defendant escapes from custody during his confinement, the director shall immediately notify the court from which committed, the prosecuting attorney and the sheriff of the county from which committed. The court shall forthwith issue an order authorizing any health officer, peace officer, or the director of the institution from which the defendant escaped, to take the defendant into custody and immediately return him to his place of confinement.

SECTION 3. That Section 66-337, Idaho Code, be, and the same is hereby amended to read as follows:

66-337. REVIEW, TERMINATION OF COMMITMENT AND DISCHARGE OF PATIENTS. (a) The department director or his designee shall as frequently as practicable but at least once at the end of the first ninety (90) days examine or cause to be examined every patient committed to his custody or admitted to an inpatient facility of the state of Idaho, and determine whether to conditionally release, discharge or terminate the commitment of the patient. If the patient has not been conditionally released, discharged, or had the commitment terminated a similar review shall be conducted every one hundred twenty (120) days thereafter. A report of each review and determination regarding an involuntary patient shall be sent to the committing court, prosecuting attorney of the county of commitment, if any, the patient's attorney, and either the patient's spouse, guardian, next of kin or friend.

(b) The commitment of an involuntary patient shall be terminated if the patient is no longer mentally ill or is no longer likely to injure himself or others or is no longer gravely disabled; provided, that patients admitted under section 18-214, Idaho Code, acquitted of criminal charges filed prior to July 1, 1982, on grounds of mental disease or defect, or committed pursuant to sections 18-212(~~3~~4) and

66-329, Idaho Code, as unfit to proceed, may not be released from an inpatient facility unless thirty (30) days before such release, the department director or his designee shall notify the committing court and prosecuting attorney of the contemplated release.

(c) Upon notification of intention to release from an inpatient facility either a patient admitted under section 18-214, Idaho Code, acquitted of criminal charges filed prior to July 1, 1982, on grounds of mental disease or defect, or committed pursuant to sections 18-212(~~3~~4) and 66-329, Idaho Code, as unfit to proceed, and upon motion of an interested party or the court on its own motion, the court shall determine whether the conditions justifying such release exist. In making such determination, the court may order an independent examination of the patient. The cost of such independent examination must be borne by the party making the motion or, if indigent, the county having jurisdiction of the case. If no motion is made, the patient may be released according to the notice.

(d) Section 18-214, Idaho Code, shall remain in full force and effect for every individual previously acquitted pursuant to section 18-213, Idaho Code. Section 18-214, Idaho Code, as last amended by section 2, chapter 13, laws of 1977, which is placed here for reference only and is not a reenactment of section 18-214, Idaho Code, and reads as follows:

18-214. Commitment of acquitted defendant -- Conditional release -- Revocation of release within five years. (1) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him to be committed to the custody of the director of the department of health and welfare to be placed in an appropriate institution for custody, care and treatment.

(2) If the director of the department of health and welfare is of the view that a person committed to his custody, pursuant to paragraph (1) of this section, may be discharged or released on condition without danger to himself or to others, he shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the prosecuting attorney of the county from which the defendant was committed. The court shall thereupon appoint at least two (2) qualified psychiatrists to examine such person and to report within sixty (60) days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate such examination and the proceedings thereon, the court may cause such person to be confined in any institution located near the place where the court sits, which may hereafter be designated by the director of the department of health and welfare as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed pursuant to paragraph (2) of this section and such testimony of the reporting psychiatrists as the court deems necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be

upon the committed person to prove that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the director of the department of health and welfare, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(4) If, within five (5) years after the conditional release of a committed person, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of such person or for the safety of others his conditional release should be revoked, the court shall forthwith order him to be recommitted to the custody of the director of the department of health and welfare subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(5) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the director of the department of health and welfare. However, no such application by a committed person need be considered until he has been confined for a period of not less than six (6) months from the date of the order of commitment and if the determination of the court be adverse to the application, such person shall not be permitted to file a further application until one (1) year has elapsed from the date of any preceding hearing on an application for his release or discharge.

(6) If a defendant escapes from custody during his confinement, the director shall immediately notify the court from which committed, the prosecuting attorney and the sheriff of the county from which committed. The court shall forthwith issue an order authorizing any health officer, peace officer, or the director of the institution from which the defendant escaped, to take the defendant into custody and immediately return him to his place of confinement.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 235
(S.B. No. 1319, As Amended)

AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRATION AND NOTIFICATION ACT; AMENDING SECTION 18-8314, IDAHO CODE, TO PROVIDE THAT THE BOARD SHALL REVIEW OFFENDERS SCHEDULED FOR RELEASE FROM INCARCERATION, TO PROVIDE FOR CLASSIFICATION OF RECIDIVISTS AS VIOLENT SEXUAL PREDATORS AND TO PROVIDE FOR REFERRAL OF SEX OFFENDER FELONS ON PROBATION OR PAROLE TO THE SEXUAL OFFENDER CLASSIFICATION BOARD TO BE REVIEWED FOR POSSIBLE VIOLENT SEXUAL PREDATOR DESIGNATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-8314, Idaho Code, be, and the same is hereby amended to read as follows:

18-8314. DUTIES OF THE SEXUAL OFFENDER CLASSIFICATION BOARD. (1) The board shall ~~evaluate~~ review offenders scheduled for release from incarceration, who were sentenced and convicted for one (1) or more of the crimes set forth in sections 18-1506, 18-1506A, 18-1508, 18-4003(d), 18-4502, 18-6101, 18-6108, 18-6602, 18-6605 and 18-6608, Idaho Code, or are recidivists as defined in this chapter, for the purpose of determining whether the offender should be designated as a violent sexual predator presenting a high risk of reoffense.

(2) The board shall review offenders who were sentenced and convicted for crimes enumerated in subsection (1) of this section and recidivists as defined in this chapter, who have been released under supervision, for the purpose of determining whether the offender should be designated as a violent sexual predator presenting a high risk of reoffense. Such review shall be undertaken upon request of the court having jurisdiction over the offender on probation or of the parole commission if the offender has been released on parole regardless of whether the offender has been reviewed by the board prior to release from incarceration. For purposes of seeking a board review pursuant to this subsection, the court or parole commission may consider all relevant evidence including, but not limited to, the probation or parole official's observations and opinions of these offenders while under supervision, in light of the circumstances of the underlying offense.

(3) The board shall establish standards for psychosexual evaluations and the qualifications for approved evaluators performing evaluations pursuant to sections 18-8316 and 18-8317, Idaho Code.

(~~3~~4) The board shall establish guidelines to determine whether an offender scheduled for release is a violent sexual predator presenting a high risk of reoffense. The guidelines shall be established with the assistance of sexual offender treatment and law enforcement professionals who have, by education, experience or training, expertise in the assessment and treatment of sexual offenders.

(a) Factors to be used in establishment of the guidelines must be supported in the sexual offender assessment field as criteria reasonably related to the risk of reoffense and be objective criteria that can be gathered in a consistent and reliable manner.

(b) The guidelines shall include, but are not limited to, the following general categories for risk assessment: seriousness of the offense, offense history, whether the offense was predatory, characteristics of the offender, characteristics of the victim, the relationship of the offender to the victim, the number of victims and the number of violations of each victim.

(~~4~~5) If the offender has indicated an intention to reoffend if released into the community and the available record reveals credible evidence to support this finding, then the offender shall be deemed a violent sexual predator regardless of application of the guidelines.

(~~5~~6) Once the board has made its determination, it shall set forth written findings which shall include:

(a) The board's risk assessment and the reasons upon which the risk assessment was based; and

(b) The board's determination whether the offender should be designated as a violent sexual predator and the reasons upon which the determination was based.

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 April 12, 2000.

CHAPTER 236
(S.B. No. 1320, As Amended)

AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRATION AND NOTIFICATION ACT; AMENDING SECTION 18-8303, IDAHO CODE, TO ADD A DEFINITION OF "RECIDIVIST"; AMENDING SECTION 18-8310, IDAHO CODE, TO PROVIDE THAT RECIDIVISTS ARE SUBJECT TO LIFETIME REGISTRATION; AMENDING SECTION 18-8311, IDAHO CODE, TO PROVIDE PENALTIES FOR PERSONS WHO EVADE SERVICE OF THE VIOLENT SEXUAL PREDATOR NOTICE; AMENDING SECTION 18-8314, IDAHO CODE, TO PROVIDE FOR CLASSIFICATION OF RECIDIVISTS AS VIOLENT SEXUAL PREDATORS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-8319, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-8303, Idaho Code, be, and the same is hereby amended to read as follows:

18-8303. DEFINITIONS. As used in this chapter:

(1) "Board" means the sexual offender classification board described in section 18-8312, Idaho Code.

(2) "Central registry" means the registry of convicted sexual offenders maintained by the Idaho department of law enforcement pursuant to this chapter.

(3) "Department" means the Idaho department of law enforcement.

(4) "Employed" means full or part-time employment exceeding ten (10) consecutive working days or for an aggregate period exceeding thirty (30) days in any calendar year, or any employment which involves counseling, coaching, teaching, supervising or working with minors in any way regardless of the period of employment, whether such employment is financially compensated, volunteered or performed for the purpose of any government or education benefit.

(5) "Incarceration" means committed to the custody of the Idaho department of correction, but excluding cases where the court has retained jurisdiction.

(6) "Offender" means an individual convicted of an offense listed and described in section 18-8304, Idaho Code, or a substantially similar offense under the laws of another state or in a federal, tribal or

military court or the court of another country.

(7) "Offense" means a sexual offense listed in section 18-8304, Idaho Code.

(8) "Predatory" means actions directed at an individual who was selected by the offender for the primary purpose of engaging in illegal sexual behavior.

(9) "Psychosexual evaluation" means an evaluation which specifically addresses sexual development, sexual deviancy, sexual history and risk of reoffense as part of a comprehensive evaluation of an offender.

(10) "Recidivist" means an individual convicted two (2) or more times of any offense requiring registration under this chapter.

(~~10~~11) "Residence" means the offender's present place of abode.

(~~11~~12) "Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education.

(~~12~~13) "Violent sexual predator" means a person who has been convicted of an offense listed in section 18-8312, Idaho Code, and who has been determined to pose a risk of committing an offense or engaging in predatory sexual conduct.

SECTION 2. That Section 18-8310, Idaho Code, be, and the same is hereby amended to read as follows:

18-8310. RELEASE FROM REGISTRATION REQUIREMENTS -- EXPUNGEMENT. (1) Any person, other than ~~one~~ a recidivist or an offender designated as a violent sexual predator, may, after a period of ten (10) years from the date the person was released from incarceration or placed on parole, supervised release or probation, whichever is greater, petition the district court for a show cause hearing to determine whether the person shall be exempted from the duty to register as a sexual offender. In the petition the petitioner shall:

(a) Provide clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or crime identified in section 18-8304, Idaho Code;

(b) Provide an affidavit indicating that the petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any violent crime or crime identified in section 18-8304, Idaho Code;

(c) Provide proof of service of such petition upon the county prosecuting attorney for the county in which the application is made; and

(d) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sexual offender.

The district court may grant a hearing if it finds that the petition is sufficient. The court shall provide at least sixty (60) days prior notice of the hearing to the petitioner and the county prosecuting attorney.

The court may exempt the petitioner from the reporting requirement only after a hearing on the petition in open court and only upon proof by clear and convincing evidence that the petitioner is not a risk to commit a new violation for any violent crime or crime identified in

section 18-8304, Idaho Code.

(2) Concurrent with the entry of any order exempting the petitioner from the reporting requirement, the court may further order that any information regarding the petitioner be expunged from the central registry.

SECTION 3. That Section 18-8311, Idaho Code, be, and the same is hereby amended to read as follows:

18-8311. PENALTIES. (1) An offender subject to registration who fails to register or provide any notice as required by this chapter shall be guilty of a felony and shall be punished by imprisonment in the state prison system for a period not to exceed five (5) years and by a fine not to exceed five thousand dollars ($5,000). If the offender is on probation or other supervised release or suspension from incarceration at the time of the violation, the probation or supervised release or suspension shall be revoked and the penalty for violating this chapter shall be served consecutively to the offender's original sentence.

(2) An offender subject to registration under this chapter, who willfully provides false or misleading information in the registration required, shall be guilty of a felony and shall be punished by imprisonment in a state prison for a period not to exceed five (5) years and a fine not to exceed five thousand dollars ($5,000).

(3) An offender subject to registration under this chapter, who willfully evades service of the board's notice pursuant to section 18-8319, Idaho Code, shall be guilty of a felony and shall be punished by imprisonment in a state prison for a period not to exceed five (5) years and a fine not to exceed five thousand dollars ($5,000).

SECTION 4. That Section 18-8314, Idaho Code, be, and the same is hereby amended to read as follows:

18-8314. DUTIES OF THE SEXUAL OFFENDER CLASSIFICATION BOARD. (1) The board shall ~~evaluate~~ review offenders scheduled for release from incarceration, who were sentenced and convicted for one (1) or more of the crimes set forth in sections 18-1506, 18-1506A, 18-1508, 18-4003(d), 18-4502, 18-6101, 18-6108, 18-6602, 18-6605 and 18-6608, Idaho Code, or are recidivists as defined in this chapter, for the purpose of determining whether the offender should be designated as a violent sexual predator presenting a high risk of reoffense.

(2) The board shall establish standards for psychosexual evaluations and the qualifications for approved evaluators performing evaluations pursuant to sections 18-8316 and 18-8317, Idaho Code.

(3) The board shall establish guidelines to determine whether an offender scheduled for release is a violent sexual predator presenting a high risk of reoffense. The guidelines shall be established with the assistance of sexual offender treatment and law enforcement professionals who have, by education, experience or training, expertise in the assessment and treatment of sexual offenders.

(a) Factors to be used in establishment of the guidelines must be supported in the sexual offender assessment field as criteria reasonably related to the risk of reoffense and be objective criteria

that can be gathered in a consistent and reliable manner.

(b) The guidelines shall include, but are not limited to, the following general categories for risk assessment: seriousness of the offense, offense history, whether the offense was predatory, characteristics of the offender, characteristics of the victim, the relationship of the offender to the victim, the number of victims and the number of violations of each victim.

(4) If the offender has indicated an intention to reoffend if released into the community and the available record reveals credible evidence to support this finding, then the offender shall be deemed a violent sexual predator regardless of application of the guidelines.

(5) Once the board has made its determination, it shall set forth written findings which shall include:

(a) The board's risk assessment and the reasons upon which the risk assessment was based; and

(b) The board's determination whether the offender should be designated as a violent sexual predator and the reasons upon which the determination was based.

SECTION 5. That Section 18-8319, Idaho Code, be, and the same is hereby amended to read as follows:

18-8319. NOTICE OF THE BOARD'S DETERMINATION. (1) Subject to the exception identified in section 18-8320, Idaho Code, the offender and the sheriff of the county in which the offender resides or intends to reside upon release shall be notified by the board that an offender has been designated as a violent sexual predator. This notice shall be in the form of the board's written findings.

(2) The board shall serve a copy of its written findings to the offender at the same time the board serves the copy to the sheriff.

(3) The board's notice to the offender shall also inform the offender:

(a) That the offender may challenge the designation as a violent sexual predator by judicial review;

(b) That unless application is made to the court of the county in which the offender resides or intends to reside on or before the date set forth in the notice, which shall be no ~~less~~ more than fourteen (14) calendar days after the notice is given, the offender shall be deemed to have waived the right to challenge the designation;

(c) That the offender has the right to retain counsel and that counsel will be provided by the court if the offender cannot afford counsel; and

(d) How such application should be made if counsel is not retained. If counsel is not retained, a simple letter delivered to the courthouse in the county of the offender's residence, which encloses a copy of the board's written findings and indicates the offender's objection or disagreement with it, shall suffice.

SECTION 6. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 237
(S.B. No. 1321)

AN ACT
RELATING TO THE SEXUAL OFFENDER REGISTRATION AND NOTIFICATION ACT; AMENDING SECTION 18-8319, IDAHO CODE, TO PROVIDE FOR LAW ENFORCEMENT ASSISTANCE IN SERVING THE VIOLENT SEXUAL PREDATOR NOTICE OR VERIFYING AN OFFENDER'S RESIDENCE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-8319, Idaho Code, be, and the same is hereby amended to read as follows:

18-8319. NOTICE OF THE BOARD'S DETERMINATION. (1) Subject to the exception identified in section 18-8320, Idaho Code, the offender and the sheriff of the county in which the offender resides or intends to reside upon release shall be notified by the board that an offender has been designated as a violent sexual predator. This notice shall be in the form of the board's written findings.

(2) The board shall serve a copy of its written findings to the offender at the same time the board serves the copy to the sheriff.

(3) The board's notice to the offender shall also inform the offender:

(a) That the offender may challenge the designation as a violent sexual predator by judicial review;

(b) That unless application is made to the court of the county in which the offender resides or intends to reside on or before the date set forth in the notice, which shall be no less than fourteen (14) calendar days after the notice is given, the offender shall be deemed to have waived the right to challenge the designation;

(c) That the offender has the right to retain counsel and that counsel will be provided by the court if the offender cannot afford counsel; and

(d) How such application should be made if counsel is not retained. If counsel is not retained, a simple letter delivered to the courthouse in the county of the offender's residence, which encloses a copy of the board's written findings and indicates the offender's objection or disagreement with it, shall suffice.

(4) Upon determining that the offender has not received the board's notice pursuant to this section, the board shall notify the sheriff of the county in which the offender resides. This notice shall be in writing and shall be delivered in a manner which will ensure receipt by the sheriff. Upon request of the board, the sheriff may personally serve the offender with the board's notice, or the sheriff may verify the offender's address and advise the board in order that notice may once again be served. If, after the second attempt to serve the offender, the board or sheriff determines that the offender has evaded service or attempted to evade service, the matter shall be referred for prosecution pursuant to section 18-8311(3), Idaho Code.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 238
(S.B. No. 1322)

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-1114, IDAHO CODE, TO PROVIDE THAT IF A PERSON WOULD OTHERWISE BE PRIVILEGED TO WITHHOLD TESTIMONY OR EVIDENCE AND IS GRANTED IMMUNITY BY AGREEMENT WITH THE PROSECUTION, THE ANSWER GIVEN OR EVIDENCE PRODUCED AND INFORMATION DERIVED FROM THE ANSWER OR EVIDENCE MAY NOT BE USED AGAINST THE PERSON IN A CRIMINAL CASE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 19-1115, IDAHO CODE, TO PROVIDE THAT IF A PERSON WOULD OTHERWISE BE PRIVILEGED TO WITHHOLD TESTIMONY OR EVIDENCE AND IS GRANTED IMMUNITY BY AGREEMENT WITH THE PROSECUTION, THE ANSWER GIVEN OR EVIDENCE PRODUCED AND INFORMATION DERIVED FROM THE ANSWER OR EVIDENCE MAY NOT BE USED AGAINST THE PERSON IN A CRIMINAL CASE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 19-1114, Idaho Code, be, and the same is hereby amended to read as follows:

19-1114. NOTICE OF REFUSAL TO GIVE INCRIMINATING EVIDENCE -- AGREEMENT TO TESTIFY WITH IMMUNITY -- PERJURY -- COMPELLING ANSWER. In any criminal proceeding or in any investigation or proceeding before a grand jury in connection with any criminal offense, if a person has advised the prosecuting attorney that he will refuse to answer a question or produce evidence, if called as a witness, on the ground that he may be incriminated thereby, the person may agree in writing with the prosecuting attorney of the county to testify voluntarily pursuant to this section. Upon written request of such prosecuting attorney being made to the district court in and for that county, said district court shall approve such written agreement, unless the court finds that to do so would be clearly contrary to the public interest. If after court approval of such agreement, and if, but for this section, the person would have been privileged to withhold the answer given or the evidence produced by him, ~~that person shall not be prosecuted or subjected to penalty or forfeiture for or on account of any fact or act concerning which, in accordance with such agreement, he answered or produced evidence,~~ the answer given, or evidence produced, and any information directly or indirectly derived from the answer or evidence, may not be used against the person in any manner in a criminal case but ~~he~~ the person may, nevertheless, be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering or in producing evidence in accordance with such agreement. If such person fails to give any answer or to produce

any evidence in accordance with such agreement, that person shall be prosecuted or subjected to penalty or forfeiture in the same manner and to the same extent as he would be prosecuted or subjected to penalty or forfeiture but for this section: provided, that if such person fails to give any answer or to produce any evidence in accordance with such agreement, the prosecuting attorney may request the district court to compel the person to answer or produce evidence, in accordance with section 19-1115, Idaho Code.

SECTION 2. That Section 19-1115, Idaho Code, be, and the same is hereby amended to read as follows:

19-1115. REFUSAL TO GIVE INCRIMINATING EVIDENCE -- COMPELLING TO ANSWER OR PRODUCE EVIDENCE -- IMMUNITY -- PERJURY. In any criminal proceeding or in any investigation or proceeding before a grand jury in connection with any criminal offense, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and if the prosecuting attorney of the county in writing requests the district court in and for that county to order that person to answer the question or produce the evidence, a judge of the district court shall set a time for hearing and order the person to appear before the court and show cause, if any, why the question should not be answered or the evidence produced, and the court shall order the question answered or the evidence produced unless it finds that to do so would be clearly contrary to the public interest, or could subject the witness to a criminal prosecution in another jurisdiction, and that person shall comply with the order. After complying, and if, but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, ~~that person shall not be prosecuted or subjected to penalty or forfeiture for or on account of any fact or act concerning which, in accordance with the order, he was required to answer or produce evidence. But~~ the answer given, or evidence produced, and any information directly or indirectly derived from the answer or evidence, may not be used against the compelled person in any manner in a criminal case, except that he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 239
(S.B. No. 1323, As Amended)

AN ACT
RELATING TO VIOLATION OF A NO CONTACT ORDER; AMENDING SECTION 18-920, IDAHO CODE, TO PROVIDE FOR ENTRY OF A NO CONTACT ORDER WHEN A PER-

SON IS CONVICTED OF CERTAIN CRIMES 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 18-920, Idaho Code, be, and the same is hereby amended to read as follows:

18-920. VIOLATION OF NO CONTACT ORDER. (1) When a person is charged with or convicted of an offense under section 18-901, 18-903, 18-905, 18-907, 18-911, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905~~,~~ or 39-6312, Idaho Code, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.

(2) A violation of a no contact order is committed when:

(a) A person has been charged or convicted under any offense defined in subsection (1) of this section; and

(b) A no contact order has been issued, either by a court or by an Idaho criminal rule; and

(c) The person charged or convicted has had contact with the stated person in violation of an order.

(3) A violation of a no contact order is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year, or both. No bond shall be set for this violation until the person charged is brought before the court which will set bond. Further, any such violation may result in the increase, revocation or modification of the bond set in the underlying charge for which the no contact order was imposed.

(4) A peace officer may arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a no contact order issued under this section if the person restrained had notice of the order.

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 April 12, 2000.

CHAPTER 240
(S.B. No. 1324)

AN ACT

RELATING TO FELONY DRIVING UNDER THE INFLUENCE; AMENDING SECTION 18-8005, IDAHO CODE, TO PROVIDE THAT A SUBSTANTIALLY CONFORMING FOREIGN CRIMINAL FELONY VIOLATION MAY BE USED AS A PRIOR CONVICTION FOR THE PURPOSE OF ESTABLISHING A FELONY CHARGE OF DRIVING UNDER THE INFLUENCE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-8005, Idaho Code, be, and the same is hereby amended to read as follows:

18-8005. PENALTIES. (1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a) or (5), Idaho Code, for the first time is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) May be sentenced to jail for not to exceed six (6) months;

(b) May be fined an amount not to exceed one thousand dollars ($1,000);

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney; and

(d) Shall have his driving privileges suspended by the court for a period of thirty (30) days which shall not be reduced and during which thirty (30) day period absolutely no driving privileges of any kind may be granted. After the thirty (30) day period of absolute suspension of driving privileges has passed, the defendant shall have driving privileges suspended by the court for an additional period of at least sixty (60) days, not to exceed one hundred fifty (150) days during which the defendant may request restricted driving privileges 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.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(b), Idaho Code, for the first time is guilty of a misdemeanor and subject to:

(a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

(b) The provisions of section 49-335, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(c), Idaho Code, for the first time, is guilty of a misdemeanor and is subject to:

(a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

(b) The provisions of section 49-335, Idaho Code.

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), and except as provided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days the first forty-eight (48) hours of which must be consecutive, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sen-

tencing 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 two thousand dollars ($2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(f) If the person has pled guilty or was found guilty for the second time within five (5) years of a violation of the provisions of section 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335, Idaho Code, shall apply.

(5) Except as provided in section 18-8004C, Idaho Code, any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation, or any combination thereof, within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony; and

(a) Shall be sentenced to the custody of the state board of correction for not to exceed five (5) years; provided that notwithstanding 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, the first forty-eight (48) hours of which must be consecutive; 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 five thousand dollars ($5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind.

(6) For the purpose of computation of the enhancement period in subsections (4), (5) and (7) of this section, the time that elapses between the date of commission of the offense and the date the defendant pleads guilty or is found guilty for the pending offense shall be excluded. If the determination of guilt against the defendant is

reversed upon appeal, the time that elapsed between the date of the commission of the offense and the date the defendant pleads guilty or is found guilty following the appeal shall also be excluded.

(7) Notwithstanding the provisions of subsections (4) and (5) of this section, any person who has pled guilty or has been found guilty of a felony violation of the provisions of section 18-8004, Idaho Code, a felony violation of the provisions of section 18-8004C, Idaho Code, a violation of the provisions of section 18-8006, Idaho Code, ~~or~~ a violation of the provisions of section 18-4006 3. (b), Idaho Code, or any substantially conforming foreign criminal felony violation, and within ten (10) years pleads guilty or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (5) of this section.

(8) For the purpose of subsections (4), ~~and~~ (5) and (7) of this section and the provisions of section 18-8004C, Idaho Code, a substantially conforming foreign criminal violation exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of section 18-8004, Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(9) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall undergo, at his own expense, (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code,) and prior to the sentencing date, an alcohol evaluation by an alcohol evaluation facility approved by the Idaho department of health and welfare. In the event the alcohol evaluation indicates the need for alcohol treatment, the evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment program, together with the estimated cost thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that alcohol treatment is required unless the defendant makes a showing by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for indigent

defendants.

(10) At the time of sentencing, the court shall be provided with the following information:

(a) The results, if administered, of any evidentiary test for alcohol and/or drugs;

(b) A computer or teletype or other acceptable copy of the person's driving record;

(c) Information as to whether the defendant has pled guilty to or been found guilty of violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, or a similar offense within the past five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s); and

(d) The alcohol evaluation required in subsection (9) of this section, if any.

(11) A minor may be prosecuted for a violation of the provisions of section 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code. In addition to any other penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended or denied for an additional one (1) year following the end of any period of suspension or revocation existing at the time of the violation, or until he reaches the age of twenty-one (21) years, whichever period is greater. During the period of additional suspension or denial, absolutely no driving privileges shall be allowed.

(12) In the event that the alcohol evaluation required in subsection (9) of this section recommends alcohol treatment, the court shall order the person to complete a treatment program in addition to any other sentence which may be imposed, unless the court determines that alcohol treatment would be inappropriate or undesirable, in which event, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation, or a comparable program. Such treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event that funding is provided for or on behalf of the defendant by an entity of state government, restitution shall be ordered to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code. Nothing contained herein shall be construed as requiring a court to order that a governmental entity shall provide alcohol treatment at government expense unless otherwise required by law.

(13) Any person who is disqualified shall not be granted restricted driving privileges to operate a commercial motor vehicle.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 241
(S.B. No. 1333)

AN ACT

RELATING TO ATTORNEY'S FEES AWARDED IN ADMINISTRATIVE OR CIVIL JUDICIAL PROCEEDINGS; AMENDING SECTION 12-117, IDAHO CODE, TO REVISE PROCEDURES WHEN A COURT MAY AWARD ATTORNEY'S FEES TO A PREVAILING PARTY IN AN ADMINISTRATIVE OR CIVIL JUDICIAL PROCEEDING AND TO MAKE TECHNICAL CORRECTIONS; PROVIDING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

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

SECTION 1. That Section 12-117, Idaho Code, be, and the same is hereby amended to read as follows:

12-117. ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN INSTANCES. (1) Unless otherwise provided by statute, i~~I~~n any administrative or civil judicial proceeding involving as adverse parties a state agency, a city, a county or other taxing district and a person, the court shall award the ~~person~~ prevailing party reasonable attorney's fees, witness fees and reasonable expenses, if the court finds ~~in favor of the person and also finds that the state agency, the city, the county or the taxing district~~ that the party against whom the judgment is rendered acted without a reasonable basis in fact or law.

(2) If the ~~person~~ prevailing party is awarded a partial judgment and the court finds the ~~state agency, the city, the county or the taxing--district~~ party against whom partial judgment is rendered acted without a reasonable basis in fact or law, the court shall allow the ~~person~~ prevailing party's attorney's fees, witness fees and expenses in an amount which reflects the person's partial recovery.

(3) Expenses awarded ~~under~~ against a state agency, city, county or other taxing district pursuant to this section shall be paid from funds in the regular operating budget of the state agency, the city, the county or the taxing district. If sufficient funds are not available in the budget of the state agency, the expenses shall be considered a claim governed by the provisions of section 67-2018, Idaho Code. If sufficient funds are not available in the budget of the city, county or taxing district, the expenses shall be considered a claim pursuant to chapter 9, title 6, Idaho Code. Every state agency, city, county or taxing district against which litigation expenses have been awarded under this act shall, at the time of submission of its proposed budget, submit a report to the governmental body which appropriates its funds in which the amount of expenses awarded and paid under this act during the fiscal year is stated.

(4) For the purposes of this section:

(a) "Person" shall mean any individual, partnership, corporation, association or any other private organization;

(b) "State agency" shall mean any agency as defined in section 67-5201, Idaho Code.

(5) If the amount pleaded in an action by a person is ~~twenty-five~~

two thousand five hundred dollars ($2,500) or less, the person must satisfy the requirements of section 12-120, Idaho Code, as well as the requirements of this section before he or she may recover attorney's fees, witness fees or expenses pursuant to this section.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000, and shall apply to all administrative or civil actions filed on and after the effective date of this act.

Approved April 12, 2000.

CHAPTER 242
(S.B. No. 1345, As Amended)

AN ACT

RELATING TO ELECTRICAL CONTRACTORS AND JOURNEYMEN; AMENDING SECTION 54-1003, IDAHO CODE, TO PROVIDE AUTHORITY FOR THE ADMINISTRATOR OF THE DIVISION OF BUILDING SAFETY TO IMPOSE CIVIL PENALTIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1006, IDAHO CODE, TO AUTHORIZE THE BOARD TO HEAR APPEALS REGARDING FINES IMPOSED BY THE ADMINISTRATOR, TO AUTHORIZE THE BOARD, WITHIN LIMITS, TO ADJUST THE PENALTY IMPOSED AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-1009, IDAHO CODE, TO PROVIDE AN ADDITIONAL CONDITION FOR WHICH A LICENSE MAY BE REVOKED OR SUSPENDED; AND AMENDING SECTION 54-1013, IDAHO CODE, TO PROVIDE ADDITIONAL CONDITIONS FOR THE RENEWAL OR REVIVAL OF A LICENSE.

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

SECTION 1. That Section 54-1003, Idaho Code, be, and the same is hereby amended to read as follows:

54-1003. ADMINISTRATOR ~~AUTHORIZED--TO--ISSUE--LICENSE~~ AUTHORITY. (1) Only the administrator of the division of building safety of the state of Idaho is authorized and empowered to conduct examinations and to pass upon the qualifications of applicants, and to grant and issue licenses or registrations to such applicants as are found to be qualified to engage in the trade, business or calling of a journeyman electrician, electrical contractor, master electrician, specialty electrician, specialty electrical contractor, specialty electrical trainee or apprentice electrician in the manner and upon the terms and conditions hereinafter provided.

(2) No licenses granted hereunder shall be transferable. Licenses shall be issued upon the condition that the holder thereof shall comply with all provisions of this chapter.

(3) The administrator of the division of building safety is authorized to impose civil penalties as provided in this chapter.

SECTION 2. That Section 54-1006, Idaho Code, be, and the same is hereby amended to read as follows:

54-1006. IDAHO ELECTRICAL BOARD. (1) The Idaho electrical board, hereinafter known as the board, is hereby created and made a part of the division of building safety. It shall be the responsibility and duty of the administrator of the division of building safety to administer and enforce the provisions of this act, to serve as secretary to the Idaho electrical board, and to appoint the chief electrical inspector.

(2) The board shall consist of nine (9) members to be appointed by the governor with power of removal for cause. Two (2) members shall be licensed journeymen or master electricians; two (2) members shall be employees or officers of licensed electrical contractors; one (1) member shall be a licensed specialty journeyman or contractor; one (1) member shall be an employee or officer of an electrical power provider; one (1) member shall be an employee or officer of a manufacturing plant or other large power user; one (1) member shall be an employee or director of a manufacturer or distributor of electrical supplies or materials; and one (1) member shall be from the public at large not directly associated with the electrical industry. Board members shall be appointed for a term of four (4) years. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(3) All members of the board shall be citizens of the United States, residents of this state for not less than two (2) years and shall be qualified by experience, knowledge and integrity in formulating rules for examinations, in passing on the fitness and qualifications of applicants for electrical contractor and journeyman electrician licenses and in establishing standards for electrical products to be used in electrical installations coming under the provisions of this act.

(4) The members of the board shall, at their first regular meeting following the effective date of this act and every two (2) years thereafter, elect by majority vote of the members of the board, a chairman who shall preside at meetings of the board. In the event the chairman is not present at any board meeting, the board may by majority vote of the members present appoint a temporary chairman. A majority of the members of the board shall constitute a quorum.

(5) The board is authorized and directed to prescribe and amend rules consistent with this act for the administration of this chapter and to effectuate the purpose thereof, and for the examination and licensing of electrical contractors, journeyman electricians, master ~~journeyman~~ electricians, specialty electricians, specialty electrical contractors, specialty electrical trainees and apprentice electricians. The board shall also establish the classifications for specialty electrician and specialty electrical contractor licensing and the fees to be charged for permits and inspections of electrical systems. The board shall establish by administrative rule the fines to be paid for citations issued and shall hear appeals regarding the imposition of civil penalties for violations of this ~~act~~ chapter and the rules of the Idaho electrical board. The board is authorized to affirm, reject, decrease or increase the penalty imposed by the admin-

istrator. However, in no case shall the penalty exceed one thousand dollars ($1,000) for each offense.

(6) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(g), Idaho Code.

SECTION 3. That Section 54-1009, Idaho Code, be, and the same is hereby amended to read as follows:

54-1009. REVOCATION OR SUSPENSION OF LICENSES -- HEARINGS -- TAKING TESTIMONY. The administrator shall have power to revoke or suspend any license if the same was obtained through error or fraud, or if the holder thereof is shown to be grossly incompetent, or has willfully violated any of the rules prescribed by the board, or as prescribed in this act; or has, after due notice, failed or refused to correct, within the specified time, any electrical installation not in compliance with the provisions of this act, or has failed to pay within the time provided, civil penalties which have become final by operation of law, provided, before any license shall be revoked or suspended, the holder thereof shall have written notice enumerating the charges against him, and shall be given a hearing by said administrator, and have an opportunity to produce testimony in his behalf, at a time and place specified in said notice, which time shall not be less than five (5) days after the service thereof. The proceedings shall be governed by the provisions of chapter 52, title 67, Idaho Code. Any party aggrieved by the action of the administrator shall be entitled to judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

The administrator shall have the power to appoint, by an order in writing, a hearing officer to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses, and the decision of the administrator shall be based on his examination of the testimony taken and the records produced. Any person whose license has been revoked may, after the expiration of one (1) year from the date of such revocation, but not before, apply for a new license.

SECTION 4. That Section 54-1013, Idaho Code, be, and the same is hereby amended to read as follows:

54-1013. RENEWAL OF LICENSES. A license once issued under this act, unless revoked or suspended as herein provided, may be renewed at any time during the month of July next following its issuance on the payment of the renewal fee herein specified, and proof of satisfaction of the continuing education requirements as established by the electrical board, and provided that all outstanding civil penalties, and permit or other fees, have been paid in full, and all outstanding correction notices have been satisfactorily resolved. Any license which has expired may be revived at any time within one (1) year from the first day of July next following its issuance, by payment of the revival fee herein specified, together with all outstanding civil penalties, and permit or other fees and penalties, and upon proof that

outstanding correction notices have been satisfactorily resolved. Certificates of competency issued prior to July 1, 1961, shall, for the purpose of this act, be considered as licenses and may be renewed or revived as herein provided.

Approved April 12, 2000.

CHAPTER 243
(S.B. No. 1355, As Amended in the House)

AN ACT

RELATING TO THEFT; AMENDING SECTION 18-2407, IDAHO CODE, TO PROVIDE THAT A PERSON IS GUILTY OF GRAND THEFT IF PROPERTY HAS AN AGGREGATE VALUE OVER FIFTY DOLLARS AND IS TAKEN DURING THREE OR MORE INCIDENTS OF THEFT DURING A CRIMINAL EPISODE AND TO DEFINE THE TERM "CRIMINAL EPISODE"; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-2407, Idaho Code, be, and the same is hereby amended to read as follows:

18-2407. GRADING OF THEFT. Theft is divided into two (2) degrees, grand theft and petit theft.

(1) Grand theft.

(a) A person is guilty of grand theft when he commits a theft as defined in this chapter and when the property, regardless of its nature and value, is obtained by extortion committed by instilling in the victim a fear that the actor or another person will:

1. Cause physical injury to some person in the future; or
2. Cause damage to property; or
3. Use or abuse his position as a public servant by engaging in conduct within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

(b) A person is guilty of grand theft when he commits a theft as defined in this chapter and when:

1. The value of the property taken exceeds one thousand dollars ($1,000); or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of a credit card; or
4. The property, regardless of its nature or value, is taken from the person of another; or
5. The property, regardless of its nature and value, is obtained by extortion; or
6. The property consists of one (1) or more firearms, rifles or shotguns; or
7. The property taken or deliberately killed is livestock or any other animal exceeding one hundred fifty dollars ($150) in value.

8. When any series of thefts, comprised of individual thefts having a value of one thousand dollars ($1,000) or less, are part of a common scheme or plan, the thefts may be aggregated in one (1) count and the sum of the value of all of the thefts shall be the value considered in determining whether the value exceeds one thousand dollars ($1,000); or

9. The property has an aggregate value over fifty dollars ($50.00) and is stolen during three (3) or more incidents of theft during a criminal episode. For purposes of this subparagraph a "criminal episode" shall mean a series of unlawful acts committed over a period of up to three (3) days.

(2) Petit theft. A person is guilty of petit theft when he commits a theft as defined in this chapter and his actions do not constitute grand theft.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 244
(S.B. No. 1359)

AN ACT

RELATING TO THE IDAHO PROBATE ACT; AMENDING SECTION 15-6-304, IDAHO CODE, TO PROVIDE THAT REGISTRATION OF A SECURITY IN BENEFICIARY FORM MUST BE IN THE FORM OF REGISTRATION IN BENEFICIARY FORM; AMENDING SECTION 15-6-305, IDAHO CODE, TO PROVIDE THAT THE FORM MUST BE SHOWN BY THE WORDS "TRANSFER ON DEATH" OR THE ABBREVIATION "TOD" OR THE WORDS "PAY ON DEATH" OR THE ABBREVIATION "POD" AFTER THE NAME OF THE REGISTERED OWNER AND BEFORE THE NAME OF THE BENEFICIARY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 15-6-304, Idaho Code, be, and the same is hereby amended to read as follows:

15-6-304. ORIGINATION OF REGISTRATION IN BENEFICIARY FORM. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners in the form set forth in section 15-6-305, Idaho Code.

SECTION 2. That Section 15-6-305, Idaho Code, be, and the same is hereby amended to read as follows:

15-6-305. FORM OF REGISTRATION IN BENEFICIARY FORM. Registration in beneficiary form ~~may~~ shall be shown by the words "transfer on

death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

SECTION 3. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 245
(S.B. No. 1363)

AN ACT

RELATING TO HORSE RACING; AMENDING SECTION 54-2512, IDAHO CODE, TO REVISE LIMITATIONS GOVERNING WHEN SIMULCAST RACING IS PERMITTED; AND AMENDING SECTION 54-2513, IDAHO CODE, TO REVISE THE CLASSIFICATION APPLIED TO DISTRIBUTION OF DEPOSITS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 54-2512, Idaho Code, be, and the same is hereby amended to read as follows:

54-2512. PARI-MUTUEL BETTING -- OTHER BETTING ILLEGAL. (1) Any licensee conducting a race meet under this act may provide a place or places in the race meet grounds or enclosure at which such licensee may conduct and supervise the use of the pari-mutuel system by patrons on the result of the races conducted by such licensee at such race meet and, upon written application by a licensee and approval by the commission, on the result of simulcast and/or televised races. The commission shall issue no more than one (1) license to simulcast per live race meet licensee and there shall be no more simulcasting sites in the state than there are licensed live race meet sites.

(2) (a) Licenses authorizing simulcast and/or televised races will be regulated by the commission, in addition to its other responsibilities, for the purpose of enhancing, promoting, and protecting the live race industry in the state of Idaho. No license authorizing simulcasting and/or televised races shall be issued to or renewed for persons that are not also licensed to conduct live race meets in the state of Idaho. Persons applying for a simulcast and/or televised race license shall have annually conducted live race meets in the state of Idaho during the preceding two (2) calendar years, and have an agreement reached voluntarily or pursuant to binding arbitration in conformance with chapter 9, title 7, Idaho Code, with a horsemen's group as the term "horsemen's group" is defined in section 54-2502, Idaho Code. The agreement shall address, but not be limited to, number of live race days and percentage of the live race and simulcast handle that is dedicated to the live horse race purse structure. Race days agreed upon shall be submitted to the Idaho racing commission

for its approval.

(b) In addition to the restrictions recited in paragraph (a) of this subsection, live horse race licensees that have had ~~an average daily live race handle of more than sixty thousand dollars ($60,000)~~ a total race handle from both live races and simulcast races exceeding five million dollars ($5,000,000) during the last calendar year in operation shall not have a license authorizing simulcasting and/or televised races issued or renewed if the licensee has not run in the calendar year immediately preceding the year for which the application for a license is being made for at least ninety percent (90%) of the number of live races that were conducted by that licensee in 1989.

(c) The commission may issue a license authorizing simulcast and/or televised races to a live horse race licensee only after that licensee has conducted at that facility a minimum of forty (40) live horse races in each of the two (2) calendar years preceding the application for such license. The requirements of this paragraph are only applicable to live horse race licensees who have received their initial live horse race license after April 1, 1997.

(3) Such pari-mutuel system conducted at such race meet shall not under any circumstances, if conducted under the provisions of this act and in conformity thereto and to the rules of the commission, be held or construed to be unlawful, other statutes of this state to the contrary notwithstanding.

(4) The participation by a licensee in an interstate combined wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located.

(5) Pari-mutuel taxes or commissions may not be imposed on any amounts wagered in an interstate combined wagering pool other than amounts wagered within this jurisdiction.

(6) It shall be unlawful to conduct pool selling, book making, or to circulate handbooks, or to bet or wager on a race of any licensed race meet, other than by the pari-mutuel system; and it shall further be unlawful knowingly to permit any minor to use the pari-mutuel system.

SECTION 2. 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~~ percent (82%) of any win, place or show pool to the winner thereof, and eighteen ~~per cent~~ percent (18%) to the licensee;

(2) Seventy-seven and one-quarter ~~per cent~~ percent (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~~ percent (.75%) to the racing commission for

deposit in the racing commission account, and twenty-two ~~per-cent~~ percent (22%) to the licensee;

(3) Seventy-five and one-quarter ~~per-cent~~ percent (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~~ percent (.75%) to the racing commission for deposit in the racing commission account, and twenty-four ~~per-cent~~ percent (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~~ percent (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 state regulatory fund.

(2) One-half of one ~~per--cent~~ percent (.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 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)~~ a total race handle from both live races and simulcast races of less than five million dollars ($5,000,000);

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~~ percent (.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 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~~ percent (.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~~ percent (.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~~ percent (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~~ percent (77%) of any win, place or show pool to the winner thereof, and twenty-three ~~per-cent~~ percent (23%) to the licensee;

(2) Seventy-six and one-quarter ~~per-cent~~ percent (76.25%) of all other pools to the winner thereof, three-quarters of one ~~per-cent~~ percent (.75%) to the racing commission for deposit in the racing account, and twenty-three ~~per-cent~~ percent (23%) to the licensee.

(D) Each licensee conducting the pari-mutuel system for live and simulcast horse races shall retain twenty-three ~~per-cent~~ percent (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~~ percent (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~~ percent (.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)~~ a total race handle from both live races and simulcast races of less than five million dollars ($5,000,000);

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~~ percent (.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~~ percent (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~~ percent (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~~ percent (.125%), and the licensee shall retain twenty and one-half ~~per--cent~~ percent (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~~ percent (.625%), and the licensee shall retain nineteen and one-half ~~per-cent~~ percent (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~~ percent (1.125%), and the licensee shall retain eighteen and one-half ~~per-cent~~ percent (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 account exceeds $400,000, the excess shall be 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~~ percent (60%) shall be 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~~ percent (50%) 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~~ percent (50%) 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~~ percent (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 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 April 12, 2000.

CHAPTER 246
(S.B. No. 1374)

AN ACT

RELATING TO SENTENCING OF JUVENILES TRIED AS ADULTS; AMENDING SECTION 19-2601, IDAHO CODE, TO PROVIDE FOR COMMITMENT OF A JUVENILE TO THE DEPARTMENT OF JUVENILE CORRECTIONS AND SUPERVISION BY A COUNTY JUVENILE PROBATION DEPARTMENT UPON RELEASE FROM THE CUSTODY OF THE DEPARTMENT OF JUVENILE CORRECTIONS; AMENDING SECTION 20-508, IDAHO CODE, TO PROVIDE SENTENCING OPTIONS FOR JUVENILES CONVICTED AS ADULTS; AMENDING SECTION 20-509, IDAHO CODE, TO PROVIDE SENTENCING OPTIONS FOR JUVENILES CONVICTED AS ADULTS AND TO MAKE TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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~~ commit the defendant to the custody of the state department of 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 correction 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, to a county juvenile probation department, 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. If the convicted person is a juvenile held for adult criminal proceedings, the court may order probation under the supervision of the county's juvenile probation department.

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 proba-

tion may be for a period of not more than the maximum period for which the defendant might have been imprisoned.

SECTION 2. That Section 20-508, Idaho Code, be, and the same is hereby amended to read as follows:

20-508. WAIVER OF JURISDICTION AND TRANSFER TO OTHER COURTS. (1) After the filing of a petition and after full investigation and hearing, the court may waive jurisdiction under the juvenile corrections act over the juvenile and order that the juvenile be held for adult criminal proceedings when:

(a) A juvenile is alleged to have committed any of the crimes enumerated in section 20-509, Idaho Code; or

(b) A juvenile is alleged to have committed an act other than those enumerated in section 20-509, Idaho Code, after the child became fourteen (14) years of age which would be a crime if committed by an adult; or

(c) An adult at the time of the filing of the petition is alleged to have committed an act prior to his having become eighteen (18) years of age which would be a felony if committed by an adult, and the court finds that the adult is not committable to an institution for the mentally deficient or mentally ill, is not treatable in any available institution or facility available to the state designed for the care and treatment of juveniles, or that the safety of the community requires the adult continue under restraint; or

(d) An adult already under the jurisdiction of the court is alleged to have committed a crime while an adult.

(2) A motion to waive jurisdiction under the juvenile corrections act and prosecute a juvenile under the criminal law may be made by the prosecuting attorney, the juvenile, or by motion of the court upon its own initiative. The motion shall be in writing and contain the grounds and reasons in support thereof.

(3) Upon the filing of a motion to waive jurisdiction under the juvenile corrections act, the court shall enter an order setting the motion for hearing at a time and date certain and shall order a full and complete investigation of the circumstances of the alleged offense to be conducted by county probation, or such other agency or investigation officer designated by the court.

(4) Upon setting the time for the hearing upon the motion to waive jurisdiction, the court shall give written notice of said hearing to the juvenile, and the parents, guardian or custodian of the juvenile, and the prosecuting attorney, at least ten (10) days before the date of the hearing, or a lesser period stipulated by the parties, and such notice shall inform the juvenile and the parents, guardian or custodian of the juvenile of their right to court appointed counsel. Service of the notice shall be made in the manner prescribed for service of a summons under section 20-512, Idaho Code.

(5) The hearing upon the motion to waive jurisdiction shall be held in the same manner as an evidentiary hearing upon the original petition and shall be made part of the record.

(6) If as a result of the hearing on the motion to waive jurisdiction the court shall determine that jurisdiction should not be

waived, the petition shall be processed in the customary manner as a juvenile corrections act proceeding. However, in the event the court determines, as a result of the hearing, that juvenile corrections act jurisdiction should be waived and the juvenile should be prosecuted under the criminal laws of the state of Idaho, the court shall enter findings of fact and conclusions of law upon which it bases such decision together with a decree waiving juvenile corrections act jurisdiction and binding the juvenile over to the authorities for prosecution under the criminal laws of the state of Idaho.

(7) No motion to waive juvenile corrections act jurisdiction shall be recognized, considered, or heard by the court in the same case once the court has entered an order or decree in that case that said juvenile has come within the purview of the juvenile corrections act, and all subsequent proceedings after the decree finding the juvenile within the purview of the act must be under and pursuant to the act and not as a criminal proceeding.

(8) In considering whether or not to waive juvenile court jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(a) The seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(b) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(c) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(d) The maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(e) The juvenile's record and previous history of contacts with the juvenile corrections system;

(f) The likelihood that the juvenile will develop competency and life skills to become a contributing member of the community by use of facilities and resources available to the court;

(g) The amount of weight to be given to each of the factors listed in subsection (8) of this section is discretionary with the court, and a determination that the juvenile is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one (1) or a combination of the factors set forth above, which shall be recited in the order of waiver.

(9) If the court does not waive jurisdiction and order a juvenile or adult held for criminal proceedings, the court in a county other than the juvenile's or adult's home county, after entering a decree that the juvenile or adult is within the purview of this chapter, may certify the case for sentencing to the court of the county in which the juvenile or adult resides upon being notified that the receiving court is willing to accept transfer. In the event of a transfer, which should be made unless the court finds it contrary to the interest of the juvenile or adult, the jurisdiction of the receiving court shall attach to the same extent as if the court had original jurisdiction.

(10) Upon conviction of a juvenile held for adult criminal proceedings under this section, the sentencing judge may, ~~choose to sentence the convicted person in accordance with the juvenile sentencing~~

~~options set forth in this chapter~~ if a finding is made that adult sentencing measures would be inappropriate:

(a) Sentence the convicted person in accordance with the juvenile sentencing options set forth in this chapter; or

(b) Sentence the convicted person to the county jail or to the custody of the state board of correction but suspend the sentence or withhold judgment pursuant to section 19-2601, Idaho Code, and commit the defendant to the custody of the department of juvenile corrections for an indeterminate period of time in accordance with section 20-520(1)(q), Idaho Code. The court, in its discretion, may order that the suspended sentence or withheld judgment be conditioned upon the convicted person's full compliance with all reasonable program requirements of the department of juvenile corrections. Such a sentence may also set terms of probation, which may be served under the supervision of county juvenile probation. However, in no event may the total of the actual time spent by the convicted person in the custody of the department plus any adult sentence imposed by the court exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same crime.

(c) If a convicted person is given a suspended sentence or withheld judgment conditioned upon the convicted person's compliance with all reasonable program requirements of the department pursuant to paragraph (b) of this subsection, and if the department reasonably believes that the convicted person is failing to comply with all reasonable program requirements, the department may petition the sentencing court to revoke the commitment to the department and transfer the convicted person to the county jail or to the custody of the state board of correction for the remainder of the sentence.

SECTION 3. That Section 20-509, Idaho Code, be, and the same is hereby amended to read as follows:

20-509. VIOLENT OFFENSES, CONTROLLED SUBSTANCES VIOLATIONS NEAR SCHOOLS AND OFFENDERS. (1) Any juvenile, age fourteen (14) years to age eighteen (18) years, who is alleged to have committed any of the following crimes or any person under age fourteen (14) years who is alleged to have committed any of the following crimes and, pursuant to section 20-508, Idaho Code, has been ordered by the court to be held for adult criminal proceedings:

(a) Murder of any degree or attempted murder;

(b) Robbery;

(c) Rape, but excluding statutory rape;

(d) Forcible sexual penetration by the use of a foreign object;

(e) Infamous crimes against nature, committed by force or violence;

(f) Mayhem;

(g) Assault or battery with the intent to commit any of the above serious felonies;

(h) A violation of the provisions of section 37-2732(a)(1)(A), (B) or (C), Idaho Code, when the violation occurred on or within one thousand (1,000) feet of the property of any public or private

primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school;

(i) Arson in the first degree and aggravated arson;

shall be charged, arrested and proceeded against by complaint, indictment or information as an adult. All other felonies or misdemeanors charged in the complaint, indictment or information, which are based on the same act or transaction or on one (1) or more acts or transactions as the violent or controlled substances offense shall similarly be charged, arrested and proceeded against as an adult. Any juvenile proceeded against pursuant to this section shall be accorded all constitutional rights, including bail and trial by jury, and procedural safeguards as if that juvenile were an adult defendant.

(2) Once a juvenile has been formally charged or indicted pursuant to this section or has been transferred for criminal prosecution as an adult pursuant to the waiver provisions of section 20-508, Idaho Code, or this section, the juvenile shall be held in a county jail or other adult prison facility unless the court, after finding good cause, orders otherwise.

(3) Except as otherwise allowed by subsection (4) of this section, o~~O~~nce a juvenile has been found to have committed the offense for which the juvenile was charged, indicted or transferred, or has been found guilty or pled guilty to a lesser offense or amended charge growing out of or included within the original charge, whether or not such lesser offense or amended charge is included within the acts enumerated in subsection (1) of this section, the juvenile shall thereafter be handled in every respect as an adult. For any subsequent violation of Idaho law, the juvenile shall be handled in every respect as an adult.

(4) ~~The sentencing judge~~ Upon the conviction of ~~any~~ juvenile ~~convicted~~ pursuant to this section, the sentencing judge may, ~~choose--to sentence the convicted person in accordance with the juvenile sentencing--options--set--forth--in this act,~~ if a finding is made that adult sentencing measures would be inappropriate:

(a) Sentence the convicted person in accordance with the juvenile sentencing options set forth in this chapter; or

(b) Sentence the convicted person to the county jail or to the custody of the state board of correction but suspend the sentence or withhold judgment pursuant to section 19-2601, Idaho Code, and commit the defendant to the custody of the department of juvenile corrections for an indeterminate period of time in accordance with section 20-520(1)(q), Idaho Code. The court, in its discretion, may order that the suspended sentence or withheld judgment be conditioned upon the convicted person's full compliance with all reasonable program requirements of the department of juvenile corrections. Such a sentence may also set terms of probation, which may be served under the supervision of county juvenile probation. However, in no event may the total of the actual time spent by the convicted person in the custody of the department plus any adult sentence imposed by the court exceed the maximum period of imprisonment that could be imposed on an adult convicted of the same crime.

(c) If a convicted person is given a suspended sentence or withheld judgment conditioned upon the convicted person's compliance with all reasonable program requirements of the department pursuant to paragraph (b) of this subsection, and if the department reasonably believes that the convicted person is failing to comply with all reasonable program requirements, the department may petition the sentencing court to revoke the commitment to the department and transfer the convicted person to the county jail or to the custody of the state board of correction for the remainder of the sentence.

SECTION 4. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 247
(S.B. No. 1379, As Amended, As Amended)

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE; AMENDING SECTION 18-8004A, IDAHO CODE, TO REQUIRE THAT A PERSON UNDER TWENTY-ONE YEARS OF AGE WITH LESS THAN AN 0.08 ALCOHOL CONCENTRATION CONVICTED OF DRIVING UNDER THE INFLUENCE FOR A SECOND TIME BE SENTENCED TO A MANDATORY MINIMUM OF FIVE DAYS IN JAIL, AS REQUIRED BY FEDERAL LAW, ABSOLUTE SUSPENSION OF DRIVING PRIVILEGES FOR ONE YEAR AND SHALL BE PROHIBITED FROM DRIVING ANY MOTOR VEHICLE NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM AFTER THE SUSPENSION PERIOD, AND TO REQUIRE A MANDATORY MINIMUM OF TEN DAYS IN JAIL, AS REQUIRED BY FEDERAL LAW, AND DRIVING ONLY VEHICLES EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM AFTER THE SUSPENSION PERIOD UPON A THIRD CONVICTION; AMENDING SECTION 18-8004C, IDAHO CODE, TO PROHIBIT A REPEAT OFFENDER WITH EXCESSIVE ALCOHOL CONCENTRATION FROM DRIVING ANY VEHICLE NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-8005, IDAHO CODE, TO REQUIRE THAT A PERSON CONVICTED OF DRIVING UNDER THE INFLUENCE FOR A SECOND TIME SERVE A MINIMUM OF FIVE DAYS IN JAIL, AS REQUIRED BY FEDERAL LAW, AND BE PROHIBITED FROM DRIVING ANY VEHICLE NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM AFTER THE SUSPENSION PERIOD, AND TO REQUIRE THAT A PERSON CONVICTED FOR A THIRD TIME SERVE A MANDATORY MINIMUM OF TEN DAYS IN JAIL, AS REQUIRED BY FEDERAL LAW, AND BE PROHIBITED FROM DRIVING ANY VEHICLE NOT EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM AFTER THE REQUIRED PERIOD OF SUSPENSION; AMENDING SECTION 18-8008, IDAHO CODE, TO REQUIRE THAT THE COURT ORDER AN INDIVIDUAL SENTENCED AS A REPEAT DUI OFFENDER, WHILE OPERATING A MOTOR VEHICLE, TO DRIVE ONLY A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING IGNITION INTERLOCK DEVICE, TO PROVIDE FOR NOTICE THEREOF TO THE TRANSPORTATION DEPARTMENT AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 18-8004A, Idaho Code, be, and the same is hereby amended to read as follows:

18-8004A. PENALTIES -- PERSONS UNDER 21 WITH LESS THAN 0.08 ALCOHOL CONCENTRATION. (1) Any person found guilty of a violation of subsection (1)(d) of section 18-8004, Idaho Code, shall be guilty of a misdemeanor; and, for a first offense:

(a) Shall be fined an amount not to exceed one thousand dollars ($1,000);

(b) Shall have his driving privileges suspended by the court for a period of one (1) year, ninety (90) days of which shall not be reduced and during which period absolutely no driving privileges of any kind may be granted. After the period of absolute suspension of driving privileges has passed, the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court;

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for any subsequent violation of the provisions of this section or any violation of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall be required to undergo an alcohol evaluation and otherwise comply with the requirements of sections 18-8005(9) and 18-8005(12), Idaho Code, as ordered by the court.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to a violation of section 18-8004(1)(d), Idaho Code, or any substantially conforming foreign criminal violation, as defined in section 18-8005(8), Idaho Code, notwithstanding the form of the judgment or withheld judgment, is guilty of a misdemeanor; and:

(a) ~~May~~ Shall be sentenced to jail for a mandatory minimum period of five (5) days, as required by 23 U.S.C. section 164, not to exceed thirty (30) days;

(b) Shall be fined an amount of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000);

(c) Shall have his driving privileges suspended by the court for a period not to exceed two (2) years, ~~one--hundred--eighty--(180) days~~ one (1) year of which shall be absolute and shall not be reduced and during which period absolutely no driving privileges of any kind may be granted;

(d) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period; and

(e) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of this section or section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(~~e~~f) Shall undergo an alcohol evaluation and comply with the other requirements of subsections (9) and (12) of section 18-8005, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(d), Idaho Code, or any substantially conforming foreign criminal violation, within five (5) years, notwithstanding the form of the judgment or withheld judgment, shall be guilty of a misdemeanor; and:

(a) ~~May~~ Shall be sentenced to jail for a mandatory minimum period of ten (10) days, as required by 23 U.S.C. section 164, not to exceed six (6) months;

(b) Shall be fined an amount of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000);

(c) Shall surrender his driver's license or permit to the court;

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year, during which period absolutely no driving privileges of any kind may be granted, or until such person reaches the age of twenty-one (21), whichever is greater; and

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period; and

(~~e~~f) Shall undergo an alcohol evaluation and comply with all other requirements imposed by the court pursuant to sections 18-8005(9) and 18-8005(12), Idaho Code.

(4) All provisions of section 18-8005, Idaho Code, not otherwise in conflict with or provided for in this section shall apply to any sentencing imposed under the provisions of this section.

(5) A person violating the provisions of section 18-8004(1)(d), Idaho Code, may be prosecuted under title 16, Idaho Code.

SECTION 2. That Section 18-8004C, Idaho Code, be, and the same is hereby amended to read as follows:

18-8004C. EXCESSIVE ALCOHOL CONCENTRATION -- PENALTIES. Notwithstanding any provision of section 18-8005, Idaho Code, to the contrary:

(1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), Idaho Code, for the first time, but who has an alcohol concentration of 0.20, as defined in section 18-8004(4), Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a test requested by a police officer, shall be guilty of a misdemeanor; and:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days the first forty-eight (48) hours of which must be consecutive, and may be sentenced to not more than one (1) year;

(b) May be fined an amount not to exceed two thousand dollars ($2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of this section and violations of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, Idaho Code, and who has an alcohol concentration of 0.20, as defined in section 18-8004(4), Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a test requested by a police officer, and who previously has been found guilty of or has pled guilty to one (1) or more violations of section 18-8004, Idaho Code, in which the person had an alcohol concentration of 0.20 or more, or any substantially conforming foreign criminal violation wherein the defendant had an alcohol concentration of 0.20 or more, or any combination thereof, within five (5) years, notwithstanding the form of judgment or withheld judgment shall be guilty of a felony; and:

(a) Shall be sentenced to the custody of the state board of correction for not to exceed five (5) years; provided that notwithstanding 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 five thousand dollars ($5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory license suspension period.

(3) All the provisions of section 18-8005, Idaho Code, not in conflict with or otherwise provided for in this section, shall apply to this section.

(4) 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 or withheld judgment.

SECTION 3. That Section 18-8005, Idaho Code, be, and the same is hereby amended to read as follows:

18-8005. PENALTIES. (1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a) or (5), Idaho Code, for the first time is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) May be sentenced to jail for not to exceed six (6) months;

(b) May be fined an amount not to exceed one thousand dollars ($1,000);

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney; and

(d) Shall have his driving privileges suspended by the court for a period of thirty (30) days which shall not be reduced and during which thirty (30) day period absolutely no driving privileges of any kind may be granted. After the thirty (30) day period of absolute suspension of driving privileges has passed, the defendant shall have driving privileges suspended by the court for an additional period of at least sixty (60) days, not to exceed one hundred fifty (150) days during which the defendant may request restricted driving privileges 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.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(b), Idaho Code, for the first time is guilty of a misdemeanor and subject to:

(a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

(b) The provisions of section 49-335, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(c), Idaho Code, for the first time, is guilty of a misdemeanor and is subject to:

(a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

(b) The provisions of section 49-335, Idaho Code.

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), and except as provided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) Shall be sentenced to jail for a mandatory minimum period of

not less than ten (10) days the first forty-eight (48) hours of which must be consecutive, and five (5) days of which must be served in jail, as required by 23 U.S.C. section 164, 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 two thousand dollars ($2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(f) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the one (1) year mandatory license suspension period.

(g) If the person has pled guilty or was found guilty for the second time within five (5) years of a violation of the provisions of section 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335, Idaho Code, shall apply.

(5) Except as provided in section 18-8004C, Idaho Code, any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation, or any combination thereof, within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony; and

(a) Shall be sentenced to the custody of the state board of correction for not to exceed five (5) years; provided that notwithstanding 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, the first forty-eight (48) hours of which must be consecutive, and ten (10) days of which must be served in jail, as required by 23 U.S.C. section 164; 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 five thousand dollars ($5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from

imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period.

(6) For the purpose of computation of the enhancement period in subsections (4), (5) and (7) of this section, the time that elapses between the date of commission of the offense and the date the defendant pleads guilty or is found guilty for the pending offense shall be excluded. If the determination of guilt against the defendant is reversed upon appeal, the time that elapsed between the date of the commission of the offense and the date the defendant pleads guilty or is found guilty following the appeal shall also be excluded.

(7) Notwithstanding the provisions of subsections (4) and (5) of this section, any person who has pled guilty or has been found guilty of a felony violation of the provisions of section 18-8004, Idaho Code, a felony violation of the provisions of section 18-8004C, Idaho Code, a violation of the provisions of section 18-8006, Idaho Code, or a violation of the provisions of section 18-4006 3.(b), Idaho Code, and within ten (10) years pleads guilty or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (5) of this section.

(8) For the purpose of subsections (4) and (5) of this section and the provisions of section 18-8004C, Idaho Code, a substantially conforming foreign criminal violation exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of section 18-8004, Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(9) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall undergo, at his own expense, (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code,) and prior to the sentencing date, an alcohol evaluation by an alcohol evaluation facility approved by the Idaho department of health and welfare. In the event the alcohol evaluation indicates the need for alcohol treatment, the evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment program, together with the estimated cost thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that alcohol treatment is required unless the defendant makes a showing by a preponderance of evidence

that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for indigent defendants.

(10) At the time of sentencing, the court shall be provided with the following information:

(a) The results, if administered, of any evidentiary test for alcohol and/or drugs;

(b) A computer or teletype or other acceptable copy of the person's driving record;

(c) Information as to whether the defendant has pled guilty to or been found guilty of violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, or a similar offense within the past five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s); and

(d) The alcohol evaluation required in subsection (9) of this section, if any.

(11) A minor may be prosecuted for a violation of the provisions of section 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code. In addition to any other penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended or denied for an additional one (1) year following the end of any period of suspension or revocation existing at the time of the violation, or until he reaches the age of twenty-one (21) years, whichever period is greater. During the period of additional suspension or denial, absolutely no driving privileges shall be allowed.

(12) In the event that the alcohol evaluation required in subsection (9) of this section recommends alcohol treatment, the court shall order the person to complete a treatment program in addition to any other sentence which may be imposed, unless the court determines that alcohol treatment would be inappropriate or undesirable, in which event, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation, or a comparable program. Such treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event that funding is provided for or on behalf of the defendant by an entity of state government, restitution shall be ordered to such governmental entity in

accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code. Nothing contained herein shall be construed as requiring a court to order that a governmental entity shall provide alcohol treatment at government expense unless otherwise required by law.

(13) Any person who is disqualified shall not be granted restricted driving privileges to operate a commercial motor vehicle.

SECTION 4. That Section 18-8008, Idaho Code, be, and the same is hereby amended to read as follows:

18-8008. IGNITION INTERLOCKS -- ELECTRONIC MONITORING DEVICES. (1) If a person is convicted, is found guilty, pleads guilty or receives a withheld judgment for violating any of the provisions of this chapter and has had any or all of a sentence or fine suspended for the violation, the court, in its discretion, may impose any, some, or all of the sanctions ~~proved~~ provided for in this section in addition to any other penalty or fine imposed pursuant to this chapter.

(2) The court ~~may~~ shall order the person while operating a motor vehicle to drive only a motor vehicle equipped with a functioning ignition interlock device, and the restriction shall be for a period not in excess of the time the person is on probation for the offense. The court shall establish a specific calibration setting at which the ignition interlock device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction. As used in this section, the term "ignition interlock device" means breath alcohol analyzed ignition equipment, certified by the transportation department, designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage. The transportation department shall by rule ~~and regulation~~ provide standards for the certification, installation, repair and removal of the devices. ~~If t~~The court ~~imposes a sanction pursuant to this subsection, it~~ shall notify the transportation department of its order imposing a sanction pursuant to this subsection. The department shall attach or imprint a notation on the driver's license or other document granting the person restricted driving privileges of any person restricted under this subsection that the person may operate only a motor vehicle equipped with an ignition interlock device.

(3) The court may order the person to use electronic monitoring devices to record the person's movements if as a condition of probation the person has been given restricted driving privileges between certain times, has been placed under a curfew or has been ordered confined to his residence during times certain. Nothing in this subsection shall restrict the court's usage of electronic monitoring devices to supervise a defendant on probation for other offenses.

(4) If a court orders a defendant to use an ignition interlock device or electronic monitoring device pursuant to this section, and the court, or its probation department, furnishes the defendant with the device, the court may order the defendant to pay a reasonable fee for utilizing the equipment. All fees collected pursuant to this section shall be in addition to any other fines or penalty provided by law and shall be deposited in the court interlock device and electronic monitoring device fund created in section 18-8010, Idaho Code.

SECTION 5. This act shall be in full force and effect on and after October 1, 2000.

Approved April 12, 2000.

CHAPTER 248
(S.B. No. 1380, As Amended)

AN ACT

RELATING TO TRANSPORTATION OF ALCOHOLIC BEVERAGES; AMENDING SECTION 23-505, IDAHO CODE, TO PROHIBIT ANY PERSON IN A MOTOR VEHICLE ON A PUBLIC HIGHWAY OR THE RIGHT-OF-WAY OF A PUBLIC HIGHWAY FROM DRINKING ALCOHOLIC BEVERAGES OR HAVING POSSESSION OF OPEN BEVERAGES CONTAINING ALCOHOLIC LIQUOR, BEER OR WINE, TO PROVIDE EXCEPTIONS AND TO PROVIDE PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 23-505, Idaho Code, be, and the same is hereby amended to read as follows:

23-505. TRANSPORTATION OF ALCOHOLIC BEVERAGES. (1) Alcoholic liquor lawfully purchased may be transported, but no person shall break open, or allow to be broken or opened any container of alcoholic liquor, or drink, or use, or allow to be drunk, or used any alcoholic liquor therein while the same is being transported. Provided however, that an unsealed alcoholic beverage container may be transported in an enclosed trunk compartment or behind the last upright seat of a vehicle which has no trunk compartment.

(2) No person in ~~actual physical control of~~ a motor vehicle, ~~as "actual physical control" is defined in section 18-8004, Idaho Code,~~ while the vehicle is on a public highway or the right-of-way of a public highway may drink or ~~physically~~ possess any open beverage containing alcoholic liquor, as defined in section 23-105, Idaho Code, beer as defined in section 23-1001, Idaho Code, or wine as defined in section 23-1303, Idaho Code, unless such person is a passenger in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or in the living quarters of a recreational vehicle as that term is defined in section 49-119, Idaho Code. Violation of this section is a misdemeanor for the individual in actual physical control of the vehicle, as defined in section 18-8004, Idaho Code, and an infraction for other individuals violating this section.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 12, 2000.

CHAPTER 249
(S.B. No. 1389)

AN ACT

RELATING TO SERVICE CONTRACTS; AMENDING CHAPTER 1, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-114A, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE THAT SERVICE CONTRACTS ARE NOT SUBJECT TO TITLE 41, IDAHO CODE, AND TO PROVIDE THAT SERVICE CONTRACTS ARE SUBJECT TO THE IDAHO CONSUMER PROTECTION ACT; DECLARING AN EMERGENCY AND PROVIDING FOR APPLICATION.

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

SECTION 1. That Chapter 1, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-114A, Idaho Code, and to read as follows:

41-114A. SERVICE CONTRACTS. (1) The term "service contract," as used in this section, means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of property or to reimburse, in whole or in part, the owner of such property for the repair, replacement or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear. A service contract may contain a provision for incidental payment under such contract where service, repair or replacement is not feasible or economical.

(2) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of a service contract is exempt from the provisions of title 41, Idaho Code.

(3) Service contracts shall be subject to the provisions of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall be applicable to all proceedings pending before the Department of Insurance or the courts of this state on the effective date of this act.

Approved April 12, 2000.

CHAPTER 250
(S.B. No. 1393)

AN ACT

RELATING TO THE MAGISTRATE'S DIVISION OF THE DISTRICT COURT; AMENDING SECTION 1-2208, IDAHO CODE, TO INCREASE THE MONETARY LIMIT OF CIVIL PROCEEDINGS WHICH MAY BE ASSIGNED TO MAGISTRATES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 1-2210, IDAHO CODE, TO

INCREASE THE MONETARY AMOUNT OF CIVIL ACTIONS WHICH MAY BE REFERRED TO MAGISTRATES WHO ARE NOT ATTORNEYS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 1-2301, IDAHO CODE, TO INCREASE THE MONETARY AMOUNTS IN CASES WHICH COME UNDER THE JURISDICTION OF THE SMALL CLAIMS DEPARTMENT OF THE MAGISTRATE'S DIVISION OF THE DISTRICT COURT, TO PROVIDE FOR VENUE OF ACTIONS AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTIONS 1-2303 AND 1-2304, IDAHO CODE; AMENDING CHAPTER 23, TITLE 1, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 1-2303, IDAHO CODE, TO PROVIDE FOR FILING A CLAIM, TO PROVIDE FOR INSTRUCTIONS TO THE DEFENDANT, TO PROVIDE FOR FILING OF AN ANSWER BY THE DEFENDANT AND DEFAULT JUDGMENT IF NO ANSWER IS FILED AND TO PROVIDE A FEE; AMENDING CHAPTER 23, TITLE 1, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 1-2304, IDAHO CODE, TO PROVIDE FOR SERVICE OF PROCESS, SERVICE BY MAIL AND SERVICE COSTS RECOVERABLE BY THE PLAINTIFF; AMENDING SECTION 1-2305, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTIONS 1-2306 AND 1-2307, IDAHO CODE; AMENDING CHAPTER 23, TITLE 1, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 1-2306, IDAHO CODE, TO PROVIDE FOR ACTIONS BY OR AGAINST STATE OR LOCAL GOVERNMENT OFFICIALS OR AGENCIES; AMENDING SECTION 1-2308, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROHIBIT APPEARANCES IN SMALL CLAIMS COURT BY ATTORNEYS AT LAW ON BEHALF OF PARTIES TO THE ACTION, TO PROVIDE FOR LEGAL ASSISTANCE TO PARTIES, TO PROVIDE FOR REPRESENTATION OF BUSINESS ORGANIZATIONS AND TO PROVIDE FOR ACTIONS BY AN ASSIGNEE OF A DEBT OR CLAIM; AMENDING SECTION 1-2313, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-6316, IDAHO CODE, TO CHANGE A REFERENCE REGARDING THE MONETARY AMOUNTS FOR CASES THAT COME UNDER THE JURISDICTION OF THE SMALL CLAIMS DEPARTMENT OF THE MAGISTRATE'S DIVISION OF THE DISTRICT COURT AND TO MAKE A TECHNICAL CORRECTION; AND PROVIDING APPLICATION.

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

SECTION 1. That Section 1-2208, Idaho Code, be, and the same is hereby amended to read as follows:

1-2208. ASSIGNMENT OF CASES TO MAGISTRATES. Subject to rules promulgated by the ~~S~~supreme ~~C~~court, the administrative judge in each judicial district or any district judge in the district designated by him may assign to magistrates, severally, or by designation of office, or by class or category of cases, or in specific instances the following matters:

(1) Civil proceedings as follows:

(a) When the amount of money or damages or the value of personal property claimed does not exceed ~~three~~ four thousand dollars ($~~3~~4,000):

(~~1~~i) ~~a~~Actions for the recovery of money only arising on contracts express or implied; actions for damages for injury to person, property or reputation or for taking or detaining personal property, or for fraud;

(~~2~~ii) ~~a~~Actions for rent and distress for rent;

(~~3~~iii) ~~a~~Actions for claim and delivery;

(~~4~~iv) ~~p~~Proceedings in attachment, garnishment, wage deductions for the benefit of creditors, trial or right of personal property and exemptions, and supplementary proceedings;

(~~5~~v) ~~a~~Actions arising under the laws for the incorporation of cities or counties or any ordinance passed in pursuance thereof; actions for the confiscation or abatement of nuisances and the seizure, condemnation and forfeiture of personal property; proceedings in respect of estrays and lost property;

(~~6~~vi) ~~a~~Actions to collect taxes.

(b) Proceedings in forcible entry, forcible detainer, and unlawful detainer; and~~,~~

(c) Proceedings for the enforcement and foreclosure of common law and statutory liens of not to exceed ~~three~~ four thousand dollars ($~~3~~4,000) on real or personal property.

(2) Proceedings in the probate of wills and administration of estates of decedents, minors and incompetents.

(3) The following criminal and quasi-criminal proceedings:

(a) Misdemeanor and quasi-criminal actions;

(b) Proceedings to prevent the commission of crimes;

(c) Proceedings pertaining to warrants for arrest or for searches and seizures; and~~,~~

(d) Proceedings for the preliminary examination to determine probable cause, commitment prior to trial or the release on bail of persons charged with criminal offenses.

(4) Any juvenile proceedings except those within the scope of the provisions of section 1-2210, Idaho Code.

(5) Proceedings under the Idaho traffic infractions act, chapter 15, title 49, Idaho Code.

SECTION 2. That Section 1-2210, Idaho Code, be, and the same is hereby amended to read as follows:

1-2210. ASSIGNMENTS RESTRICTED TO MAGISTRATES WHO ARE ATTORNEYS. The ~~S~~supreme ~~C~~court by rule may specify additional categories of matters assignable to magistrates, except that the following matters may not be assigned to magistrates who are not attorneys:

(~~a~~1) ~~c~~Civil actions in which the amount of money or damages or the value of property claimed exceeds ~~three~~ four thousand dollars ($~~3~~4,000), except as otherwise authorized by this act;

(~~b~~2) ~~c~~Criminal proceedings in which the maximum authorized punishment exceeds the punishment authorized for misdemeanors;

(~~c~~3) ~~a~~All proceedings involving the custody of minors and all habeas corpus proceedings;

(~~d~~4) ~~p~~Proceedings for divorce, separate maintenance or annulment; and

(~~e~~5) ~~p~~Proceedings in quo warranto, or for injunction, prohibition, mandamus, ne exeat, or appointment of a receiver.

SECTION 3. That Section 1-2301, Idaho Code, be, and the same is hereby amended to read as follows:

1-2301. SMALL CLAIMS DEPARTMENT -- CREATION ~~AND JURISDICTION~~ --

SCOPE OF CLAIMS -- VENUE. In every magistrate's division of the district court of this state, the district court may create and organize a "Small Claims Department of the Magistrate's Division," which shall have jurisdiction in cases for the recovery of money where the amount of each claim does not exceed ~~three~~ four thousand dollars ($~~3~~4,000), and in cases for the recovery of personal property where the value of ~~such~~ the property does not exceed ~~three~~ four thousand dollars ($~~3~~4,000); provided however, that the small claims department shall not award punitive damages or damages for pain or suffering in any proceeding. Any action brought in a small claims department of the magistrate's division shall be brought in the magistrate's division ~~encompassing either~~ of the county where ~~the~~ any defendant resides ~~or~~ unless at the time the action is filed all of the defendants reside outside of the state of Idaho, in which case the action shall be brought in the county where the cause of action arose. ~~Either party to an action~~ A defendant may request a change of venue ~~as provided by chapter 4, title 5, Idaho Code~~ if an action is brought in an improper county.

SECTION 4. That Sections 1-2303 and 1-2304, Idaho Code, be, and the same are hereby repealed.

SECTION 5. That Chapter 23, 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 1-2303, Idaho Code, and to read as follows:

1-2303. FILING OF CLAIM -- DEFAULT. Upon filing a claim, the clerk shall furnish to the plaintiff a form of answer and instructions to the defendant, which, among other matters shall advise the defendant that if the defendant desires to have a hearing on the matter, the defendant must sign, complete and file the answer with the clerk. The instructions also shall notify the defendant that if the defendant does not sign and file the answer within twenty (20) days from the date of service on the defendant, judgment will be entered as requested in the claim.

If no answer is filed within twenty (20) days, judgment may be entered by the court as provided in Rule 55, I.R.C.P. If an answer is filed by the defendant, the court shall set the matter for trial or mediation, by notice mailed to each party.

The court shall collect in advance upon each claim the sum of seven dollars ($7.00), which shall be in addition to the costs necessary to effect service of the claim upon the defendant, and which shall be paid to the county treasurer for deposit in the district court fund of the county.

SECTION 6. That Chapter 23, 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 1-2304, Idaho Code, and to read as follows:

1-2304. SERVICE OF PROCESS -- SERVICE BY MAIL. (1) A summons, copy of the claim, form of answer and instructions to defendant shall

be served upon the defendant by personal service in the manner provided by law, or when a request is made therefor by the plaintiff, service of process may be made upon the defendant by mail, as herein provided.

(2) The plaintiff may request service upon the defendant by mail by endorsing his request in writing upon the claim, which request shall include the address to be used in mailing. The court shall mail to the defendant at the address given in the endorsement a summons, copy of the claim, form of answer and instructions to the defendant. Service of process by mail shall be made by registered or certified mail, return receipt requested, and shall be complete upon the return of the receipt signed by the defendant to the court. The signature of the defendant on the return receipt shall constitute prima facie proof of service by mail. The plaintiff shall bear the cost of service of process by mail.

(3) The costs to plaintiff for personal service of process on the defendant, in addition to the filing fee provided in section 1-2303, Idaho Code, shall be added to any judgment for the plaintiff.

SECTION 7. That Section 1-2305, Idaho Code, be, and the same is hereby amended to read as follows:

1-2305. CONTENTS OF CLAIM. The claim ~~hereinabove--referred--to~~ shall contain the name of the plaintiff and the name of the defendant, followed by a statement, in brief and concise form, of the nature and amount of ~~said~~ the claim and the time ~~of~~ the ~~accruing--of--such~~ claim accrued, and shall also state the ~~name-and-residence~~ address of the defendant, if ~~same-be~~ known to the plaintiff~~,-for-the-purpose-of-serving-the-notice-of-claim-on-such-defendant~~.

SECTION 8. That Sections 1-2306 and 1-2307, Idaho Code, be, and the same are hereby repealed.

SECTION 9. That Chapter 23, 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 1-2306, Idaho Code, and to read as follows:

1-2306. ACTIONS BY OR AGAINST STATE OR LOCAL GOVERNMENT OFFICIALS OR AGENCIES. (1) Except as specifically provided in this subsection, the state of Idaho, any state agency, any political subdivision of the state of Idaho, city, county, taxing district, or public corporation, along with any official and employee thereof acting within their official capacity may be a party plaintiff or defendant in any small claims action otherwise allowed by law. Any state agency or other governmental entity which is a party to a small claims action may appear as provided in subsection (2) of this section. The governmental agency or entity may not appear through the office of the attorney general, notwithstanding the provisions of section 67-1401, Idaho Code, nor through any other attorney at law, whether an employee of the agency or entity or otherwise. No action may be prosecuted in the small claims department against the state of Idaho or any justice or judge thereof based upon any act or omission alleged to have been committed

by the justice or judge while acting in an official capacity.

(2) Notwithstanding the provisions of section 1-2301, Idaho Code, a small claims action filed against the state of Idaho, or any agency thereof, or any official or employee of the state of Idaho while acting in an official capacity shall be filed in the county of the plaintiff's residence, or if the plaintiff is not a resident of the state of Idaho, in the county where the cause of action arose. In either case, the plaintiff, in addition to service on the defendant, shall serve the Idaho attorney general by certified or registered mail. Prior to appearing in the defense of any small claims action, the defendant public official, or chief executive officer of the defendant agency, with the advice of the attorney general, shall designate in writing the nonattorney employee or agent of the state who is authorized to appear in defense of the action. The written designation shall be filed with the court.

SECTION 10. That Section 1-2308, Idaho Code, be, and the same is hereby amended to read as follows:

1-2308~~7~~. ~~USE OF COUNSEL PROHIBITED~~ ATTORNEYS AT LAW -- COLLECTION AGENCIES -- WITNESSES AND EVIDENCE -- JUDGMENT. ~~No--attorney-at-law, collection--agency,--except-as-provided-in-section-1-2307,-Idaho-Code, or-any-other-person,-except-an-employee-shall-represent-a-party-at-any trial-in-said-department,-nor-shall-i~~It shall not be necessary to summon witnesses, but the plaintiff and defendant in any claim shall have the privilege of offering evidence in their behalf, themselves and witnesses appearing at such hearing, and being duly sworn as in other cases, and the magistrate shall render and enter judgment as in other cases. No attorney at law shall appear before the court on behalf of any party at any trial, pretrial matter or posttrial motion in the small claims department; provided however, that nothing herein shall be construed to prevent an attorney at law from providing a party with legal advice concerning the issues in a case or the preparation or presentation of the case, including the preparation of exhibits, affidavits, or memoranda to be presented by the party to the action. An attorney may appear in any proceeding after entry of a small claims judgment relating to the execution of the judgment, including any proceeding for the examination of the judgment debtor in aid of execution of the judgment. Any attorney at law or law firm may be a party to a small claims proceeding and may prosecute any claim the attorney or law firm may have, except any claim obtained by assignment, and may appear before the court as any other plaintiff or defendant in the case.

(2) In any case in which a business organization is a party including, without limitation, a corporation, whether nonprofit or for profit, partnership, professional association or sole proprietorship, no person shall represent the organization except an owner of a substantial interest in the organization or any nonattorney employee of the organization. At the option of the business organization, the same owner or nonattorney employee may represent the business organization in any trial de novo on appeal to the magistrate division and the organization shall not be required to appear through an attorney at law.

(3) Any assignee of a debt or claim triable in the small claims department, including any licensed collection agency, may bring an action in small claims court; provided however, that no attorney at law who is an assignee of the debt or claim may appear before the small claims court.

SECTION 11. That Section 1-2313, Idaho Code, be, and the same is hereby amended to read as follows:

1-2313. ~~CERTIFICATION OF~~ JUDGMENT -- ENTRY ON DOCKET -- ENFORCEMENT. If no appeal is taken by the defendant and the defendant fails to pay the judgment according to the terms and conditions thereof, the magistrate before whom such hearing was had, may, on application of the plaintiff, certify such judgment in substantially the following form: In the Magistrate's Division of the District Court for .... County, Idaho

Plaintiff .....

v.

Defendant .....

In the Small Claims Department

This is to certify that in a certain action before me, the undersigned, had on this the .... day of ...., ~~19~~20.., wherein .... was plaintiff and .... was defendant, jurisdiction of said defendant having had by personal service (or otherwise), as provided by law, I then and there entered judgment against said defendant in the sum of .... dollars, which judgment has not been paid.

Witness my hand this .... day of ...., ~~19~~20...

..... Magistrate sitting in the small claims department.

The magistrate of said magistrate's division shall forthwith enter such judgment transcript on the judgment docket of such magistrate's division, and thereafter execution and other process on execution provided by law may issue thereon, as obtains in other cases of judgments of magistrate's division, and a transcript of such judgments may be filed and entered in judgment lien dockets in district courts with like effect as in other cases.

SECTION 12. That Section 39-6316, Idaho Code, be, and the same is hereby amended to read as follows:

39-6316. LAW ENFORCEMENT OFFICERS -- TRAINING, POWERS, DUTIES. (1) All training provided by the peace officers standards and training academy relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) When a peace officer responds to a domestic violence call,

the officer shall give a written statement to victims which alerts the victim to the availability of a shelter or other resources in the community, and give the victim a written notice provided by the department of law enforcement substantially stating the following:

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in magistrate court requesting an order for protection from domestic abuse which could include any of the following: (a) an order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available from the clerk of the district court. The resources available in this community for information relating to domestic violence, treatment of injuries and places of safety and shelters are: (For safety reasons, inclusion of shelter/safe house addresses are not necessary). You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than ~~three~~ four thousand dollars ($~~3~~4,000).

(3) The peace officer shall make every effort to arrange, offer, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(4) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten (10) days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

SECTION 13. This act shall apply to all actions filed on and after January 1, 2001.

Approved April 12, 2000.

CHAPTER 251
(S.B. No. 1407, As Amended)

AN ACT

RELATING TO HIGHWAYS AND PUBLIC RIGHTS-OF-WAY; AMENDING SECTION 40-202, IDAHO CODE, TO PROVIDE THAT A MAP OF THE HIGHWAYS AND PUBLIC RIGHTS-OF-WAY WITHIN A HIGHWAY JURISDICTION SHALL SHOW THE GENERAL LOCATION OF EACH SUCH HIGHWAY AND PUBLIC RIGHT-OF-WAY, TO CLARIFY USE OF AN OFFICIAL HIGHWAY SYSTEM MAP, TO EXTEND THE DATE

BY WHICH BOARDS 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 THEIR JURISDICTIONS, AND TO PROVIDE LIMITATIONS ON THE AUTHORITY OF A PUBLIC HIGHWAY AGENCY TO ASSERT OR CLAIM RIGHTS SUPERIOR TO OR IN CONFLICT WITH RIGHTS-OF-WAY THAT RESULTED FROM THE CREATION OF CERTAIN FACILITIES FOR THE TRANSMISSION OF WATER; AMENDING SECTION 40-203, IDAHO CODE, TO CLARIFY TO WHOM NOTICE SHALL BE SENT OF HEARINGS SCHEDULED ON ABANDONMENT OR VACATION OF A HIGHWAY OR RIGHT-OF-WAY, TO PROVIDE THAT DECISIONS OF COMMISSIONERS SHALL BE IN THE PUBLIC INTEREST OF THE AFFECTED HIGHWAY JURISDICTION AND TO PROVIDE FOR REVERSION OF FEDERAL LAND RIGHTS-OF-WAY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 40-203A, IDAHO CODE, TO PROVIDE THAT HIGHWAYS AND PUBLIC RIGHTS-OF-WAY ON HIGHWAY SYSTEM MAPS SHALL GENERALLY CONFORM AS TO LOCATION, TO PROVIDE FOR THE OPTIONAL USE OF SURVEYS WHEN VALIDATING A HIGHWAY OR PUBLIC RIGHT-OF-WAY AND TO PROVIDE PROPER TERMINOLOGY; AMENDING SECTION 40-204A, IDAHO CODE, TO PROVIDE FOR VALIDATION OF FEDERAL LAND RIGHTS-OF-WAY, TO PROVIDE FOR RECORDING OF ACKNOWLEDGEMENTS OF FEDERAL LAND RIGHTS-OF-WAY AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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 the general location of 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, 200~~0~~5, and every five (5) years thereafter, the board of county or highway district commissioners shall have published in map form and made readily available a map showing the general 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.

(7) Nothing in this section or in any designation of the general location of a highway or public right-of-way shall authorize the public highway agency to assert or claim rights superior to or in conflict with any rights-of-way that resulted from the creation of a facility for the transmission of water which existed before the designation of the location of a highway or public right-of-way.

SECTION 2. That Section 40-203, Idaho Code, be, and the same is hereby amended to read as follows:

40-203. ABANDONMENT AND VACATION OF COUNTY AND HIGHWAY DISTRICT SYSTEM HIGHWAYS OR PUBLIC RIGHTS-OF-WAY. (1) A board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, shall use the following procedure to abandon and vacate any highway or public right-of-way in the county or highway district system including those which furnish public access to state and federal public lands and waters:

(a) The commissioners may by resolution declare its intention to abandon and vacate any highway or public right-of-way considered no longer to be in the public interest.

(b) Any resident, or property holder, within a county or highway district system including the state of Idaho, any of its subdivi-

sions, or any agency of the federal government may petition the respective commissioners for abandonment and vacation of any highway or public right-of-way within their highway system. The petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings.

(c) The commissioners shall establish a hearing date or dates on the proposed abandonment and vacation.

(d) The commissioners shall prepare a public notice stating their intention to hold a public hearing to consider the proposed abandonment and vacation of a highway or public right-of-way which shall be made available to the public not later than thirty (30) days prior to any hearing and mailed to any person requesting a copy not more than three (3) working days after any such request.

(e) At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice by United States mail to known owners and operators of an underground facility, as defined in section 55-2202, Idaho Code, that lies within the highway or public right-of-way.

(f) At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice to owners of record of land abutting the portion of the highway or public right-of-way proposed to be abandoned and vacated at their addresses as shown on the county assessor's tax rolls and shall publish notice of the hearing at least two (2) times if in a weekly newspaper or three (3) times if in a daily newspaper, the last notice to be published at least five (5) days and not more than twenty-one (21) days before the hearing.

(g) At the hearing, the commissioners shall accept all information relating to the proceedings. Any person, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appear and give testimony for or against abandonment.

(h) After completion of the proceedings and consideration of all related information, the commissioners shall decide whether the abandonment and vacation of the highway or public right-of-way is in the public interest of the highway jurisdiction affected by the abandonment or vacation. The decision whether or not to abandon and vacate the highway or public right-of-way shall be written and shall be supported by findings of fact and conclusions of law.

(i) If the commissioners determine that a highway or public right-of-way parcel to be abandoned and vacated in accordance with the provisions of this section has a fair market value of twenty-five hundred dollars ($2,500) or more, a charge may be imposed upon the acquiring entity, not in excess of the fair market value of the parcel, as a condition of the abandonment and vacation; provided, however, no such charge shall be imposed on the landowner who originally dedicated such parcel to the public for use as a highway or public right-of-way; and provided further, that if the highway or public right-of-way was originally a federal land right-of-way, said highway or public right-of-way shall revert to a federal land right-of-way.

(j) The commissioners shall cause any order or resolution to be recorded in the county records and the official map of the highway system to be amended as affected by the abandonment and vacation.

(k) From any such decision, a resident or property holder within the county or highway district system, including the state of Idaho or any of its subdivisions or any agency of the federal government, may appeal to the district court of the county in which the highway or public right-of-way is located pursuant to section 40-208, Idaho Code.

(2) No highway or public right-of-way or parts thereof shall be abandoned and vacated so as to leave any real property adjoining the highway or public right-of-way without access to an established highway or public right-of-way.

(3) In the event of abandonment and vacation, rights-of-way or easements may be reserved for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, or other underground facilities as defined in section 55-2202, Idaho Code, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances.

(4) A highway abandoned and vacated under the provisions of this section may be reclassified as a public right-of-way.

(5) Until abandonment is authorized by the commissioners, public use of the highway or public right-of-way may not be restricted or impeded by encroachment or installation of any obstruction restricting public use, or by the installation of signs or notices that might tend to restrict or prohibit public use. Any person violating the provisions of this subsection shall be guilty of a misdemeanor.

(6) When a county or highway district desires the abandonment or vacation of any highway, public street or public right-of-way which was accepted as part of a platted subdivision said abandonment or vacation shall be accomplished pursuant to the provisions of chapter 13, title 50, Idaho Code.

SECTION 3. That Section 40-203A, Idaho Code, be, and the same is hereby amended to read as follows:

40-203A. VALIDATION OF COUNTY OR HIGHWAY DISTRICT SYSTEM HIGHWAY OR PUBLIC RIGHT-OF-WAY. (1) Any resident or property holder within a county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may petition the board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, to initiate public proceedings to validate a highway or public right-of-way, including those which furnish public access to state and federal public lands and waters, provided that the petitioner shall pay a reasonable fee as determined by the commissioners to cover the cost of the proceedings, or the commissioners may initiate validation proceedings on their own resolution, if any of the following conditions exist:

(a) If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a highway or public right-of-way;

(b) If the location of the highway or public right-of-way cannot be accurately determined due to numerous alterations of the high-

way or public right-of-way, a defective survey of the highway, public right-of-way or adjacent property, or loss or destruction of the original survey of the highways or public rights-of-way; or

(c) If the highway or public right-of-way as traveled and used does not generally conform to the location of a highway or public right-of-way described on the official highway system map or in the public records.

(2) If proceedings for validation of a highway or public right-of-way are initiated, the commissioners shall follow the procedure set forth in section 40-203, Idaho Code, and shall:

(a) If the commissioners determine it is necessary, c~~C~~ause the highway or public right-of-way to be surveyed;

(b) Cause a report to be prepared, including ~~the~~ consideration of any survey and any other information required by the ~~board~~ commissioners;

(c) Establish a hearing date on the proceedings for validation;

(d) Cause notice of the proceedings to be provided in the same manner as for abandonment and vacation proceedings; and

(e) At the hearing, the commissioners shall consider all information relating to the proceedings and shall accept testimony from persons having an interest in the proposed validation.

(3) Upon completion of the proceedings, the commissioners shall determine whether validation of the highway or public right-of-way is in the public interest and shall enter an order validating the highway or public right-of-way as public or declaring it not to be public.

(4) From any such decision, any resident or property holder within a county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appeal to the district court of the county in which the highway or public right-of-way is located pursuant to section 40-208, Idaho Code.

(5) When a board of commissioners validates a highway or public right-of-way, it shall cause the order validating the highway or public right-of-way, and if ~~surveyed,~~ cause the survey to be recorded in the county records and shall amend the official highway system map of the respective county or highway district ~~system~~.

(6) The commissioners shall proceed to determine and provide just compensation for the removal of any structure that, prior to creation of the highway or public right-of-way, encroached upon a highway or public right-of-way that is the subject of a validation proceeding, or if such is not practical, the commissioners may acquire property to alter the highway or public right-of-way being validated.

(7) This section does not apply to the validation of any highway, public street or public right-of-way which is to be accepted as part of a platted subdivision pursuant to chapter 13, title 50, Idaho Code.

SECTION 4. That Section 40-204A, Idaho Code, be, and the same is hereby amended to read as follows:

40-204A. FEDERAL LAND RIGHTS-OF-WAY. (1) The state recognizes that the act of construction and first use constitute the acceptance of the grant given to the public for federal land rights-of-way, and that once acceptance of the grant has been established, the grant

shall be for the perpetual term granted by the congress of the United States.

(2) The only method for the abandonment of these rights-of-way shall be that of eminent domain proceedings in which the taking of the public's right to access shall be justly compensated. Neither the mere passage of time nor the frequency of use shall be considered a justification for considering these rights-of-way to have been abandoned.

(3) All of the said rights-of-way shall be shown by some form of documentation to have existed prior to the withdrawal of the federal grant in 1976 or to predate the removal of land through which they transit from the public domain for other public purposes. Documentation ~~shall~~ may take the form of ~~at least~~ a map, ~~and~~ an affidavit~~.--S~~, surveys, books ~~and~~ or other historic information. ~~may--also--be included.~~

(4) These rights-of-way shall not require maintenance for the passage of vehicular traffic, nor shall any liability be incurred for injury or damage through a failure to maintain the access or to maintain any highway sign. These rights-of-way shall be traveled at the risk of the user and may be maintained by the public through usage by the public.

(5) Any member of the public, the state of Idaho and any of its political subdivisions, and any agency of the federal government may choose to seek validation of its rights under law to use granted rights-of-way either through a process set forth by the state of Idaho, through processes set forth by any federal agency or by proclamation of user rights granted under the provisions of the original act, Revised Statute 2477.

~~These--rights--of--way-shall-not-be-required-to-possess-centerline surveys-typical-of-publicly-maintained-roads,-but--shall--be--surveyed prior-to-being-accepted-into-the-maintained-public-highway-system~~ Persons seeking to have a federal land right-of-way, including those which furnish public access to state and federal public lands and waters, validated as a highway or public right-of-way as part of a county or highway official highway system, shall follow the procedure outlined in section 40-203A, Idaho Code.

Neither the granting of the original right-of-way nor any provision in this or any other state act shall be construed as a relinquishment of either federal ownership or management of the surface estate of the property over which the right-of-way passes.

(6) Persons seeking acknowledgement of federal land rights-of-way shall file with the county recorder the request for acknowledgement and for any supporting documentation. The county recorder shall ~~place the~~ record acknowledgements, ~~on-the-official-county--road--system--map~~ including supporting documentation, and maintain an appropriate index of same.

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 April 12, 2000.

CHAPTER 252
(S.B. No. 1408, As Amended)

AN ACT

RELATING TO PUBLIC RIGHTS-OF-WAY; AMENDING SECTION 40-117, IDAHO CODE, TO REVISE THE DEFINITION OF "PUBLIC RIGHT-OF-WAY"; AMENDING SECTION 40-2319, IDAHO CODE, TO PROVIDE THAT GATES ARE ENCROACHMENTS, TO INCREASE THE PENALTY FOR UNLAWFUL ENCROACHMENTS, TO PROVIDE PROPER NOMENCLATURE AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 40-2320, IDAHO CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 40-117, Idaho Code, be, and the same is hereby amended to read as follows:

40-117. DEFINITIONS -- P.

(1) "Person" includes every natural person, firm, fiduciary, copartnership, association, corporation, trustee, receiver or assignee for the benefit of creditors.

(2) "Place." (See "Maintain," section 40-114, Idaho Code)

(3) "Primary system" or "primary highway" means any portion of the highways of the state, as officially designated, or as may hereafter be so designated, by the Idaho transportation board, and approved by the secretary of transportation, pursuant to the provisions of title 23, U.S. Code, "Highways."~~.~~

(4) "Public highway agency" means the state transportation department, any city, county, highway district or other political subdivision of the state with jurisdiction over public highway systems and public rights-of-way.

(5) "Public highways" means all highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. (Also see "Highways," section 40-109, Idaho Code)

(6) "Public right-of-way" means a right-of-way 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, but may expend funds for the maintenance of, said public right-of-way or post traffic signs for vehicular traffic on said public right-of-way. In addition, a public right-of-way includes a right-of-way which was originally intended for development as a highway and was accepted on behalf of the public by deed of purchase, fee simple title, authorized easement, eminent domain, by plat, prescriptive use, or abandonment of a highway pursuant to section 40-203, Idaho Code, but shall not include federal land rights-of-way, as provided in section 40-204A, Idaho Code, that resulted from the creation of a facility for the transmission of water. Public rights-of-way shall not be considered improved highways for the apportionment of funds from the highway distribution account.

SECTION 2. That Section 40-2319, Idaho Code, be, and the same is hereby amended to read as follows:

40-2319. ENCROACHMENTS -- REMOVAL -- NOTICE -- PENALTY FOR FAILURE TO REMOVE -- REMOVAL BY ~~DIRECTOR-OF--HIGHWAYS~~ COUNTY OR HIGHWAY DISTRICT -- ABATEMENT. (1) If any highway ~~laid-out-or-erected~~ or public right-of-way under the jurisdiction of a county or highway district is encroached upon by gates, fences, buildings, or otherwise, ~~the-director-of-highways-of~~ the appropriate county or highway district may~~,-orally-or-in-writing,~~ require the encroachment to be removed. ~~from-the-highway.~~ If the encroachment is of a nature as to effectually obstruct and prevent the use of the highway or public right-of-way for vehicles, the county or highway district shall immediately cause the encroachment to be removed.

(2) Notice shall be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he resides in the ~~county~~ highway jurisdiction. If not, it shall be posted on the encroachment, specifying ~~the--breadth--of--the highway,~~ the place and extent of the encroachment, and requiring him to remove the encroachment within ten (10) days.

(3) If the encroachment is not removed, or commenced to be removed, prior to the expiration of ten (10) days from the service or posting the notice, the person who caused, owns or controls the encroachment shall forfeit up to one hundred fifty dollars ($150~~,00~~) for each day the encroachment continues ~~unmoved.-If--the--encroachment is--of--a-nature-as-to-effectually-obstruct-and-prevent-the-use-of-the highway-for-vehicles,--the--director--of--highways--shall--immediately remove-the-encroachment~~ unremoved.

(4) If the encroachment is denied, and the owner, occupant, or person controlling the encroachment, refuses either to remove it or to permit its removal, the ~~director-of-highways~~ county or highway district shall commence in the proper court an action to abate the encroachment as a nuisance. If the ~~director--of--highways~~ county or highway district recovers judgment, ~~he~~ it may, in addition to having the encroachment abated, recover up to one hundred fifty dollars ($150~~,00~~) for every day the nuisance remained after notice, as well as costs of the legal action and removal.

(5) If the encroachment is not denied, but is not removed ~~for~~ within five (5) days after the notice is complete, the ~~director--of highways~~ county or highway district may remove it at the expense of the owner, occupant, or person controlling the encroachment, and the county or highway district may recover ~~his~~ costs and expenses, as well as the sum of up to one hundred fifty dollars ($150~~,00~~) for each day the encroachment remained after notice was complete.

SECTION 3. That Section 40-2320, Idaho Code, be, and the same is hereby repealed.

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 April 12, 2000.

CHAPTER 253
(S.B. No. 1410)

AN ACT

RELATING TO OVERSIZED VEHICLES OR LOADS; AMENDING SECTION 49-1010, IDAHO CODE, TO AUTHORIZE CERTAIN SEMITRAILERS TO OPERATE ON STATE HIGHWAYS AS SET FORTH BY POLICY AND APPROVED BY THE IDAHO TRANSPORTATION BOARD; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 49-1010, Idaho Code, be, and the same is hereby amended to read as follows:

49-1010. SIZE OF VEHICLES AND LOADS. No vehicle shall exceed the dimensions specified below, except that certain devices determined by the board as necessary for the safe and efficient operation of motor vehicles, including energy conservation devices, shall be excluded from the calculation of width or length.

(1) The width of a vehicle, including any load thereon, except as noted below, shall not exceed ..... 8 1/2 feet.

(a) The limitations as to size of vehicles stated in this section shall not apply to farm tractors or to implements of husbandry, including any load thereon, and including all equipment used in land leveling operations, when being incidentally operated upon the highway from one (1) farm operation to another during daylight hours.

(b) Notwithstanding the exemption from width limitation for farm tractors included in paragraph (a) of this subsection, the total outside width of any farm tractor being transported on the interstate system in this state, except as permitted by section 49-1004, Idaho Code, shall not exceed ..... 9 feet.

(c) A farm tractor or implement of husbandry, when being incidentally transported upon the highway with a width in excess of the limits of paragraphs (a) and (b) of this subsection, must not proceed at a speed in excess of twenty-five (25) miles per hour, must display one (1) eighteen (18) by eighteen (18) inch red flag on the outermost left projection of the tractor or implement being transported, except that the speed restriction of twenty-five (25) miles per hour shall not apply when such tractor or implement of husbandry is being hauled on legal width highway vehicles equipped as required by law.

(2) The height of a vehicle, including the load thereon, shall not exceed ..... 14 feet.

(3) The length of a vehicle, or vehicle combination, except as noted below shall not exceed:

(a) When a single motor vehicle ..... 45 feet.

(b) When a trailer or semitrailer, except as noted below ..... 48 feet.

1. Semitrailers operating on routes determined by the board to have severe curvature, deficient width and/or heavy traffic conditions shall be limited to an overall combination length not to exceed ..... 65 feet.

2. The length of a trailer tongue, or the length of the tongue of a converter gear used to convert a semitrailer to a trailer, shall be excluded from the calculation of a trailer length.

3. Semitrailers operating on routes which are a part of the national network as set forth in the Code of Federal Regulations, Title 23, Part 658, ~~and~~ on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network and state highways as set forth by policy and approved by the transportation board shall not exceed a length of ..... 53 feet.

(c) When a motor vehicle and one or more trailers, except as noted in (3)(b), (3)(d) and (3)(e) ..... 75 feet.

(d) When a combination of semitrailer and trailer, or of two (2) semitrailers the length in such combination, including the connecting tongue and excluding the truck tractor except as noted below ..... 61 feet.

When the combination of semitrailer and trailer or of two (2) semitrailers including the connecting tongues exceeds sixty-one (61) feet, the length of such combination including the truck tractor ..... 75 feet.

(e) When a combination of a semitrailer and trailer, or of two (2) semitrailers operating on routes on the national network as set forth in the Code of Federal Regulations, Title 23, Part 658, and on routes providing access between the national network and terminals and facilities for food, fuel, repairs and rest which are located within one (1) road mile of the national network, the length, including the connecting tongue and excluding the truck tractor, shall not exceed ..... 68 feet.

(f) When a dromedary tractor with semitrailer, stinger-steered by having the kingpin located five (5) feet to the rear of the centroid of the rear axle(s) ..... 75 feet.

(g) When a dromedary tractor with semitrailer, not meeting the stinger-steer requirement as defined in (f) above ..... 65 feet.

(h) When an auto transporter or boat transporter, stinger-steered as defined in (f) above, excluding front and rear overhang of load ..... 75 feet.

(i) When an auto transporter or boat transporter, not meeting the stinger-steer requirement as defined in (f) above, excluding front and rear overhang of load ..... 65 feet.

(j) When a truck tractor with stinger-steered pole trailer or log dolly, connected by a reach or pole, or a combination used for transporting long loads such as poles, pipes, logs or structural members generally capable of sustaining themselves as beams between supporting bunks or connections ..... 75 feet.

(4) The overhang or extension of a load shall not extend:

(a) Beyond the front of a vehicle, more than ..... 4 feet.

(b) Beyond the last axle, more than ..... 15 feet.

(c) Beyond the left fender of a passenger vehicle, more than ..... 0 feet.

(d) Beyond the right fender of a passenger vehicle, more than ..... 6 inches.

(e) To the front and rear combined of an auto transporter or boat transporter, more than ..... 7 feet.

(5) Noncargo-carrying devices necessary for the safe and efficient operation of the vehicle, as determined by the board, shall not be included in measurement for length.

(6) No combination shall include more than three (3) units except when a saddlemount combination ..... 75 feet.

(7) Vehicle combinations consisting of not more than four (4) vehicle units with an overall length in excess of the limits of subsection (3) of this section and with an overall combination length not to exceed one hundred and five (105) feet, may be operated by permit on routes designated for such operations by the public highway agency having jurisdiction over that highway system.

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

Approved April 12, 2000.

CHAPTER 254
(S.B. No. 1417, As Amended)

AN ACT

RELATING TO THE LAWS CONCERNING THE SALE OF ALCOHOLIC BEVERAGES; AMENDING SECTION 23-614, IDAHO CODE, TO CLARIFY CERTAIN PROHIBITED ACTS BY LICENSEES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 23-614, Idaho Code, be, and the same is hereby amended to read as follows:

23-614. PROHIBITED ACTS -- MISDEMEANORS -- PENALTIES. (1) No person, partnership, association or corporation shall conduct, permit, or encourage any of the following acts or activities in or upon premises licensed pursuant to title 23, Idaho Code:

(a) Employment or use of any <u>person, including allowing any person on the premises,</u> while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

(b) Employment or use of any person who touches, caresses or fondles the breast, buttocks, anus or genitals of any other person, or who is so touched, caressed or fondled by another person.

(c) Employment or use of any person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof.

(d) Employment or use of any person to perform acts of or acts which simulate sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are

prohibited by law.

(e) The showing of films, still pictures, electronic reproductions, or other visual reproductions depicting:

(i) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(ii) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.

(iii) Scenes wherein a person displays the vulva or the anus or the genitals.

(iv) Scenes wherein artificial devices or inanimate objects are employed to portray any of the prohibited activities described in this section.

(2) A violation of any of the provisions of this section by any agent, employee, or other person in any way acting on behalf of a licensee shall constitute a misdemeanor, and upon conviction such person shall be fined not less than the sum of one hundred dollars ($100) nor more than the sum of three hundred dollars ($300), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months, or both such fine and imprisonment. Any court in which a judgment of conviction is entered shall certify a copy thereof to the director, and the director shall thereupon commence administrative proceedings. The director shall review the circumstances and may take action he considers appropriate against the licensee including suspension of the license for not to exceed six (6) months, a fine, or both such suspension and fine or may revoke the license.

(3) In addition to misdemeanor violations or other criminal proceedings instituted under this section, upon sufficient proof to the director, the director shall take administrative action as provided in subsection (2) of this section against any licensee in the event any person is found to have committed any of the above proscribed acts. The proceedings shall be in accordance with provisions of the administrative procedure act.

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

Approved April 12, 2000.

CHAPTER 255
(S.B. No. 1419, As Amended)

AN ACT

RELATING TO WATER USE FOR LIVESTOCK; AMENDING SECTION 42-113, IDAHO CODE, TO PROVIDE FOR DIVERTING WATER OUT OF A STREAM FOR LIVESTOCK WATERING, TO PROVIDE CONDITIONS, TO REQUIRE NOTICE AND A FEE, TO PROVIDE THAT COMPLIANCE IS A SUBSTITUTE FOR TRANSFER PROCEEDINGS, TO PROVIDE FOR NO EFFECT ON PRIORITY DATES, TO PROVIDE FOR A PETITION TO CURTAIL THE DIVERSION AND FOR REVIEW AND TO REQUIRE CONSENT OF A PERMITTEE IN A FEDERAL GRAZING ALLOTMENT.

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

SECTION 1. That Section 42-113, Idaho Code, be, and the same is hereby amended to read as follows:

42-113. IN-STREAM AND OTHER WATER USE FOR LIVESTOCK. (1) A permit may be issued, but shall not be required for appropriation of water for the in-stream watering of livestock. In the consideration of applications for permits to appropriate water for other purposes, the director of the department of water resources shall impose such reasonable conditions as are necessary to protect prior downstream water rights for in-stream livestock use, and in the administration of the water rights on any stream, the director, and the district court where applicable, shall recognize and protect water rights for in-stream livestock use, according to priority, as they do water rights for other purposes. As used in this section, the phrase "in-stream watering of livestock" means the drinking of water by livestock directly from a natural stream, without the use of any constructed physical diversion works.

(2) For rights to the use of water for in-stream or out-of-stream livestock purposes, associated with grazing on federally owned or managed land, established under the diversion and application to beneficial use method of appropriation, the priority date shall be the first date that water historically was used for livestock watering associated with grazing on the land, subject to the provisions of section 42-222(2), Idaho Code.

(3) This subsection is established to promote the watering of livestock away from streams and riparian areas, but not to require fencing of livestock away from streams and riparian areas.

(a) Any person having an established water right or appropriating water for in-stream watering of livestock pursuant to subsection (1) of this section may, in addition to the instream use, divert the water for livestock use away from the stream or riparian area. The diversion may occur only if the following conditions are met:

(i) The water is diverted from a surface water source to a trough or tank through an enclosed water delivery system;

(ii) The water delivery system is equipped with an automatic shutoff or flow control mechanism or includes a means for returning unused water to the surface water source through an enclosed delivery system, and the system is designed and constructed to allow the rate of diversion to be measured;

(iii) The diversion is from a surface water source to which the livestock would otherwise have access and the watering tank or trough is located on land from which the livestock would have access to the surface water source from which the diversion is made;

(iv) The diversion of water out of the stream in this manner does not injure other water rights;

(v) The use of the water diverted is for watering livestock; and

(vi) The bed and banks of the source shall not be altered as that term is defined in section 42-3802, Idaho Code, except that an inlet conduit may be placed into the source in a man-

ner that does not require excavation or obstruction of the stream channel, unless additional work is approved by the director of the department of water resources.

(b) The amount of water diverted for watering of livestock in accordance with this subsection shall not exceed thirteen thousand (13,000) gallons per day per diversion.

(c) Before construction and use of a water diversion and delivery system as provided in this subsection, the person or other entity proposing to construct and use the system shall give notice to the director of the department of water resources. Separate notice for each diversion shall be provided on a form approved by the director and shall be accompanied by a twenty-five dollar ($25.00) fee for each notice filed. Filing of the notice as herein provided shall serve as a substitute for filing a notice of claim to a water right pursuant to section 42-243, Idaho Code. The director may provide notice to holders of water rights and others as the director deems appropriate.

(d) Compliance with the provisions of this subsection is a substitute for the requirements for transfer proceedings in section 42-222, Idaho Code. In the administration of water diverted for livestock watering pursuant to this subsection, the director, and the district court where applicable, shall recognize and protect water rights for out-of-stream livestock watering use pursuant to this subsection as they would in-stream livestock watering use. The priority date for out-of-stream watering of livestock pursuant to this subsection shall be the first date that water historically was used for livestock watering and shall not be altered due to the diversion out-of-stream.

(e) Any water right holder who determines that diversion or use of water under the provisions of this subsection is depriving the water right holder of water to which the water right holder is entitled may petition the director of the department of water resources to curtail the diversion or use of water for livestock purposes. Upon such petition, the director shall cause an investigation to be made and may hold hearings or gather information in other ways. If the director finds that an interference is occurring, the director may order curtailment of diversion or use of the water or may require the water diversion and delivery system to be modified to prevent injury to other water rights. Any person feeling aggrieved by an order of the director in response to a petition filed as herein provided shall be entitled to review as provided in section 42-1701A, Idaho Code.

(4) No change in use of any water right used for watering of livestock, whether proposed under this section or section 42-222, Idaho Code, shall be made or allowed without the consent of the permittee in the federal grazing allotment, if any, in which the water right is used for the watering of livestock.

Approved April 12, 2000.

CHAPTER 256
(S.B. No. 1421)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1402, IDAHO CODE, TO CLARIFY THAT IT IS A FLAGRANT VIOLATION TO TAKE ANY BIG GAME ANIMAL DURING A CLOSED SEASON WHEN THERE IS NO ESTABLISHED TAKE SEASON OPEN ANYWHERE IN THE STATE FOR THAT SPECIES OF BIG GAME.

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

SECTION 1. 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 or proclamations 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 or proclamations promulgated pursuant thereto shall, except in cases where a higher penalty is prescribed, be fined in a sum of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000) and/or by commitment to jail for not more than six (6) months. The minimum fine, per animal, fish or bird, for the illegal taking, illegal possession or the illegal waste of the following animals, fish or birds shall be as indicated below:

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 or failing to depart the real property of another after notification as set forth in section 36-1603, Idaho Code.
6. The unlawful release of any species of live fish into any public body of water in the state. For purposes of this paragraph, an "unlawful release of any species of live fish" shall mean a release of any species of live fish, or live eggs thereof, in the state without the permission of the director of the department of fish and game; provided, that no permission is required when fish are being freed from a hook and released at the same time and place where caught or when crayfish are being released from a trap at the same time and place where caught.

Provided further, that the magistrate hearing the case of a first time hunting violation offender under the age of twenty-one (21) 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~~ that 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.

Approved April 12, 2000.

CHAPTER 257
(S.B. No. 1422)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-1404, IDAHO CODE, TO INCREASE THE AMOUNTS TO BE REIMBURSED TO THE STATE FOR THE ILLEGAL KILLING, ILLEGAL POSSESSION OR ILLEGAL WASTE OF A TROPHY BIG GAME ANIMAL AND TO INCREASE THE MINIMUM VALUE FOR WILDLIFE TO BE REIMBURSED WITHOUT COMPOUNDING.

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

SECTION 1. 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, seven hundred fifty dollars ($750) per animal killed, possessed or wasted.
2. Caribou, bighorn sheep, mountain goat and moose, one thousand five hundred dollars ($1,500) per animal killed, possessed or wasted.
3. Any other species of big game, four hundred dollars ($400) per animal killed, possessed or wasted.
4. Wild turkey and swan, two hundred fifty dollars ($250) per bird killed, possessed or wasted.
5. Sturgeon, chinook salmon, and wild steelhead, two hundred fifty dollars ($250) per fish killed, possessed or wasted.
6. Bull trout, one hundred fifty dollars ($150) per fish killed, possessed or wasted.
7. Any other game bird, game fish or furbearer, fifty dollars ($50.00) per animal killed, possessed or wasted.

Provided further, that any person who pleads guilty, is 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 reim-

bursed 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)~~ five thousand two hundred fifty dollars ($5,250), calculated as follows: ~~five~~ seven hundred fifty dollars ($750~~0~~) for the first elk; one thousand five hundred dollars ($1,~~0~~500) for the second elk; and ~~two~~ three thousand dollars ($~~2~~3,000) 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 ($20,000) for the third elk. Provided however, that wildlife possessing a ~~twenty-five~~ fifty dollar ($~~2~~50.00) 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.

Approved April 12, 2000.

CHAPTER 258
(S.B. No. 1431)

AN ACT

RELATING TO CORPORATE POWERS OF HIGHWAY DISTRICTS; AMENDING SECTION 40-1309, IDAHO CODE, TO PROVIDE THAT PERSONAL PROPERTY, NO LONGER USEFUL TO A HIGHWAY DISTRICT, NOT EXCEEDING FIVE THOUSAND DOLLARS MAY BE SOLD BY THE HIGHWAY COMMISSIONERS AT A PRIVATE SALE OR AT ANY REGULAR BOARD OF HIGHWAY DISTRICT COMMISSIONERS MEETING WITHOUT ADVERTISEMENT.

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

SECTION 1. That Section 40-1309, Idaho Code, be, and the same is hereby amended to read as follows:

40-1309. CORPORATE POWERS OF HIGHWAY DISTRICTS. Each highway district has power:

(1) To sue and be sued.

(2) To purchase and hold lands, make contracts, purchase and hold personal property as may be necessary or convenient for the purposes of this chapter, and to sell and exchange any real or personal property other than public lands which by the constitution and laws of the state are placed under the jurisdiction of the state land board. Personal property, no longer useful to the district, not exceeding ~~one hundred~~ five thousand dollars ($~~1~~5,000) in value may be sold by the highway commissioners at a private sale or at any regular board meeting without advertisement. The highway district commissioners shall first adopt a resolution finding that all other personal or real property to be sold or exchanged is no longer useful to the district; that a public hearing is to be held, of which hearing notice shall be published in accordance with the provisions of section 40-206, Idaho Code, and at which hearing any person interested may appear and show cause that the sale or exchange should not be made. The hearing and sale shall not be conducted at the same regular meeting. Highway district commissioners and highway directors must be personally disinterested, directly or indirectly, in the purchase of property for the use of the highway district, or in the sale of any property belonging to the highway district, or in any contract made by the highway district or other person on behalf of the highway district unless otherwise authorized by law.

(3) To levy and apply ad valorem taxes for purposes under its exclusive jurisdiction as are authorized by law.

Approved April 12, 2000.

CHAPTER 259
(S.B. No. 1436, As Amended)

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING CHAPTER 2, TITLE 25, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 25-237, IDAHO CODE, TO AUTHORIZE THE ADMINISTRATOR OF THE DIVISION OF ANIMAL INDUSTRIES TO REGULATE THE DISPOSAL OF DEAD ANIMALS, CARCASSES AND BODY PARTS, TO AUTHORIZE RULEMAKING, TO PROVIDE FOR VIOLATIONS, TO PROVIDE FOR CRIMINAL AND CIVIL PROSECUTION AND PENALTIES, TO PROVIDE FOR CORRECTIVE ACTIONS AND TO PROVIDE DISCRETION TO THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 2, Title 25, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 25-237, Idaho Code, and to read as follows:

25-237. DISPOSAL OF DEAD ANIMAL BODIES, CARCASSES AND BODY PARTS. (1) The administrator of the division is authorized to regulate the disposal of dead animal bodies, carcasses and body parts, and similar activities to protect public health, animals and the environment. The administrator is authorized to promulgate and enforce rules that may be necessary for the efficient administration and enforcement of this section. Such rules shall be consistent with other applicable state or federal laws or rules or regulations which relate to disposal of dead animal bodies, carcasses and body parts.

(2) Any person violating this section or rules promulgated under this section is guilty of a misdemeanor. Upon conviction, violators are subject to a fine of not less than one hundred dollars ($100) and not more than five thousand dollars ($5,000) for each offense, or by imprisonment in the county jail for a period not to exceed six (6) months.

(3) Any person violating this section or rules promulgated under this section may be assessed a civil penalty by the department or its agent of not more than five thousand dollars ($5,000) for each offense. Persons against whom civil penalties are assessed are liable for reasonable attorney's fees. Civil penalties may be assessed in conjunction with any other department administrative action. Civil penalties may not be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. If the department is unable to collect an assessed civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of

chapter 52, title 67, Idaho Code. Moneys collected for violations of this section or rules promulgated under this section shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund. If the director determines that a person has not complied with this section or the rules promulgated under this section, the director shall identify appropriate corrective actions. The director may develop a formal compliance schedule to correct deficiencies caused by noncompliance. The director may, through a formal compliance schedule, allow all or part of the value of the assessed civil penalties to apply toward correction of the deficiencies.

(4) Nothing in this section requires 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 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 April 12, 2000.

CHAPTER 260
(S.B. No. 1438, As Amended)

AN ACT

RELATING TO SALES OF MILK; AMENDING SECTION 37-403, IDAHO CODE, TO PROVIDE THE DURATION OF A REVOCATION OF LICENSES OR PERMITS FOR THE SALE OF MILK SHALL BE DETERMINED BY THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE, TO PROVIDE THAT FOR VIOLATIONS REGARDING WASTE SYSTEMS THE DEPARTMENT OF AGRICULTURE SHALL ALLOW THE MILK TO BE SOLD UPON CERTAIN CONDITIONS OCCURRING AND TO PROVIDE FOR REMITTANCES OF THE FUNDS FROM THE SALE OF THE MILK; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 37-403, Idaho Code, be, and the same is hereby amended to read as follows:

37-403. BASIS FOR ISSUANCE OR REVOCATION OF LICENSES OR PERMITS. Whenever, under any law of this state <u>or rule,</u> the director of the department of agriculture or any agent is required to inspect dairy farms and dairy waste systems for compliance with rules prescribed by the department, or determine the sanitary condition of anything referred to in section 37-401, Idaho Code, or the purity of milk, cream, butter, or other dairy products intended for human consumption, the director shall make or cause to be made an examination and inspection and shall report his findings and conclusions. When the issuance or the revoking of any license or permit by the department of agriculture is required to be made after an inspection involving waste systems, milk quality, and sanitary conditions and purity for human con-

sumption of any milk, cream, butter, or other dairy products, the issuance or revocation of license or permit shall be based upon the report or reports so made by the director. The duration of such revocation shall be determined by the director. For violations regarding waste systems the department shall allow the dairy farm's milk to be processed, provided the milk meets quality standards. The value of the milk sold by the violator during the revocation shall be remitted to the county where the violation occurred for deposit in the county current expense fund. The amount remitted to the county current expense fund shall be less processor expenses associated with the procurement of the milk.

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 April 12, 2000.

CHAPTER 261
(S.B. No. 1439)

AN ACT

RELATING TO REAL ESTATE BROKERS AND SALESPERSONS; AMENDING SECTION 54-2054, IDAHO CODE, AS ADDED BY SENATE BILL 1312, ENACTED BY THE SECOND REGULAR SESSION OF THE FIFTY-FIFTH IDAHO LEGISLATURE, TO ALLOW A LICENSED REAL ESTATE BROKER OR SALESPERSON TO SHARE COMMISSIONS DIRECTLY WITH THE BUYER OR SELLER IN A REGULATED REAL ESTATE TRANSACTION.

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

SECTION 1. That Section 54-2054, Idaho Code, as added by Senate Bill 1312, as enacted by the Second Regular Session of the Fifty-Fifth Idaho Legislature, be, and the same is hereby amended to read as follows:

54-2054. COMPENSATION, COMMISSIONS AND FEES -- PROHIBITED CONDUCT. (1) Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson in Idaho shall bring or maintain any action in the courts for the collection of a fee, commission or other compensation for the performance of any acts requiring a real estate license as provided in section 54-2002, Idaho Code, without alleging and proving that such person was an actively licensed broker or salesperson in Idaho at the time the alleged cause of action arose.

(2) Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the state of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in

Idaho or in another state or jurisdiction. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to a corporation, all of whose shareholders and directors are active real estate licensees. An Idaho licensee may pay any part or share of a commission, fee or compensation received, directly to the buyer or seller in the real estate transaction. However, no commission, fee or compensation may be split with any party to the transaction in a manner which would directly or indirectly create a double contract, as defined in this chapter, or which would otherwise mislead any broker, lender, title company or government agency involved in the transaction regarding the source of funds used to complete the real estate transaction or regarding the financial resources or obligations of the buyer.

(3) Finder's fees prohibited. Any offer of monetary value, by an Idaho licensee, to any person who is not licensed in Idaho or any state or jurisdiction, made for the purpose of inducing such unlicensed person to secure prospects to buy, sell, option, or otherwise dispose of an interest in real property shall be considered to be splitting fees with an unlicensed person, and is prohibited.

(4) Interference with real estate brokerage agreement prohibited. It shall be unlawful for any person, licensed or unlicensed, to interfere with the contractual relationship between a broker and a client. Communicating a company's relocation policy or benefits to a transferring employee or consumer shall not be considered a violation of this subsection so long as the communication does not involve advice or encouragement on how to terminate or amend an existing contractual relationship between a broker and client.

(5) Double contracts prohibited. No licensed broker or salesperson shall use, propose the use of, agree to the use of, or knowingly permit the use of a double contract, as defined in section 54-2004, Idaho Code, in connection with any regulated real estate transaction. Such conduct by a licensee shall be deemed flagrant misconduct and dishonorable and dishonest dealing and shall subject the licensee to disciplinary action by the commission.

(6) Kickbacks and rebates prohibited. No licensed real estate broker or salesperson shall receive a kickback or rebate for directing any transaction to any individual for financing. A licensee shall not receive a kickback or unearned fee for directing any transaction to any lending institution, escrow or title company, as those practices are defined and prohibited by the real estate settlement and procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq. However, a licensee legally receiving any fee or rebate from any person providing direct services to either the buyer or the seller in connection with a regulated real estate transaction is required to disclose the licensee's intent to receive such fee, rebate or compensation in writing to all parties to the transaction prior to closing.

(7) Compensation from more than one party. No licensed real estate broker or salesperson shall charge or accept compensation from more than one (1) party in any one (1) transaction, without first making full disclosure in writing of the broker's intent to do so, to all parties involved in the transaction.

(8) After-the-fact referral fees prohibited. It shall be unlawful for any person to solicit or request a referral fee or similar payment from a licensed Idaho real estate broker or sales associate, for the referral of a buyer or seller in connection with a regulated real estate transaction, unless the person seeking the referral fee has reasonable cause. "Reasonable cause" shall not exist unless:

(a) The person seeking the referral fee has a written contractual relationship with the Idaho real estate broker for a referral fee or similar payment; and

(b) The contractual relationship providing for the referral fee exists at the time the buyer or seller purportedly referred by such person signs a written agreement with the Idaho broker for the listing of the real estate or for representation by the broker, or the buyer signs an offer to purchase the real estate involved in the transaction. It shall be unlawful for any person including, but not limited to, a relocation company or company with a relocation policy or benefits, to directly or indirectly threaten to or actually reduce or withhold promised or expected employee or customer relocation benefits from a buyer or seller in a regulated real estate transaction based upon a broker's participation in payment of a referral fee or other fee.

(9) All fees must be paid through broker. No sales associate shall accept any commission, compensation or fee for the performance of any acts requiring a real estate license from any person except the real estate broker with whom the sales associate is licensed. However, a broker may pay a former sales associate for services performed while the sales associate was actively licensed with that broker, regardless of the former sales associate's license status at the time the commission or fee is actually paid.

Approved April 12, 2000.

CHAPTER 262
(S.B. No. 1444, As Amended)

AN ACT

RELATING TO HEALTH CARE IN RURAL, MEDICALLY UNDERSERVED AREAS; REPEALING CHAPTER 59, TITLE 39, IDAHO CODE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 59, TITLE 39, IDAHO CODE, TO ADOPT THE IDAHO RURAL HEALTH CARE ACCESS PROGRAM, TO PROVIDE A SHORT TITLE, TO CREATE THE RURAL HEALTH CARE ACCESS FUND, TO DEFINE TERMS, TO CREATE THE RURAL HEALTH CARE ACCESS GRANT REVIEW BOARD, TO DEFINE THE SCOPE OF GRANT SUPPORT, TO SPECIFY CATEGORIES OF GRANTS, TO SPECIFY ELIGIBILITY FOR GRANTS, TO REQUIRE AN APPLICATION, TO SPECIFY THE GRANT AWARD SCHEDULE, TO DEFINE AWARD CRITERIA, TO AUTHORIZE NEGOTIATION, TO PROHIBIT FRAUDULENT INFORMATION ON A GRANT APPLICATION AND TO PROVIDE FOR APPEALS.

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

SECTION 1. That Chapter 59, Title 39, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 59, Title 39, Idaho Code, and to read as follows:

CHAPTER 59
IDAHO RURAL HEALTH CARE ACCESS PROGRAM

39-5901. SHORT TITLE. This act shall be known and cited as the "Idaho Rural Health Care Access Program."

39-5902. RURAL HEALTH CARE ACCESS FUND. (1) There is hereby created in the state treasury a fund known as the "Rural Health Care Access Fund." Subject to appropriation by the legislature, moneys in the fund shall be used exclusively for the purpose of grants for improving access to primary care medical services in areas designated as primary care health professional shortage areas and medically underserved areas and their administration pursuant to this chapter.

39-5903. DEFINITIONS. As used in this chapter:

(1) "Applicant" means an entity submitting documents required by the rural health care access program for the purpose of requesting a grant from the rural health care access fund.

(2) "Application period" means the time period from January 15 to May 15 prior to the state fiscal year for which funding is requested.

(3) "Approval" means written notification that the application will be awarded funding through the rural health care access fund.

(4) "Board" means the rural health care access program review board.

(5) "Department" means the department of health and welfare.

(6) "Director" means the director of the department of health and welfare.

(7) "Grant period" means the time immediately following the application period from July 1 through June 30 (state fiscal year) for which funding is granted.

(8) "Nurse practitioner" means a health care provider licensed pursuant to chapter 14, title 54, Idaho Code.

(9) "Physician assistant" means a health care provider licensed pursuant to chapter 18, title 54, Idaho Code.

(10) "Primary care" means the provision of professional comprehensive health services that includes health education and disease prevention, initial assessment of health problems, treatment of acute care and chronic health problems, and the overall management of an individual's or family's health care services as provided by an Idaho licensed internist, obstetrician, gynecologist, pediatrician, family practitioner, general practitioner, nurse practitioner or physician assistant. It provides the initial contact for health services and referral for secondary and tertiary care.

(11) "Primary care health professional shortage area" means a geographic area or population group which the U.S. secretary of health and human services has determined is underserved by primary care health professional(s).

(12) "Medically underserved area" means a geographic area which the U.S. secretary of health and human services has determined is

underserved by primary care health professional(s).

(13) "Rural health care access grant" means a grant awarded pursuant to this chapter.

(14) "Rural health care access program" means the program that administers the rural health care access fund.

39-5904. RURAL HEALTH CARE ACCESS GRANT REVIEW BOARD. (1) The director shall appoint the members of a board to be known as the rural health care access grant review board, who shall serve at the pleasure of the director. Board members shall not be compensated, but shall be reimbursed for travel expenses incurred for attendance at board meetings.

(2) The board shall meet at least annually, for the purposes described in this chapter.

(3) The board shall be composed of the following: a representative from the Idaho academy of family physicians, a representative from the nurse practitioner conference group, a rural hospital administrator, a representative from the physician assistant association, the health resources section supervisor from the division of health, a faculty member from one (1) of the Idaho family residency programs, an Idaho medical association representative, an Idaho hospital association representative, and an Idaho primary care association representative.

(4) Appointments to the board shall be for three (3) years. Board members may be reappointed at the end of each three (3) year period. Initial appointments shall be staggered in such a manner that approximately one-third (1/3) are appointed for one (1) year, one-third (1/3) are appointed for two (2) years, and one-third (1/3) are appointed for three (3) years.

(5) A majority of the board members constitutes a quorum for the transaction of business. A majority vote is required by the quorum in finalizing decisions.

39-5905. SCOPE OF GRANT SUPPORT. The board may award grants, in accordance with the procedures and criteria in this chapter, to governmental and nonprofit entities for the purpose of improving access to primary health care services to rural and underserved areas.

(1) Individual grant awards will be limited to a total of thirty-five thousand dollars ($35,000), direct and indirect costs, per year.

(2) Applicants may propose projects for funding for up to three (3) years.

(a) Continued funding for projects beyond the first grant year, years two (2) and three (3), shall be subject to the appropriation of funds and grantee performance.

(b) No project may be funded for more than a total of three (3) years.

(c) Any unused grant funds shall be returned to the rural health care access fund by the applicant no later than June 10 of the grant period.

(3) No funds awarded under a grant may be used for purchase, construction, renovation or improvement of real property or for projects which are solely or predominantly designed for the purchase of equipment. Use of funds for the purchase of equipment may be allowed when

such equipment is an essential component of a program. However, the purchase of equipment may not represent more than forty percent (40%) of the total annual share of a proposal. Indirect costs shall not exceed fifteen percent (15%) of the total project.

39-5906. CATEGORIES OF GRANTS. There are four (4) categories of grant assistance:

(1) Recruitment and retention of primary care providers -- Grant funds may be used for loan repayment for primary care providers, recruitment incentive, and/or reimbursement of relocation expenses for primary care providers.

(2) Telehealth projects -- Grant funds may be used for projects that involve the use of telecommunications technologies for distance learning and for projects to improve access to care for rural communities.

(3) Community development projects -- Grant funds may be used for health needs assessments, marketplace analysis, financial analysis and strategic planning activities.

(4) Other -- Communities may choose to apply for funds for activities that they have identified and determined will help to improve access to primary care in rural areas.

39-5907. ELIGIBILITY FOR GRANTS. Applicants must meet the following requirements:

(1) The geographical area to be benefitted must be located in a current primary care health professional shortage area or a medically underserved area.

(2) Applicant must be a governmental entity or a nonprofit entity registered with the Idaho secretary of state.

39-5908. APPLICATION REQUIRED. (1) A completed rural health care access grant application must be submitted by the applicant for the purpose of requesting a grant, on or before the conclusion of the application period specified for the appropriate grant cycle.

(2) Each application shall include:

(a) Geographical area of need;

(b) Individual or entity requesting funds;

(c) Narrative description of the methods to be used to address needs and demonstrate the potential of the project to improve access to health care services in the community;

(d) Identification of measurable goals, objectives to be used to reach the goals, and the resources necessary to complete each activity;

(e) Estimation of how long it will take to accomplish the individual activities of the project;

(f) Demonstrated community and organizational support for the project;

(g) County or local governmental endorsement;

(h) Operating budget including:

(i) Proportion of operating budget, if any, the applicant proposes to match with the rural health care access grant funds;

(ii) Documentation of one (1) or more vendor price quotes

for all proposed equipment purchases;

(iii) Contact person for verification of fiscal information;

(i) Federal tax identification number; and

(j) Other information required by the board.

(3) All applications must include the required information.

(4) The grant application and any attachments submitted by the applicant shall be the primary source of information for awarding a grant. Additionally, the board may request and/or use other information known to them in making their decision.

39-5909. GRANT AWARD SCHEDULE. The board shall conduct the grant process in accordance with the following schedule:

(1) The rural health care access director will generate, and make available, a list of areas eligible for potential grant assistance no later than November 15 prior to the application period.

(2) The rural health care access director shall develop an application form and make guidance available no later than January 15 which shall initiate the application period prior to the grant period.

(3) The completed application shall be submitted no later than May 15 of the application period.

(4) The board shall issue notification to every applicant regarding the disposition of their grant request by June 7 prior to the grant period.

(5) Funds for approved grants shall be disbursed during July of that grant period or over the course of the current grant year as funds become available.

39-5910. AWARD CRITERIA. The board shall award grants based on the following weighted criteria:

(1) Background of bidding organization. The applicant must show adequate experience, knowledge, and qualifications to adequately perform the scope of work: weight = 10%;

(2) Community and organizational support. The applicant must demonstrate community and organizational support for the project: weight = 15%;

(3) Specificity and clarity of scope of project. The proposal will be evaluated based on the extent to which the goals and objectives are specific, measurable, and relevant to the purpose of the proposal and the activities planned to accomplish those objectives are germane and can be sustained beyond the grant time frame. Additionally, there must be a demonstrated need for and lack of availability of funds from other sources to address the primary health care needs of the defined area of service: weight = 35%;

(4) Monitoring and evaluation. The proposal will be evaluated based on the extent to which the monitoring and evaluation system will document program or activity progress and measure effectiveness: weight = 15%;

(5) Budget. The proposal will be evaluated based on the extent to which a detailed itemized budget and justification are consistent with stated objectives and planned program activities: weight = 25%;

39-5911. NEGOTIATION. The board shall have the authority to negotiate the amount of the grant award and any potential continuation,

not to exceed a total of three (3) years.

39-5912. FRAUDULENT INFORMATION ON GRANT APPLICATION. Providing false information on any application or document submitted under this statute is a misdemeanor and grounds for declaring the applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the rural health care access fund. This section shall not limit other remedies which may be available for the filing of false or fraudulent applications.

39-5913. ADMINISTRATIVE APPEALS. Applicants aggrieved by the award or failure to award a grant pursuant to this chapter shall be afforded the remedies provided in chapter 52, title 67, Idaho Code.

Approved April 12, 2000.

CHAPTER 263
(S.B. No. 1445, As Amended)

AN ACT

RELATING TO IMMUNITY OF DONORS OF WILD GAME MEAT; AMENDING CHAPTER 3, TITLE 5, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 5-338, IDAHO CODE, TO PROVIDE FOR IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY OF DONORS OF WILD GAME MEAT TO CHARITABLE ORGANIZATIONS ABSENT NEGLIGENCE, RECKLESSNESS OR INTENTIONAL MISCONDUCT AND TO PROVIDE DEFINITIONS.

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

SECTION 1. That Chapter 3, Title 5, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 5-338, Idaho Code, and to read as follows:

5-338. IMMUNITY OF DONORS OF WILD GAME MEAT. (1) A donor of wild game meat for free use by a charitable organization is immune from civil or criminal liability arising from an injury or death attributable to the nature, age, condition or packaging of the donated wild game meat if the injury or death is not a result of the gross negligence, recklessness, or intentional misconduct of the donor and the donated wild game meat is prepared and packaged by a commercial butcher, commercial slaughterhouse, commercial meat processor or similar entity subject by law to regular state or federal inspection and licensing.

(2) A charitable organization that receives, distributes or serves donated wild game meat is immune from civil or criminal liability arising from an injury or death attributable to the condition of the meat if:

(a) The charitable organization uses appropriate food storage and handling equipment to provide for the safe and sanitary storage and/or service of the wild game meat;

(b) The charitable organization accepts only wild game meat prepared and packaged by a commercial butcher, commercial slaughterhouse, commercial meat processor, or similar entity subject by law to regular state or federal inspection and licensing;
(c) The charitable organization inspects the donated wild game meat in a reasonable manner and finds it to be apparently fit for human consumption at the time of distribution or service;
(d) The charitable organization has no actual or constructive knowledge at the time the wild game meat is distributed or served that it is adulterated, tainted, contaminated, or would be harmful to the health or well-being of a person eating it; and
(e) An injury or death caused by eating the wild game meat is not a proximate cause of the gross negligence, recklessness or intentional misconduct of the charitable organization.
(3) For purposes of this section:
(a) "Charitable organization" means a nonprofit organization that is exempt from taxation under the provisions of sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, as amended.
(b) "Donor" means a person, retailer, commercial butcher, commercial slaughterhouse, commercial meat processor, or similar entity under state supervision, and the Idaho fish and game department in its capacity as a donor of unlawfully taken or unclaimed wildlife pursuant to section 36-1304, Idaho Code.
(c) "Wild game meat" means any raw, cooked, processed, or prepared edible meat from a game animal killed in the wild and used or intended for use in whole or in part for human consumption and which is exempt from the inspection requirements of the federal wholesome meat act, or chapter 19, title 37, Idaho Code; provided however, that wild game salami may not be donated. Wild game meat shall not be considered "adulterated" as that term is defined in chapters 1 and 19, title 37, Idaho Code, and IDAPA 16.02.19, merely because the meat is the product of a game animal killed in the wild and not slaughtered by a butcher in a state or federally regulated food processing establishment. Wild game meat shall be considered "wildlife" as that term is used in IDAPA 16.02.19, and shall be handled, prepared and served accordingly if the charitable organization is a food establishment as defined in the rules.

Approved April 12, 2000.

CHAPTER 264
(S.B. No. 1449, As Amended)

AN ACT

RELATING TO RENEWABLE CONTRACTS FOR CERTIFICATED SCHOOL DISTRICT EMPLOYEES; AMENDING SECTION 33-515, IDAHO CODE, TO REVISE THE TIME LIMITS FOR A SCHOOL BOARD OF TRUSTEES TO GIVE NOTICE TO THE CERTIFICATED EMPLOYEE ON RENEWABLE CONTRACT STATUS FROM MAY 25TH TO MAY 15TH, AND TO REVISE THE RESPONSE TO THE BOARD BY THE EMPLOYEE ON ACCEPTANCE OF A RENEWABLE CONTRACT FOR THE NEXT ENSUING SCHOOL YEAR FROM JUNE 15TH TO JUNE 1ST.

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

SECTION 1. That Section 33-515, Idaho Code, be, and the same is hereby amended to read as follows:

33-515. ISSUANCE OF RENEWABLE CONTRACTS. During the third full year of continuous employment by the same school district, including any specially chartered district, each certificated employee named in subsection 13. of section 33-1001, Idaho Code, and each school nurse and school librarian shall be evaluated for a renewable contract and shall, upon having been offered a contract for the next ensuing year, having given notice of acceptance of renewal and upon signing a contract for a fourth full year, be placed on a renewable contract status with said school district subject to the provisions included in this chapter.

After the third full year of employment and at least once annually, the performance of each such certificated employee, school nurse, or school librarian shall be evaluated according to criteria and procedures established by the board of trustees in accordance with general guidelines approved by the state board of education. Except as otherwise provided, that person shall have the right to automatic renewal of contract by giving notice, in writing, of acceptance of renewal. Such notice shall be given to the board of trustees of the school district then employing such person not later than the ~~fifteenth~~ first day of June preceding the expiration of the term of the current contract. Except as otherwise provided by this paragraph, the board of trustees shall notify each person entitled to be employed on a renewable contract of the requirement that such person must give the notice hereinabove and that failure to do so may be interpreted by the board as a declination of the right to automatic renewal or the offer of another contract. Such notification shall be made, in writing, not later than the ~~twenty-fifth~~ fifteenth day of May, in each year, except to those persons to whom the board, prior to said date, has sent proposed contracts for the next ensuing year, or to whom the board has given the notice required by this section.

Any contract automatically renewed under the provisions of this section shall be for the same length as the term stated in the current contract and at a salary no lower than that specified therein, to which shall be added such increments as may be determined by the statutory or regulatory rights of such employee by reason of training, service, or performance.

Nothing herein shall prevent the board of trustees from offering a renewed contract increasing the salary of any certificated person, or from reassigning an administrative employee to a nonadministrative position with appropriate reduction of salary from the preexisting salary level. In the event the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee which contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the informal review shall be determined by the local board of trustees.

Before a board of trustees can determine not to renew for reasons

of an unsatisfactory report of the performance of any certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, such person shall be entitled to a reasonable period of probation. This period of probation shall be preceded by a written notice from the board of trustees with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's renewable contract status. Consideration of probationary status for certificated personnel is consideration of the status of an employee within the meaning of section 67-2345, Idaho Code, and may be held in executive session. If the consideration results in probationary status, the individual on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file.

If the board of trustees takes action to immediately discharge or discharge upon termination of the current contract a certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, the action of the board shall be consistent with the procedures specified in section 33-513(5), Idaho Code, and furthermore, the board shall notify the employee in writing whether there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relied upon in that determination.

If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract, reduce the salary or not renew the contract of a certificated person whose contract would otherwise be automatically renewed, nothing herein shall require a probationary period.

Approved April 12, 2000.

CHAPTER 265
(S.B. No. 1452, As Amended)

AN ACT

RELATING TO NOTICE OF BUDGET HEARINGS BY TAXING DISTRICTS; AMENDING SECTIONS 63-802A, IDAHO CODE, TO PROVIDE IF NO BUDGET HEARING IS REQUIRED BY LAW THE COUNTY CLERK SHALL BE SO NOTIFIED, TO PROVIDE CONSEQUENCES IF A NONSCHOOL DISTRICT DOES NOT COMPLY WITH STATUTE BEGINNING IN 2003, TO PROVIDE CONSEQUENCES IF A SCHOOL DISTRICT DOES NOT COMPLY WITH STATUTE REGARDING BUDGET HEARINGS AND TO PROVIDE FOR PUBLICATION OF A CHANGE OF TIME AND LOCATION OF A BUDGET HEARING.

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

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

63-802A. NOTICE OF BUDGET HEARING. (1) Not later than April 30 of each year, each taxing district shall set and notify the county clerk of the date and location set for the budget hearing of the district. If no budget hearing ~~will be held~~ is required by law, the county clerk shall be so notified.

(2) Beginning in 2003, a nonschool district that fails to comply with subsection (1) of this section shall be prohibited from including in its budget any budget increase otherwise permitted by either subsection (1)(a) or (1)(e) of section 63-802, Idaho Code.

(3) Beginning in 2003, a school district that fails to comply with subsection (1) of this section shall be prohibited, in the year of such failure, from increasing the portion of its property tax budget raised under section 33-802 2., Idaho Code, over the amount of the immediately preceding year.

(4) If a taxing district wishes to change the time and location of such budget hearing as stated on the assessment notice, they shall publish such change of time and location in advance of such hearing as provided by law.

Approved April 12, 2000.

CHAPTER 266
(S.B. No. 1457)

AN ACT

RELATING TO THE EDUCATIONAL SUPPORT PROGRAM; AMENDING SECTION 33-1001, IDAHO CODE, TO PROVIDE ADDITIONAL DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-1002, IDAHO CODE, TO SUPPORT DISTRIBUTION BASED UPON ATTENDANCE UNITS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-1003, IDAHO CODE, TO PROVIDE SPECIAL APPLICATION OF THE EDUCATION SUPPORT PROGRAM FOR ATTENDANCE UNITS AND FOR HARDSHIP SECONDARY SCHOOLS; AND AMENDING SECTIONS 33-515 AND 33-1004G, IDAHO CODE, TO PROVIDE CORRECT REFERENCES AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-1001, Idaho Code, be, and the same is hereby amended to read as follows:

33-1001. DEFINITIONS. The following words and phrases used in this chapter are defined as follows:

1. "Administrative schools" means and ~~apply~~ applies to all elementary schools and kindergartens within a district that are situated ten (10) miles or less from both the other elementary schools and the principal administrative office of the district and all secondary schools within a district that are situated fifteen (15) miles or less from other secondary schools of the district.

2. "Average daily attendance" or "pupils in average daily attendance" means the aggregate number of days enrolled students are present, divided by the number of days of school in the reporting period;

provided, however, that students for whom no Idaho school district is a home district shall not be considered in ~~in~~ such computation.

3. "Elementary grades" or "elementary average daily attendance" means and applies to students enrolled in grades one (1) through six (6) inclusive, or any combination thereof.

4. "Elementary schools" are schools that serve grades one (1) through six (6) inclusive, or any combination thereof.

5. "Elementary/secondary schools" are schools that serve grades one (1) through twelve (12) inclusive, or any combination thereof.

6. "Homebound student" means any student who would normally and regularly attend school, but is confined to home or hospital because of an illness or accident for a period of ten (10) or more consecutive days.

~~5~~7. "Kindergarten" or "kindergarten average daily attendance" means and applies to all students enrolled in a school year, less than school year, or summer kindergarten program.

~~6~~8. "Public school district" or "school district" or "district" means any public school district organized under the laws of this state, including specially chartered school districts.

~~7~~9. "Secondary grades" or "secondary average daily attendance" means and applies to students enrolled in grades seven (7) through twelve (12) inclusive, or any combination thereof.

10. "Secondary schools" are schools that serve grades seven (7) through twelve (12) inclusive, or any combination thereof.

~~8~~11. "Separate elementary school" means an elementary school which measured from itself, traveling on an all-weather road, is situated more than ten (10) miles distance from both the nearest elementary school and elementary/secondary school serving like grades within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools.

~~9~~12. "Separate kindergarten" means a kindergarten which measured from itself, traveling on an all-weather road, is situated more than ten (10) miles distance from both the nearest kindergarten school within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools.

~~10~~13. "Separate secondary school" means any secondary school which is located more than fifteen (15) miles by an all-weather road from any other secondary school and elementary/secondary school serving like grades operated by the district.

~~11~~14. "Support program" means the educational support program as described in section 33-1002, Idaho Code, the transportation support program described in section 33-1006, Idaho Code, and the exceptional education support program as provided in section 33-1007, Idaho Code.

~~12~~15. "Support unit" means a function of average daily attendance used in the calculations to determine financial support provided the public school districts.

~~13~~16. "Teacher" means any person employed in a teaching, instructional, supervisory, educational ~~adinistrative~~ administrative or educational and scientific capacity in any school district. In case of

doubt the state board of education shall determine whether any person employed requires certification as a teacher.

SECTION 2. 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 72-1349A, Idaho Code;

i. For programs to provide basic curricula necessary to enable students to enter academic or professional-technical 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; and

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	23...grades 4,5 & 6....	15
	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 <u>and attendance units</u> 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 3. That Section 33-1003, Idaho Code, be, and the same is hereby amended to read as follows:

33-1003. SPECIAL APPLICATIONS OF EDUCATIONAL SUPPORT PROGRAM. 1. Decrease in Average Daily Attendance. -- Any school district which has a decrease in total average daily attendance of one percent (1%) of its average daily attendance in the then current school year from the total average daily attendance used for determining the allowance in the educational support program for the school year immediately preceding, the allowance of funds from the educational support program may be based on the average daily attendance of the school year immediately preceding, less one percent (1%). When this provision is applied, the decrease in average daily attendance shall be proportionately distributed among the various categories of support units that are appropriate for the district.

2. Application of Support Program to Separate Schools/Attendance Units in District.

a. Separate Elementary School. -- Any separate elementary school shall be allowed to participate in the educational support program as though the school were the only elementary school operated by the district.

b. Hardship Elementary School. -- Upon application of the board of trustees of a school district, the state board of education is empowered to determine that a given elementary school or elementary schools within the school district, not otherwise qualifying, are entitled to be counted as a separate elementary school as defined in section 33-1001, Idaho Code, when, in the discretion of the state board of education, special conditions exist warranting the retention of the school as a separate attendance unit and the retention results in a substantial increase in cost per pupil in average daily attendance above the average cost per pupil in average daily attendance of the remainder of the district's elementary grade school pupils. An elementary school operating as a previously approved hardship elementary school shall continue to be considered as a separate attendance unit, unless the hardship status of the elementary school is rescinded by the state board of education.

c. Separate Secondary School. -- Any separate secondary school shall be allowed to participate in the educational support program as though the school were the only secondary school operated by the district.

d. Elementary/Secondary School Attendance Units. -- Elementary grades in an elementary/secondary school will be funded as a separate attendance unit if all elementary grades served are situated more than ten (10) miles distance from both the nearest like elementary grades within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of

such district if the district employs no superintendent of schools. Secondary grades in an elementary/secondary school will be funded as a separate attendance unit if all secondary grades served are located more than fifteen (15) miles by an all-weather road from the nearest like secondary grades operated by the district.

e. Hardship Secondary School. -- Any district which operated two (2) secondary schools separated by less than fifteen (15) miles, but which district was created through consolidation subsequent to legislative action pursuant to chapter 111, laws of 1947, and which school buildings were constructed prior to 1935, shall be entitled to count the schools as separate attendance units.

f. Minimum Pupils Required. -- Any elementary school having less than ten (10) pupils in average daily attendance shall not be allowed to participate in the state or county support program unless the school has been approved for operation by the state board of education.

3. Remote Schools. -- The board of trustees of any Idaho school district which operates and maintains a school which is remote and isolated from the other schools of the state because of geographical or topographical conditions may petition the state board of education to recognize and approve the school as a remote and necessary school. The petition shall be in form and content approved by the state board of education and shall provide such information as the state board of education may require. Petitions for the recognition of a school as a remote and necessary school shall be filed annually at least ninety (90) days prior to the date of the annual meeting of the board of trustees as established in section 33-510, Idaho Code.

Within forty-five (45) days after the receipt of a petition for the recognition of a remote and necessary school, the state board of education shall either approve or disapprove the petition and notify the board of trustees of its decision. Schools which the state board of education approves as being necessary and remote shall be allowed adequate funding within the support program for an acceptable educational program for the students of the school. In the case of a remote and necessary secondary school, grades 7-12, the educational program shall be deemed acceptable when, in the opinion of the state board of education, the accreditation standard relating to staff size, established in accordance with section 33-119, Idaho Code, has been met. The final determination of an acceptable program and adequate funding in the case of a remote and necessary elementary school shall be made by the state board of education.

4. Support Program When District Boundaries are Changed.

a. In new districts formed by the division of a district, the support program computed for the district divided in its last year of operation, shall be apportioned to the new districts created by the division, in the proportion that the average daily attendance of pupils, elementary and secondary combined, residing in the area of each new district so created, is to the average daily attendance of all pupils, elementary and secondary combined, in the district divided in its last year of operation before the division.

b. When boundaries of districts are changed by excision or annex-

ation of territory, the support program of any district from which territory is excised for the last year of operation before such excision shall be divided, and apportioned among the districts involved, as prescribed in subsection 4a. ~~hereof~~ of this section.

c. In new districts formed by consolidation of former districts, the support program allowance for a seven (7) year period following the formation of the new district, shall not be less than the combined support program allowances of the component districts in the last year of operation before consolidation.

5. For the fiscal year which commences on July 1, 1986, and for each succeeding fiscal year, any school district whose adjusted market value for assessment purposes decreases forty percent (40%) or more from the previous year's adjusted market value for assessment purposes as such valuation existed on December 31, is eligible to receive an adjustment to its educational support program entitlement, subject to qualifications as follows:

a. The adjusted market value for assessment purposes has decreased forty percent (40%) or more from the previous year's adjusted market value for assessment purposes as such valuation existed on December 31; and

b. The school levy to be certified for the general maintenance and operation fund shall be no less than four-tenths of one percent (.4%); and

c. An eligible school district has made application to the state department of education for an adjustment to entitlement from the state educational support program on or before June 1 of the fiscal year. Such application must document the need for additional funds and must include a district plan to minimize impact of a reduced local tax base.

SECTION 4. That Section 33-515, Idaho Code, be, and the same is hereby amended to read as follows:

33-515. ISSUANCE OF RENEWABLE CONTRACTS. During the third full year of continuous employment by the same school district, including any specially chartered district, each certificated employee named in subsection 1~~3~~6. of section 33-1001, Idaho Code, and each school nurse and school librarian shall be evaluated for a renewable contract and shall, upon having been offered a contract for the next ensuing year, having given notice of acceptance of renewal and upon signing a contract for a fourth full year, be placed on a renewable contract status with said school district subject to the provisions included in this chapter.

After the third full year of employment and at least once annually, the performance of each such certificated employee, school nurse, or school librarian shall be evaluated according to criteria and procedures established by the board of trustees in accordance with general guidelines approved by the state board of education. Except as otherwise provided, that person shall have the right to automatic renewal of contract by giving notice, in writing, of acceptance of renewal. Such notice shall be given to the board of trustees of the school district then employing such person not later than the fifteenth day of June preceding the expiration of the term of the current

contract. Except as otherwise provided by this paragraph, the board of trustees shall notify each person entitled to be employed on a renewable contract of the requirement that such person must give the notice hereinabove and that failure to do so may be interpreted by the board as a declination of the right to automatic renewal or the offer of another contract. Such notification shall be made, in writing, not later than the twenty-fifth day of May, in each year, except to those persons to whom the board, prior to said date, has sent proposed contracts for the next ensuing year, or to whom the board has given the notice required by this section.

Any contract automatically renewed under the provisions of this section shall be for the same length as the term stated in the current contract and at a salary no lower than that specified therein, to which shall be added such increments as may be determined by the statutory or regulatory rights of such employee by reason of training, service, or performance.

Nothing herein shall prevent the board of trustees from offering a renewed contract increasing the salary of any certificated person, or from reassigning an administrative employee to a nonadministrative position with appropriate reduction of salary from the preexisting salary level. In the event the board of trustees reassigns an administrative employee to a nonadministrative position, the board shall give written notice to the employee which contains a statement of the reasons for the reassignment. The employee, upon written request to the board, shall be entitled to an informal review of that decision. The process and procedure for the informal review shall be determined by the local board of trustees.

Before a board of trustees can determine not to renew for reasons of an unsatisfactory report of the performance of any certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, such person shall be entitled to a reasonable period of probation. This period of probation shall be preceded by a written notice from the board of trustees with reasons for such probationary period and with provisions for adequate supervision and evaluation of the person's performance during the probationary period. Such period of probation shall not affect the person's renewable contract status. Consideration of probationary status for certificated personnel is consideration of the status of an employee within the meaning of section 67-2345, Idaho Code, and may be held in executive session. If the consideration results in probationary status, the individual on probation shall not be named in the minutes of the meeting. A record of the decision shall be placed in the teacher's personnel file.

If the board of trustees takes action to immediately discharge or discharge upon termination of the current contract a certificated person whose contract would otherwise be automatically renewed, or to renew the contract of any such person at a reduced salary, the action of the board shall be consistent with the procedures specified in section 33-513(5), Idaho Code, and furthermore, the board shall notify the employee in writing whether there is just and reasonable cause not to renew the contract or to reduce the salary of the affected employee, and if so, what reasons it relied upon in that determination.

If the board of trustees, for reasons other than unsatisfactory service, for the ensuing contract year, determines to change the length of the term stated in the current contract, reduce the salary or not renew the contract of a certificated person whose contract would otherwise be automatically renewed, nothing herein shall require a probationary period.

SECTION 5. That Section 33-1004G, Idaho Code, be, and the same is hereby amended to read as follows:

33-1004G. EARLY RETIREMENT INCENTIVE. (1) Each certificated employee of an Idaho public school district as defined in section 33-1001 1~~3~~6., Idaho Code, is eligible for an early retirement incentive, provided they meet the following criteria:

(a) The employee has completed a minimum of ten (10) years of continuous full-time certified employment in Idaho public school districts at the time of application.

(b) The employee is not eligible for unreduced service, early or disability retirement from the public employee retirement system of Idaho at the time of application.

(c) The employee is fifty-five (55) years old before August 15 of the year the application is made.

(d) The employee submits his/her application to the state superintendent of public instruction on or before April 1 of the year of application.

(e) The employee is contracted with an Idaho public school district for the entire school year during the year of application and has not been terminated or on a leave of absence for the current or upcoming school year.

(2) (a) Full-time qualifying applicants shall receive as a one (1) time incentive the following amount of the employee's qualifying salary allocation as provided in section 33-1004E, Idaho Code:

at 55 years of age	55% of allocation
at 56 years of age	50% of allocation
at 57 years of age	45% of allocation
at 58 years of age	40% of allocation
at 59 years of age	30% of allocation
at 60 years of age	30% of allocation
at 61 years of age	20% of allocation
at 62 years of age	20% of allocation
at 63 years of age and over	0% of allocation

(b) Certified employees working less than full-time in the application year will have the incentive payment prorated according to their full-time equivalent (FTE) percentage.

(c) Incentive payments for certified employees not placed on the experience and education multiplier table as provided in section 33-1004A, Idaho Code, will be calculated using the BA column of the table.

(3) Incentives and the employer's share of FICA benefits shall be paid by the state department of education to the Idaho public school district with which the applicant was last contracted on or before July 31 of the year of application and acceptance.

(4) Incentives shall be considered additional compensation flowing from the employment relationship and subject to federal and state tax laws. Incentives shall not be considered salary for purposes of the public employee retirement system.

(5) Any employee receiving an early retirement incentive as provided in this section shall not be eligible for future employment with an Idaho school district where such employment would again qualify him/her for participation in the state retirement system.

(6) Any applicant choosing to withdraw their application must notify the state superintendent of public instruction in writing no later than June 20 in the year of application.

(7) A special application of the early retirement incentive shall ~~supercede~~ supersede the limitations of this section to the extent necessary to comply with this subsection. An otherwise qualified certificated employee who becomes medically unable to work prior to July 1 of any year shall be eligible to apply for the early retirement incentive for which the employee would have been eligible retroactive to April 1.

Approved April 12, 2000.

CHAPTER 267
(S.B. No. 1465)

AN ACT

RELATING TO LIMITATIONS ON GARNISHMENT; AMENDING SECTION 28-45-104, IDAHO CODE, TO PROVIDE THAT THE MAXIMUM PART OF THE AGGREGATE DISPOSABLE EARNINGS OF AN INDIVIDUAL FOR ANY WORK WEEK WHICH IS SUBJECT TO GARNISHMENT ARISING FROM A REGULATED CONSUMER CREDIT SALE OR REGULATED CONSUMER LOAN MAY NOT EXCEED THE LESSER OF TWENTY-FIVE PERCENT OF THE INDIVIDUAL'S DISPOSABLE EARNINGS FOR THAT WEEK OR THE AMOUNT BY WHICH HIS DISPOSABLE EARNINGS FOR THAT WEEK EXCEED THIRTY TIMES THE FEDERAL MINIMUM HOURLY WAGE PRESCRIBED IN THE FAIR LABOR STANDARDS ACT.

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

SECTION 1. That Section 28-45-104, Idaho Code, be, and the same is hereby amended to read as follows:

28-45-104. LIMITATION ON GARNISHMENT. (1) For the purposes of this part:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment to enforce payment of a judgment arising from a regulated consumer credit

sale or regulated consumer loan may not exceed the lesser of:

(a) Twenty-five percent (25%) of his disposable earnings for that week; or

(b) The amount by which his disposable earnings for that week exceed ~~forty (40)~~ thirty (30) times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. title 29, section 206(a)(1), in effect at the time the earnings are payable.

(c) In the case of earnings for a pay period other than a week, the director of the department of labor shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in paragraph (b).

(3) No court may make, execute, or enforce an order or process in violation of this section.

Approved April 12, 2000.

CHAPTER 268
(S.B. No. 1478, As Amended, As Amended in the House)

AN ACT

RELATING TO SWINE FACILITIES; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 79, TITLE 39, IDAHO CODE, TO ESTABLISH THE LOCAL OPTION SWINE FACILITIES SITING ACT, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE FINDINGS AND PURPOSES, TO PROVIDE DEFINITIONS, TO REQUIRE SITE APPROVAL, TO PROVIDE THAT SITE APPROVAL IS SUPPLEMENTAL, TO PROVIDE THAT PARTICIPATION IS A LOCAL OPTION, TO PROVIDE THAT LOCAL ACTION IS REQUIRED FOR ACTION BY THE DEPARTMENT OF HEALTH AND WELFARE, TO PROVIDE APPLICATION, TO PROVIDE THAT THE DIRECTOR MAY MAKE RULES AND CONTRACT WITH OTHER AGENCIES, TO PROVIDE LOCATION GUIDELINES, TO ESTABLISH SITE REVIEW PANELS, TO REQUIRE A SITING APPLICATION, CONTENTS OF THE APPLICATION AND FEES, TO PROVIDE DUTIES OF THE DIRECTOR RELATIVE TO APPLICATIONS, TO REQUIRE FINANCIAL ASSURANCE FOR CLOSURE AND REMEDIATION, TO PROVIDE THAT THE DIRECTOR MAY REQUEST ADDITIONAL INFORMATION, TO PROVIDE FOR VIOLATIONS AND ENFORCEMENT, TO PROVIDE FOR CONFIDENTIALITY OF RECORDS, TO PROVIDE SEVERABILITY AND TO PROVIDE FOR CONFLICTS; DECLARING AN EMERGENCY; AND PROVIDING FOR A CHANGE IN NOMENCLATURE UPON THE OCCURRENCE OF CERTAIN EVENTS.

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

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 79, Title 39, Idaho Code, and to read as follows:

CHAPTER 79
LOCAL OPTION SWINE FACILITIES SITING ACT

39-7901. SHORT TITLE. This act shall be known as the "Local Option Swine Facilities Siting Act."

39-7902. LEGISLATIVE FINDINGS AND PURPOSES. (1) The legislature finds that:

(a) The swine industry is experiencing rapid changes such as increased sophistication of production technology, increased demand for capital to maintain or expand operations, consolidation of production and packing facilities and changing consumer demands and markets;

(b) Large swine facilities increase social and environmental impacts in the areas where these facilities are located;

(c) Adverse public health and environmental impacts can result from the improper siting of large swine facilities, therefore the need for establishing safe sites with an adequate supply of natural resources, such as water, and an adequate capacity for the disposal of animal waste is a matter of statewide concern;

(d) Section 39-104A, Idaho Code, vests the department of health and welfare with the responsibility to make rules regulating swine operations; and section 39-105, Idaho Code, vests the department of health and welfare with the responsibility for the general supervision of the promotion and protection of the life, health and environment of the people of the state, including regulation of air quality, water quality and disposal of solid waste.

(2) (a) To facilitate swine facility siting decisions by boards of county commissioners and governing bodies of cities, this chapter establishes a review process within the department of health and welfare for construction or expansion of large swine facilities of a certain size, and to require approval of sites.

(b) The procedures and requirements established in this chapter are necessary to facilitate the proper siting of large swine facilities, to effect timely and responsible completion of statutory duties and to ensure protection of human health, natural resources, private property values and the environment of the state.

(c) The site approval required in this chapter is required in addition to any other license, permit or approval required by law or rule.

(3) It is the intent of the legislature that this chapter will be applied only to swine facilities with a capacity of twenty thousand (20,000) animal units or more and that this chapter will not be applied to any other confined animal feeding operations.

39-7903. DEFINITIONS. As used in this chapter:

(1) "Active unit" means that part of a facility or unit that has received or is receiving wastes and that has not been closed.

(2) "Animal unit" is a unit of measurement equaling two and one-half (2 1/2) swine, each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds), or ten (10) weaned swine, each weighing under twenty-five (25) kilograms. Total animal units are calculated by adding the number of swine weighing over twenty-five (25) kilograms (approximately fifty-five 55 pounds) multiplied by four-tenths (.4), plus the number of weaned swine weighing under twenty-five (25) kilograms multiplied by one-tenth (.1).

(3) "Animal waste" means animal excrement, feed wastes, process wastewater or any other waste associated with the confinement of

swine.

(4) "Animal waste management system" means any structure or system that provides for the collection, treatment, disposal, distribution or storage of animal waste.

(5) "Applicant" means the owner or the operator with the owner's written consent.

(6) "Aquifer" means a geological formation, group of formations, or a portion of a formation capable of yielding significant quantities of ground water to wells or springs.

(7) "Certified planner" means a person who has completed the nutrient management certification in accordance with the nutrient management standard.

(8) "County" means any county in the state of Idaho.

(9) "Department" means the Idaho department of health and welfare.

(10) "Director" means the director of the Idaho department of health and welfare or his designee.

(11) "Existing facility" means a facility built and in operation one (1) year or more before the original effective date of this chapter.

(12) "Expand" or "expanding facility" means a swine facility of less than twenty thousand (20,000) animal units that increases its one-time animal unit capacity to twenty thousand (20,000) or more animal units.

(13) "Facility" means any place, site or location or part thereof where swine are kept, handled, housed, or otherwise maintained and includes, but is not limited to, all buildings, lots, pens, animal waste management systems, structures, and other appurtenances and improvements on the land.

(14) "Ground water" means water below the land surface in a zone of saturation.

(15) "Holocene fault" means a fault characterized as a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side and holocene being the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.

(16) "Land application" means the spreading on or incorporation of animal waste into the soil mantle primarily for beneficial purposes.

(17) "Natural resources conservation service" or "NRCS" means the United States department of agriculture, natural resources conservation service.

(18) "Nutrient management plan" means a plan prepared in compliance with the nutrient management standard or other equally protective standard approved by the director for managing the amount, source, placement, form and timing of the land application of nutrients and soil amendments for plant production and to minimize the potential for environmental degradation, particularly of water quality.

(19) "Nutrient management standard" means the standard of the United States department of agriculture, natural resource conservation service code 590 or the Idaho agricultural pollution abatement plan, nutrient management standard component practice.

(20) "One-time animal unit capacity" means the maximum number of animal units that a facility is capable of housing at any given point

in time.

(21) "Operate" means to confine, feed, propagate, house or otherwise sustain swine.

(22) "Operator" means the person(s) responsible for the overall operation of a facility or part of a facility.

(23) "Owner" means the person(s) who owns a facility or part of a facility.

(24) "Permit" when used as a noun means a permit issued by the director pursuant to IDAPA 16.01.09.

(25) "Person" means an individual, association, firm, partnership, political subdivision, public or private corporation, state or federal agency, municipality, industry or any other legal entity whatsoever, and includes owners and operators.

(26) "Plan of operation" or "operating plan" means the written plan developed by an owner or operator of a swine facility unit detailing how the facility is to be operated during its active life, during closure, and throughout the postclosure period.

(27) "Process wastewater" means any water used in the facility that comes into contact with any manure, litter, bedding, raw, intermediate, or final material or product used in or resulting from the production of swine and any products directly or indirectly used in the operation of a facility, such as spillage or overflow from animal watering systems; washing, cleaning, or flushing pens, barns, manure pits, or spray cooling of animals; and dust control and any precipitation which comes into contact with animals or animal waste.

(28) "Qualified professional" means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in compliance with applicable provisions of the Idaho Code.

(29) "Unauthorized discharge" means a release of animal waste to the environment or waters of the state that is not authorized by the license or the terms of a national pollutant discharge elimination system (NPDES) permit issued by the federal environmental protection agency.

(30) "Water quality standard" means a standard set for maximum allowable contamination in surface waters and ground water as set forth in the water quality standards for waters for the state of Idaho, IDAPA 16.01.02 and 16.01.11.

(31) "Waters of the state" means all the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.

39-7904. SITE APPROVAL REQUIRED -- SITE APPROVAL IS SUPPLEMENTAL -- LOCAL OPTION -- LOCAL ACTION REQUIRED FOR DEPARTMENT ACTION. (1) No person may construct or expand a large swine facility regulated by this chapter without first obtaining site approval from the director as provided in this chapter.

(2) The site approval required by this chapter for construction or expansion of a large swine facility is required in addition to requirements of any rules of the department. Further, the site approval required by this chapter must be obtained in addition to any other license, permit or approval required by law or rule.

(3) This chapter does not preempt the local regulation of swine facilities. This chapter provides boards of county commissioners and governing bodies of cities with an optional procedure for siting swine facilities. If boards of county commissioners and governing bodies of cities do not exercise their option to comply with this chapter, they are not subject to its provisions and may exercise individual authority to accept, regulate or reject swine facilities independently of this chapter.

(4) This chapter applies only if the board of county commissioners or governing body of a city, whichever has jurisdiction over the site for a proposed swine facility, chooses to comply with this chapter. If a board of county commissioners or a governing body of a city with jurisdiction chooses not to comply with this chapter, the department is not required to take any action under this chapter.

(5) Boards of county commissioners and governing bodies of cities that choose to comply with this chapter shall signify compliance by resolution or ordinance communicated to the director in writing.

(6) If a board of county commissioners or a governing body of a city chooses to comply with this chapter, the department does not have to issue a determination or notice of environmental suitability of facility location pursuant to its rules for swine facilities, IDAPA 16.01.09.

39-7905. APPLICATION -- FACILITIES REGULATED. (1) The following swine facilities must obtain site approval under this chapter:

(a) New swine facilities having a one-time animal unit capacity of twenty thousand (20,000) or more animal units; and

(b) Existing swine facilities that expand their one-time animal unit capacity to twenty thousand (20,000) animal units or more.

(2) Two (2) or more swine facilities under common owners, operators or those with whom the owners or operators contract or are located within the same county or within five (5) miles of each other shall be considered, for purposes of licensing, to be a single facility regulated under this chapter, even though separately their capacity is less than twenty thousand (20,000) animal units. In each case, the director shall determine whether one (1) or multiple site approvals are required.

(3) (a) Existing swine facilities with a one-time animal unit capacity of twenty thousand (20,000) animal units built and in operation one (1) year or more before the original effective date of this chapter are exempt from the requirement to obtain a site approval pursuant to this chapter unless they expand as provided in this section. However, such facilities shall register with the director within three (3) months after the original effective date of this chapter. The director shall determine the information that must be submitted as part of their registration.

(b) Existing swine facilities required in this subsection to register with the director shall submit a nutrient management plan and closure plan to the director for approval within two (2) years of the original effective date of this chapter in accordance with rules of the department. An application fee shall not be required unless the facility is expanding.

39-7906. DIRECTOR MAY MAKE RULES AND CONTRACT WITH OTHER AGENCIES. (1) The director may adopt administrative rules he deems necessary or helpful to carry out the purposes of this chapter.

(2) The director may enter into contracts, agreements, memorandums and other arrangements with federal, state and local agencies to carry out the purposes of this chapter.

39-7907. LOCATION GUIDELINES. This section provides location guidelines for swine facilities regulated by this chapter. Where the location guidelines provide a specific setback distance, that distance is the maximum setback distance that may be imposed. Lesser setback distances may be imposed as circumstances permit.

(1) A swine facility regulated by this chapter shall not:

(a) Locate its closest waste facility within two (2) miles of any occupied residence not owned or leased by the owner or operator of the swine facility;

(b) Land apply liquid animal waste within one (1) mile of the nearest corner of an occupied residence not owned or leased by the owner or operator of the swine facility.

(2) The setback distances provided in subsection (1) of this section do not apply if the affected property owner executes a written waiver with the owner or operator of the swine facility, under terms and conditions that the parties may negotiate. The written waiver is effective when recorded in the offices of the recorder of deeds in the county in which the property is located. The recorded waiver shall preclude enforcement of the setback distances contained in subsection (1) of this section. A change in ownership of the applicable property or change in ownership of the swine facility does not affect the validity of the waiver.

(3) All distances between occupied residences and swine facilities shall be measured from the closest corner of the walls of the occupied residence to the closest point of the nearest waste structure or waste facility, as defined by the director.

(4) No liquid animal waste may be land applied within one hundred (100) feet of an existing public or private drinking water well.

(5) The minimum distance from a waste structure or waste facility to a domestic well, public well or public water source shall be one (1) mile.

(6) Further, swine facilities shall not be located:

(a) In areas designated by the United States fish and wildlife service or the Idaho department of fish and game as critical habitat for endangered or threatened species of plants, fish or wildlife;

(b) So as to be at variance with any locally adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance. If no land use plan has been adopted by the local government which would have land use jurisdiction pursuant to chapter 65, title 67, Idaho Code, the recommendations of the panel approving a site shall contain an analysis of the requirements and guidelines provided in this chapter. The analysis shall be accompanied by findings and conclusions, entered by the local government with jurisdiction after the local government has held a public hearing in accord with section 67-6509, Idaho Code, that the

public interest would be served by locating a swine facility on the site for which approval is sought;
(c) Within one (1) mile of any local, state or national park, or land reserved or withdrawn for scenic or natural use; and
(d) Within two (2) miles of a school, church, hospital or community center.
(7) A swine facility active unit shall not be located:
(a) Within a one hundred (100) year flood plain;
(b) Within five hundred (500) feet upstream of a perennial stream or river;
(c) Within one thousand (1,000) feet of any perennial lake or pond;
(d) So as to cause any measurable impact on water quality limited streams;
(e) Within a wetland;
(f) Within two hundred (200) feet to the property line of adjacent land;
(g) Within two hundred (200) feet of a holocene fault or adjacent to geologic features which could compromise the structural integrity of a swine facility active unit unless the owner or operator demonstrates to the director that an alternative setback distance of less than two hundred (200) feet will prevent damage to the structural integrity of the swine facility unit and will be protective of human health and the environment. For the purposes of this subsection:
(i) "Fault" means a fracture or a zone of fractures in any material along which strata on one (1) side have been displaced with respect to that on the other side;
(ii) "Displacement" means the relative movement of any two (2) sides of a fault measured in any direction;
(iii) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the pleistocene epoch to the present.
(h) Within seismic impact zones, unless the owner or operator demonstrates to the director that all swine facility active units and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and notify the director that it has been placed in the operating record. For the purposes of this section:
(i) "Seismic impact zone" means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed one-tenth (0.10g) in two hundred fifty (250) years;
(ii) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment;
(iii) "Lithified earth material" means all rock, including

all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

(i) On any site whose natural state would be considered unstable in that its undisturbed character would not permit establishment of a swine facility without unduly threatening the integrity of the design due to inherent site instability;

(j) Where the integrity of the site would be compromised by the presence of ground water which would interfere with construction or operation of the active unit.

39-7908. SITE REVIEW PANELS ESTABLISHED. (1) A site review panel shall be established to ensure public input in the siting process and to recommend to the director site approval, approval with conditions or rejection.

(2) A panel shall consist of eight (8) members to be appointed as follows:

(a) Three (3) members shall be the administrator of the division of environmental quality or his designee, the director of the department of water resources or his designee, and the director of the department of agriculture or his designee.

(b) One (1) member shall be a public member appointed by the governor. The public member shall be an environmental professional, shall serve as chairman of the panel and shall be a voting member. A member who is a public member shall be appointed to serve on site review panels only until the particular site application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(c) Two (2) members shall be appointed by the city council of the city located closest to, or in which the swine facility is proposed to be located or expanded, provided the governing body of the city has signified compliance with this chapter as provided in section 39-7903, Idaho Code. At least one (1) shall be a resident of the city. However, if two (2) cities are equidistant from the proposed or expanding swine facility, plus or minus five (5) miles, the city council of each city shall appoint one (1) member each to the site review panel, each of whom shall be a resident of the city appointing them. The members serving pursuant to this subsection shall serve until the particular site application subject to their review is approved or it is rejected and is no longer subject to their review.

(d) Two (2) members shall be appointed by the county commission and be residents of the county where the swine facility is proposed to be located or expanded, provided the board of county commissioners has signified compliance with this chapter as provided in section 39-7903, Idaho Code. The members serving pursuant to this subsection shall serve until the particular site application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(e) A person nominated to represent a city or county shall not have a conflict of interest, as that term is defined in section 59-703, Idaho Code, or derive any economic gain as that term is defined in section 59-703, Idaho Code, from the location of the proposed or expanding swine facility.

(3) The director shall notify the city council of the nearest city, or cities if two (2) cities are within five (5) miles of the site of the proposed facility, and the board of county commissioners in which the site is located, of a site application filed with the department and shall instruct the city or cities and county to appoint the necessary members to a panel.

(4) A majority of members of the panel shall constitute a quorum for the transaction of business of the panel and the concurrence of a majority of the panel shall constitute a legal action of the panel, provided that no meeting of the panel shall occur unless there are at least as many members present representing the city and county as there are representing the state and the public as appointed pursuant to subsections (2)(a) and (b) of this section. All meetings of the panel shall be conducted pursuant to the state open meeting law.

(5) The director shall make staff available to assist the panel in carrying out its responsibilities.

(6) Members of the panel who are not state employees shall be entitled to receive compensation as provided in section 59-509(b), Idaho Code.

39-7909. SITING APPLICATION -- FEE -- RULES. (1) A site application shall include, in a format set forth by the director and when determined applicable by the director, the following information:

(a) Name, mailing address and phone number of the facility owner;

(b) Name, mailing address and phone number of the facility operator;

(c) Name and mailing address of the facility;

(d) Legal description of the facility location;

(e) The legal structure of the entity owning the facility, including the names and addresses of all directors, officers, registered agents and partners;

(f) The names and locations of all swine facilities owned and/or operated by the applicant within the last ten (10) years;

(g) The one-time animal unit capacity of the facility;

(h) The type of animals to be confined at the facility;

(i) Evidence that a valid water right exists to supply adequate water for the proposed facility or a copy of either an application for a permit to appropriate water or an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho department of water resources which, if approved, will supply adequate water for the proposed operation;

(j) The facility's biosecurity and sanitary standards.

(2) A facility plan. Plans and specifications for the facility's animal waste management system that include the following information:

(a) Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following:

(i) Layout of the facility, including buildings and animal waste management system;

(ii) The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant;

(iii) The location of occupied dwellings, public and private gathering places, such as schools, churches and parks, and incorporated municipalities which are within a two (2) mile radius of the facility; and

(iv) Private and community domestic water wells, irrigation wells, irrigation conveyance and drainage structures, monitoring wells, wetlands, streams, springs, and reservoirs which are within a one (1) mile radius of the facility.

(b) Facility specifications including:

(i) A site plan showing:

1. Building locations;
2. Waste facilities;
3. All waste conveyance systems; and
4. All irrigation systems used for land application, including details of approved water supply protection devices.

(ii) Building plans showing:

1. All wastewater collection systems in housed units;
2. All freshwater supply systems, including details of approved water supply protection devices;
3. Detailed drawings of wastewater collection and conveyance systems and containment construction; and
4. Detailed construction and installation procedures.

(3) Site characterization. A characterization of the facility and any land application site(s) owned or operated by the applicant, prepared by a registered professional geologist, a registered professional engineer or a qualified ground water hydrologist, that includes the following information:

(a) A description of monitoring methods, frequency and reporting components related to either leak detection systems and/or ground water monitoring wells;

(b) The climatic, hydrogeologic and soil characteristics;

(c) The depth to water and a potentiometric map for the uppermost and regional aquifer;

(d) The vertical and horizontal conductivity, gradient and ground water flow direction and velocity;

(e) Estimates of recharge to the uppermost aquifer;

(f) Information which characterizes the relationship between the ground water and adjacent surface waters; and

(g) A summary of local ground water quality data.

(4) A nutrient management plan. A plan prepared by a certified planner demonstrating compliance with the nutrient management standard for land application.

(5) A plan for meeting standards for heavy metals as those provided in 40 CFR section 503, subchapter O.

(6) A plan for disposal of dead animal carcasses.

(7) An air quality management plan.

(8) A closure plan. A plan describing the procedures for final

closure of a facility that ensures no adverse impacts to the environment and waters of the state and that includes:

(a) The estimated length of operation of the facility;

(b) A description of the procedures, methods and schedule to be implemented at the facility for final disposal, handling, management and/or treatment of all animal waste;

(c) A plan for permanent disposal of residual solid waste.

(9) Other information. An applicant shall provide any other information relative to this section and deemed necessary by the director to assess protection of human health and the environment, including information showing that:

(a) The harm to scenic, public health, environmental, private property, historic, cultural or recreational values is not substantial or can be mitigated;

(b) The risk and impact of accident during transportation of animal waste or animal carcasses is not substantial or can be mitigated. Dead animals shall be removed from the facility for rendering, cremation, burial, composting or other disposal in accordance with IDAPA 02.04.03, "Rules of Department of Agriculture Governing Animal Industry," section 050, "Dead Animals, Movement, Disposal";

(c) The impact on local government is not adverse regarding health, safety, cost and consistency with local planning and existing development or can be mitigated;

(d) The facility or operations associated with the facility do not create a public health hazard or nuisance conditions including odors;

(e) The applicant has the financial ability to construct, operate and close the facility.

(10) Within thirty (30) days after receipt of the application, the director shall determine whether it is complete. If it is not complete, the director shall notify the applicant and state the areas of deficiency.

(11) The application shall be accompanied by a fee. The director shall establish by rule the scale for determining the application fee. The fee shall be based on the cost to the site review panel of reviewing the application. The scale shall be based on characteristics including the site size, projected waste volume, and hydrogeological and atmospheric characteristics surrounding the site. Fees received pursuant to this section may be expended by the director to pay the actual, reasonable and necessary costs incurred by the department in acting upon an application.

39-7910. DUTIES OF THE DIRECTOR RELATIVE TO APPLICATIONS. (1) Upon determination that a siting application is complete, the director shall:

(a) Notify the permanent panel members, the city and/or county in which the swine facility site is located, the director of the department of fish and game, the director of the department of law enforcement, and other state agencies as deemed appropriate by the director.

(b) Publish a notice that the application has been received, as provided in section 60-109, Idaho Code, in a newspaper having

major circulation in the county and the immediate vicinity of the site. The notice shall contain a map indicating the location of the site, a description of the proposed action and the location where the application may be reviewed. The notice shall describe the procedure by which the siting approval under this chapter may be granted.

(2) Upon notification by the director, the chairman shall immediately notify the representatives of the state to the panel and the public members. The chairman shall also notify the applicable county and city for their appointment of members as provided in subsection (2) of section 39-7908, Idaho Code. Within thirty (30) days after the notification, the board of commissioners of the county and the city council shall select the members to serve on the panel. The panel shall be created at that time and notification of the creation of the panel shall be made to the chairman.

(3) Within thirty (30) days after appointment of panel members, the panel shall meet to review and establish a timetable for the consideration of the draft site approval.

(4) The panel shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the site and proposed facility, a description of the proposed action, and the location where the application for a siting approval may be reviewed and where copies may be obtained;

(ii) Identify the time, place and location for the public hearing held to receive public comment and input on the application for a siting approval;

(b) Publish the notice not less than thirty (30) days before the date of the public hearing and the notice shall be, at a minimum, a twenty (20) days' notice as provided in section 60-109, Idaho Code.

(5) Comment and input on the proposed siting of the swine facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the panel for thirty (30) days after the public hearing date. The public hearing shall be held in the same county as the proposed site. If the proposed site is adjacent to a city or populated area in a neighboring county, it is recommended that public hearings also be held in the neighboring county.

(6) The panel shall consider, but not be limited to, the following:

(a) The risk of the spread of disease or impact upon public health from improper treatment, storage or incineration methods;

(b) The impact on local units of government where the proposed swine facility is to be located in terms of health, safety, cost and consistency with local planning and existing development;

(c) The nature of the probable environmental and public health impact;

(d) The financial capability of the applicant to construct, operate and close the swine facility.

(e) Impact on adjacent property values.

(7) The panel shall consider the concerns and objections submit-

ted by the public. The panel shall facilitate efforts to provide that the concerns and objections are mitigated by proposing additional conditions regarding the construction of the swine facility. The panel may propose conditions which integrate the provisions of the city or county ordinances, permits or requirements.

(8) Within one hundred eighty (180) days after creation, the panel shall issue an approval letter, approval letter with conditions, or rejection. If the panel recommends conditions, a clear statement of the need for a condition must be submitted to the director. If the panel recommends rejection, a clear statement of the reasons for the rejection must be submitted to the director.

(9) The director shall not issue a permit to operate under IDAPA 16.01.09, unless a site has been approved by the site review panel. Approval of a site by the panel does not require the director to issue a permit to operate under IDAPA 16.01.09.

39-7911. FINANCIAL ASSURANCE FOR CLOSURE AND REMEDIATION. (1) All swine facilities regulated by section 39-104A, Idaho Code, and this chapter shall provide financial assurances demonstrating financial capability to meet requirements for closure of the facilities and remediation. Requirements for financial assurances shall be determined by the agency as set forth in rule. Financial assurances may include any mechanism or combination of mechanisms meeting the requirements established by agency rule including, but not limited to, surety bonds, trust funds, irrevocable letters of credit, insurance and corporate guarantees. The mechanism(s) used to demonstrate financial capability must be legally valid, binding and enforceable under applicable law and must ensure that the funds necessary to meet the costs of closure and remediation will be available whenever the funds are needed. The director may retain financial assurances for up to five (5) years after closure of a facility to ensure proper closure and remediation, as defined by rule.

(2) Nothing in this section prohibits the boards of county commissioners of any county or the governing body of any city from adopting regulations that are more stringent or that require greater financial assurances than those imposed by the division of environmental quality.

39-7912. DIRECTOR MAY REQUEST ADDITIONAL INFORMATION. The applicant shall provide the director with additional information the director deems necessary to process an application, within thirty (30) days of the director's request. The time period within which the director must act with regard to an application shall be stayed until the information requested is provided. If an applicant fails to provide the information within this time period, unless a longer time period is allowed by the director, the director may stop the application process and require the applicant to submit a new application.

39-7913. VIOLATIONS AND ENFORCEMENT. (1) The following acts are unlawful:

(a) Failure to comply with this chapter and any rules of the department regulating swine facilities, and conditions of site approval granted pursuant to this chapter;

(b) Knowingly making a false statement, representation, or certification in any application report, document, or record developed, maintained, or submitted pursuant to this chapter, rules or conditions of a site approval.

(2) Any person violating this chapter or any site approval or order under this chapter is liable for a civil or criminal penalty in accordance with chapter 1, title 39, Idaho Code. The director may apply the provisions of chapter 1, title 39, Idaho Code, to ensure compliance.

(3) The director may revoke a site approval:

(a) For material violation of any condition of a site approval, final agency order or order or judgment of a court secured by any state or federal agency and relating to the operation of a swine facility;

(b) If an approval was obtained by misrepresentation or failure to disclose all relevant facts;

(c) If approval for adequate water rights cannot be obtained from the Idaho department of water resources;

(d) The site or facility does not meet the requirements of this chapter.

(4) A private right of action on behalf of any person who has been injured or damaged by any approval authorized in this chapter or violation of the terms of any approval or rule authorized in this chapter may be maintained in accordance with the provisions of this chapter and/or the provisions of chapter 52, title 67, Idaho Code, as applicable.

39-7914. CONFIDENTIALITY OF RECORDS. Information obtained by a public agency pursuant to this chapter or its associated rules is subject to public disclosure pursuant to the provisions of chapter 3, title 9, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment as provided in section 9-342A, Idaho Code, and IDAPA 16.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Division of Environmental Quality."

39-7915. SEVERABILITY CLAUSE. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

39-7916. CONFLICTS CLAUSE. If a conflict arises between this chapter and rules of the department regulating swine facilities, the most restrictive provision shall apply.

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

SECTION 3. If the Division of Environmental Quality is by law designated an individual department of the state of Idaho: the rights

and duties provided in this act to the Department of Health and Welfare and the Division of Environmental Quality shall be transferred to the Department of Environmental Quality; references to "director" shall mean the director of the Department of Environmental Quality; references to "department" shall mean the Department of Environmental Quality; references to "division" or "Division of Environmental Quality" shall mean the Department of Environmental Quality; and references to the "Department of Health and Welfare" shall mean the Department of Environmental Quality.

Approved April 12, 2000.

CHAPTER 269
(S.B. No. 1486, As Amended)

AN ACT

RELATING TO TEACHER PREPARATION; AMENDING SECTION 33-1207A, IDAHO CODE, TO REVISE REQUIREMENTS FOR CERTAIN CERTIFICATED EMPLOYEES TAKING A STATE APPROVED READING INSTRUCTION COURSE TITLED "IDAHO COMPREHENSIVE LITERACY COURSE" AND TO REVISE PROCEDURES; AND DECLARING AN EMERGENCY.

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

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

33-1207A. TEACHER PREPARATION. (1) Higher Education Institutions. The state board shall review teacher preparation programs at the institutions of higher education under their supervision and shall assure that the course offerings and graduation requirements are consistent with the state board approved, research based "Idaho Comprehensive Literacy Plan." To assure the most immediate compliance with this requirement, the board may allocate funds, subject to appropriation, to institutions which require revision of the program.

The state board shall be responsible for the development of a single preservice assessment measure for all kindergarten through grade eight (8) teacher preparation programs. The assessment must include a demonstration of teaching skills and knowledge congruent with current research on best reading practices. In addition the assessment must include how children acquire language; the basic sound structure of English, including phonological and phonemic awareness; phonics and structural analysis; semantics and syntactics; how to select reading textbooks; and how to use diagnostic tools and test data to improve teaching. It shall also include the preservice teacher's knowledge base of reading process: phonological awareness; sound-symbol correspondence (intensive, systematic phonemes); semantics (meaning); syntax (grammar and language patterns); pragmatics (background knowledge and life experience); and comprehension and critical thinking. By September 2002, all teacher candidates shall pass this assessment as part of the graduation requirements from an Idaho teacher preparation pro-

gram. The state board shall report the number of preservice teachers taking and passing the performance-based reading assessment to the legislature and governor annually. All costs associated with administration of this test shall be borne by the institution which administers the test and shall be shown as a line item in the appropriation request of the institution for state reimbursement.

(2) In-service Programs. Each teacher employed in a classroom for kindergarten through grade eight (8), Title I, or special education and each school administrator of a school which includes kindergarten through grade eight (8), Title I, or special education shall complete three (3) credits (or forty-five (45) contact hours of in-service training) of a ~~single~~ state approved reading instruction course titled "Idaho Comprehensive Literacy Course" based on the state approved research based "Idaho Comprehensive Literacy Plan" in order to recertify. ~~Effective September 2000, the affected certificated personnel need only qualify under this requirement once.~~ Courses which qualify for credit shall be approved by the state department of education, ~~. These courses~~ and any educator who completes a state approved reading instruction course prior to September 2001, shall be deemed to have met the requirements of this subsection. Completion of a state approved reading instruction course shall be a one-time requirement for ~~each~~ renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The department shall provide a waiver of this requirement if the applicant successfully completes the reading assessment measure developed for preservice purposes as provided in subsection (1) of this section. The department shall establish a procedure to allow a waiver of this requirement if the applicant teaches in a secondary grade subject which does not directly involve teaching reading or writing.

The board of trustees of every school district shall include in its plan for in-service training, coursework covering reading skills development, including diagnostic tools to review and adjust instruction continuously, and the ability to identify students who need special help in reading. The district plan for in-service training in reading skills shall be submitted to the state department of education for review and approval, in a format specified by the department.

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 April 12, 2000.

CHAPTER 270
(S.B. No. 1490)

AN ACT

RELATING TO THE ENDANGERED SPECIES ACT; PROVIDING LEGISLATIVE INTENT; AMENDING TITLE 36, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 24, TITLE 36, IDAHO CODE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR A

DELISTING ADVISORY TEAM, DUTIES OF THE TEAM AND MEMBERSHIP, TO PROVIDE OPERATIONS OF THE DELISTING ADVISORY TEAM, TO PROVIDE DELISTING MANAGEMENT PLAN REQUIREMENTS AND TO PROVIDE FOR RECOMMENDATION OF MANAGEMENT PLANS; AMENDING CHAPTER 8, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-818, IDAHO CODE, TO CREATE IN THE GOVERNOR'S OFFICE THE OFFICE OF SPECIES CONSERVATION, TO PROVIDE FOR AN ADMINISTRATOR, TO PROVIDE DUTIES AND TO PROVIDE REPORTS; AMENDING CHAPTER 8, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-819, IDAHO CODE, TO AUTHORIZE ACCEPTANCE OF FUNDS AND TO ESTABLISH A FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. LEGISLATIVE INTENT. (1) It is hereby declared by the Legislature of the State of Idaho that:

(a) Idaho is home to a unique diversity of plant and animal species. Populations of some species have decreased due to a variety of causes.

(b) Idaho's wildlife and plants are an important economic, esthetic, cultural, and scientific resource to the state and its citizens.

(c) The state of Idaho must marshal the various resources of the state in a cooperative, consensus-based approach to address the population decline in some of Idaho's species.

(d) The state of Idaho must weigh the sometimes competing needs of the citizens of the state of Idaho and the plant and animal species resident in the state.

(e) It is through the proper balancing of these needs that Idahoans can provide for the continued survival and well-being of Idaho's plant and animal species.

(f) Coordination between the various state governmental entities with jurisdiction over state resources is necessary to foster a partnership within the state and between the state of Idaho and federal agencies.

(2) It is hereby declared that the purposes of this act are to:

(a) Authorize within the Office of the Governor, an Office of Species Conservation that shall provide coordination, cooperation and consultation among and between the various state and federal agencies with responsibility for species listed under the Endangered Species Act (ESA); solicit and review data and scientific information; develop an integrated state policy towards those species; negotiate and implement conservation plans and agreements; and marshal state resources to assist in the management and conservation of those species;

(b) Provide the resources and authority necessary to recommend an appropriate management plan for species that may be delisted under the ESA;

(c) Facilitate the development and use of federal and state programs and incentives to provide protections for nonfederal landowners willing to assist in the management of federally listed endangered species, threatened species and petitioned species.

SECTION 2. That Title 36, Idaho Code, be, and the same is hereby,

amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 24, Title 36, Idaho Code, and to read as follows:

CHAPTER 24
SPECIES CONSERVATION

36-2401. DEFINITIONS. As used in this title, the following terms have the following meanings unless the context indicates otherwise:

(1) "Best scientific and commercial data available" means that where this chapter requires the use of the best scientific and commercial data available, the state, when evaluating comparable data, shall give greater weight to scientific or commercial data that is empirical or has been field tested or peer reviewed.

(2) "Candidate conservation agreements" means agreements, entered into with the fish and wildlife service or the national marine fisheries service (services), to implement mutually agreed upon conservation measures for a proposed or candidate species, or a species likely to become a candidate or proposed candidate in the near future, that include assurances from the services that additional conservation measures above and beyond those contained in the agreement will not be required, and that additional land, water or resource use restrictions will not be imposed upon them should the species become listed in the future.

(3) "Candidate species" means a species for which the secretary of interior or secretary of commerce has on file sufficient information on biological vulnerability and threats to support a proposal to list the species as an endangered species or a threatened species, but for which listing is precluded because of pending proposals to list species that are of a higher priority.

(4) "Endangered species" means those species listed as endangered pursuant to 16 U.S.C. section 1532(6).

(5) "Habitat conservation plan" means a plan submitted pursuant to a permit as provided in 16 U.S.C. section 1539, et seq.

(6) "Listed species" means threatened or endangered species.

(7) "Rare and declining species" means those species in need of additional management consideration due to natural rarity, downward trends in populations and habitats, or other factors, natural or human, that, without additional management, might be listed as threatened or endangered species under the ESA in the future.

(8) "Recovery plans" means federal plans or conservation programs, referenced in 16 U.S.C. section 1533(f), that set forth the actions designed to assure the continued survival and recovery of the species listed as "endangered" or "threatened" pursuant to the endangered species act.

(9) "Species conservation assessment" means a state analysis, based on the best scientific and commercial data available, about the status of a rare or declining species throughout its range which describes current and anticipated factors limiting the viability of the species as it relates to desired goals and objectives and identifies specific research needs relative to the species.

(10) "Species conservation strategy" means a state strategic plan for the management or conservation of a rare or declining species that describes the species needs in terms of habitat needs, population

size, distribution and connectivity. The strategy shall include voluntary, landowner-based incentives and measures to achieve the management or conservation goals.

(11) "Species management plan" means a plan which provides for the consideration and management of a species upon its being delisted.

(12) "State conservation programs" means the programs developed, pursuant to 16 U.S.C. section 1535(c), for the conservation of endangered species and threatened species.

(13) "Threatened species" means those species listed as threatened pursuant to 16 U.S.C. section 1532(20).

36-2402. DELISTING ADVISORY TEAM -- DUTIES -- MEMBERSHIP. (1) The director of the department of fish and game for animal species or the department of parks and recreation for plant species, in cooperation and consultation with the governor's office of species conservation, may establish a delisting advisory team (DAT) of no more than nine (9) members for a threatened species or endangered species, to recommend an appropriate state species management plan for a listed species in response to a notification from the secretary of interior or secretary of commerce of intent to delist the species or sooner if deemed appropriate.

(2) The delisting advisory team members shall be broadly representative of the constituencies with an interest in the species and its management or conservation and in the economic or social impacts of management or conservation including, where appropriate, depending on the specific species, representatives of tribal governments, local governments, academic institutions, private individuals and organizations and commercial enterprises. The delisting advisory team members shall be selected based upon:

(a) Their knowledge of the species;

(b) Their knowledge and expertise in the potential conflicts between a species' habitat requirements or management and human activities;

(c) Their knowledge and expertise in the interests that may be affected by species management or conservation; or

(d) Other factors that may provide knowledge, information, or data that will further the intent of this act.

36-2403. OPERATIONS OF DELISTING ADVISORY TEAM. (1) The delisting advisory team shall elect a team leader who shall chair all meetings of the team and otherwise administer its operations. The team shall meet as necessary, but shall meet no less than once every six (6) months.

(2) Members of the team not in the employ of public agencies may be compensated as provided in section 59-509(b), Idaho Code, from the budget of the governor's office of species conservation. Their department or division shall compensate its members of the team who are state employees.

36-2404. STATE DELISTING MANAGEMENT PLAN REQUIREMENTS. (1) The delisting advisory team shall develop a state management plan for a species in response to all notification of intent to delist the species by the secretary of interior or secretary of commerce or sooner

if deemed appropriate. The state management plan shall provide for the management and conservation of the species once it is delisted, and contain sufficient safeguards to protect the health, safety, private property and economic well-being of the citizens of the state of Idaho.

(2) The department of fish and game or the department of parks and recreation, as appropriate, shall provide the delisting advisory teams, the informational, technical or other needs and requirements of those teams in the performance of their duties.

(3) In developing state delisting management plans, the delisting advisory team shall consult with the appropriate state agencies, commissions and boards. The appropriate state agency for wildlife biological and species management issues is the department of fish and game. The appropriate state agency for plant life biological and species management issues is the department of parks and recreation. The appropriate state agency for timber harvest activities, oil and gas exploration activities and for mining activities is the department of lands. The appropriate state agencies for agricultural activities are the department of agriculture and the soil conservation commission. The appropriate state agency for public road construction is the transportation department. The appropriate state agency for water rights is the department of water resources. The appropriate state agency for water quality is the division of environmental quality in the department of health and welfare. The appropriate state agency for outfitting and guiding activities is the Idaho outfitters and guides licensing board.

36-2405. RECOMMENDATION ON MANAGEMENT PLANS. (1) The delisting advisory team shall submit the management plan to the director of the department of fish and game for animal species, or to the director of the department of parks and recreation for plant species, for review and recommendation.

(2) The director shall review the management plan and make a recommendation to the fish and game commission, or the board of parks and recreation, as appropriate. The director may recommend either approval of the management plan, or recommend to return the management plan to the delisting advisory team for further study and review, with instructions, prior to return of the species strategy or management plan to the directors.

(3) If the fish and game commission or the board of parks and recreation finds that the management plan provides for the management and conservation of the species when it is delisted by the secretary of the interior or secretary of commerce and that reasonable safeguards are included in the management plan to protect the health, safety, private property and economic well-being of the citizens of the state of Idaho, the fish and game commission or the board of parks and recreation, as appropriate, shall approve the management plan.

(4) If the fish and game commission or the board of parks and recreation makes the finding required in subsection (3) of this section, the fish and game commission or board of parks and recreation shall forward the state management plan, to the governor's office of species conservation and the legislature. The management plan is subject to legislative approval, amendment or rejection by concurrent

resolution at the regular session immediately following the commission's or board's finding and approval of the plan.

(5) The governor's office of species conservation may petition the responsible public agencies to initiate rulemaking to facilitate the implementation of the approved management plan.

(6) Each management plan developed pursuant to this chapter shall include a public education component that shall be developed and implemented in cooperation with other appropriate bureaus of the department of fish and game or department of parks and recreation.

(7) Nothing in this act shall be interpreted as granting the department of fish and game or the department of parks and recreation with new or additional authority.

SECTION 3. That Chapter 8, 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 67-818, Idaho Code, and to read as follows:

67-818. COORDINATION OF POLICY AND PROGRAMS RELATED TO THREATENED SPECIES AND ENDANGERED SPECIES IN IDAHO. (1) There is hereby created in the office of the governor, the "Office of Species Conservation." The administrator of the office of species conservation shall be the official in the state designated to oversee implementation of federal recovery plans, as provided in 16 U.S.C. section 1533(f), and to fulfill the duties provided by this section. The administrator shall be appointed by, and serve at the pleasure of, the governor and shall be subject to confirmation by the state senate.

(2) The duties of the office of species conservation shall include:

(a) Coordination of all state departments and divisions with duties and responsibilities affecting endangered species, threatened species and species petitioned to be listed;

(b) Coordinating state implementation and response to federal recovery plans, biological opinions, guidance and projects among all state and local governments in the state of Idaho;

(c) Participation in regional efforts to cooperatively address endangered species and threatened species;

(d) Providing input and comment to federal and state agencies, and tribes on issues relating to endangered species, threatened species, petitioned, rare and declining species;

(e) Cooperating and consulting with the departments of fish and game and parks and recreation regarding agreements pursuant to 16 U.S.C. section 1535;

(f) Negotiating agreements with federal agencies concerning endangered species, threatened species and candidate species, including, but not limited to, agreements pursuant to 16 U.S.C. section 1533(d) and 16 U.S.C. section 1539(a), other than those agreements negotiated pursuant to 16 U.S.C. section 1535;

(g) Providing the people of the state of Idaho with an ombudsman who can listen to citizens being harmed or hindered by the regulations of the ESA and direct them to the appropriate state or federal agency and/or speak on their behalf, as deemed appropriate by the ombudsman, to address issues or concerns related to the ESA;

(h) Serve as a repository for agreements and plans among governmental entities in the state of Idaho to conserve threatened and endangered species.

(3) State policy and management plans developed pursuant to this section shall be developed in accordance with the following subsections:

(a) State policy on threatened, endangered and petitioned species and state management plans shall be developed in consultation with the appropriate state agencies. The appropriate state agency for wildlife biological and species management issues is the department of fish and game. The appropriate state agency for plant life biological and species management issues is the department of parks and recreation. The appropriate state agency for timber harvest activities, oil and gas exploration activities and for mining activities is the department of lands. The appropriate state agencies for agricultural activities are the department of agriculture and the soil conservation commission. The appropriate state agency for public road construction is the transportation department. The appropriate state agency for water rights is the department of water resources. The appropriate state agency for water quality is the division of environmental quality in the department of health and welfare. The appropriate state agency for outfitting and guiding activities is the Idaho outfitters and guides licensing board;

(b) State management plans shall be the policy of the state of Idaho, but are subject to legislative approval, amendment or rejection by concurrent resolution. State management plans shall be subject to public notice and comment but shall not be subject to judicial review.

(4) The governor's office of species conservation shall prepare a report to the legislature recommending a plan to develop state conservation assessments and strategies for rare and declining species in the state of Idaho and submit that report and recommendation to the legislature. The report and recommendation are subject to legislative approval, amendment or rejection by concurrent resolution.

SECTION 4. That Chapter 8, 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 67-819, Idaho Code, and to read as follows:

67-819. FUNDING -- ACCOUNT CREATED. (1) The governor's office of species conservation may accept private contributions, federal funds, funds from other public agencies or any other source. The moneys shall be used solely for the purposes provided in section 67-818, Idaho Code, and be expended and accounted for as provided by law.

(2) There is hereby established in the state treasury the species conservation fund which shall consist of all moneys received pursuant to subsection (1) of this section. Moneys in the species conservation fund shall be used for purposes described in section 67-818, Idaho Code.

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 April 12, 2000.

CHAPTER 271
(S.B. No. 1550)

AN ACT

RELATING TO HABEAS CORPUS; AMENDING CHAPTER 42, TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 19-4201A, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING SECTION 19-4203, IDAHO CODE, TO PROVIDE FOR FILING OF A PETITION FOR A WRIT OF HABEAS CORPUS BY AN IN-STATE PRISONER AND AN OUT-OF-STATE PRISONER, TO PROVIDE PROPER NOMENCLATURE, TO PROVIDE THAT CONDITIONS OF CONFINEMENT SHALL INCLUDE THE EFFECTS OF ACTIONS BY EMPLOYEES OF A PRIVATE PRISON CONTRACTOR WHILE EMPLOYED AT A PRIVATE CORRECTIONAL FACILITY IN IDAHO AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 19-4205, IDAHO CODE, TO PROVIDE FOR AN APPLICATION FOR A WRIT OF HABEAS CORPUS BY AN OUT-OF-STATE PRISONER; AMENDING SECTION 19-4206, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 19-4209, IDAHO CODE, TO PROVIDE WHEN THE COURT MAY GRANT A WRIT OF HABEAS CORPUS UPON A PETITION FILED BY AN OUT-OF-STATE PRISONER AND TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 19-4211, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 19-4213, IDAHO CODE, TO PROVIDE THE RELIEF AVAILABLE TO AN IN-STATE PRISONER FOR CONSTITUTIONAL VIOLATIONS DURING THE COURSE OF REVOCATION OF PAROLE AND TO PROVIDE THAT THE IDAHO COMMISSION FOR PARDONS AND PAROLE HAS EXCLUSIVE AUTHORITY TO ORDER RELEASE OF AN IN-STATE PRISONER ON PAROLE; AMENDING SECTION 19-4214, IDAHO CODE, TO PROVIDE FOR RELIEF AVAILABLE TO AN IN-STATE PRISONER FOR MISCALCULATION OF SENTENCE; AMENDING SECTION 19-4215, IDAHO CODE, TO PROVIDE THE RELIEF AVAILABLE TO AN IN-STATE PRISONER FOR LOSS OF GOOD TIME CREDITS AND TO PROVIDE PROPER NOMENCLATURE; AMENDING SECTION 19-4216, IDAHO CODE, TO PROVIDE THE RELIEF AVAILABLE TO IN-STATE PRISONERS FOR DETAINERS; AMENDING SECTION 19-4217, IDAHO CODE, TO CLARIFY THAT INJUNCTIVE RELIEF IN CONDITIONS OF CONFINEMENT CASES IS APPLICABLE WITH RESPECT TO STATE, LOCAL OR PRIVATE CORRECTIONAL FACILITIES; AMENDING SECTION 19-4219, IDAHO CODE, TO INCLUDE REFERENCES TO STATE, LOCAL OR PRIVATE CORRECTIONAL FACILITIES WITH RESPECT TO TERMINATION OF AN ORDER OR DECREE FOR PROSPECTIVE RELIEF IN CONDITIONS OF CONFINEMENT CASES; AMENDING SECTIONS 19-4221 AND 19-4222, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 42, Title 19, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 19-4201A, Idaho Code, and to read as follows:

19-4201A. DEFINITIONS. As used in this chapter:

(1) "Correctional facility" means a facility for the confinement of prisoners. Unless otherwise specifically provided, the term shall include a state, local or private correctional facility.

(2) "In-state prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated in a correctional facility for that crime or is in custody for trial and sentencing.

(3) "Institution" or "state or county institution" means a place owned or operated by or under the control of the state or county in which a person other than a prisoner is restrained and with respect to which restraint the person may file a petition for a writ of habeas corpus under the provisions of this chapter.

(4) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include any reference to "jail" or "county jail."

(5) "Out-of-state prisoner" means a person who has been convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility in the state of Idaho, or who is being transported in any manner within or through the state of Idaho.

(6) "Prisoner" includes an in-state or out-of-state prisoner, unless otherwise specifically provided or unless the context clearly indicates otherwise.

(7) "Private correctional facility" means a correctional facility owned or operated in the state of Idaho by a private prison contractor.

(8) "Private prison contractor" means any person, organization, partnership, joint venture, corporation or other business entity engaged in the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private correctional facilities or any combination of these services.

(9) "State correctional facility" means a correctional facility owned or operated by or under the control of the state of Idaho.

SECTION 2. That Section 19-4203, Idaho Code, be, and the same is hereby amended to read as follows:

19-4203. WHO MAY PETITION FOR A WRIT OF HABEAS CORPUS. (1) Any person, not a prisoner as defined in section ~~31-3220A(1)(d)~~ 19-4201A, Idaho Code, who believes he is unlawfully restrained of his liberty in this state may file a petition for writ of habeas corpus to request that the court inquire into the cause and/or legality of the restraint.

(2) An in-state prisoner, as defined in section ~~31-3220A(1)(d)~~ 19-4201A, Idaho Code, or a person who is restrained of his liberty while involved in parole revocation proceedings, or while held on an agent or commission warrant in this state, may file a petition for writ of habeas corpus to request that a court inquire into state or federal constitutional questions concerning:

(a) The conditions of his confinement;

(b) Revocation of parole;
(c) Miscalculation of his sentence;
(d) Loss of good time credits;
(e) A detainer lodged against him.

(3) An out-of-state prisoner, as defined in section 19-4201A, Idaho Code, may file a petition for writ of habeas corpus only to request that an Idaho court inquire into a state or federal constitutional question concerning the conditions of his confinement. Habeas corpus relief shall not be available for an out-of-state prisoner to challenge:

(a) Any issue concerning the legality of his out-of-state conviction or sentence;
(b) Any issue concerning the legality of the fact or duration of his confinement in this state;
(c) Any issue concerning the legality of the contract or agreement or any terms thereof pursuant to which he is housed in this state;
(d) Any issue concerning the grant, denial or revocation of parole for his out-of-state conviction and sentence;
(e) Miscalculation of his out-of-state sentence;
(f) Loss of out-of-state good time credits or lack of (failure to grant) good time credits under the laws of the state of Idaho;
(g) A detainer lodged against him.

(4) Habeas corpus shall not be used as a substitute for, or in addition to, a direct appeal of a criminal conviction or proceedings under Idaho criminal rule 35 or the uniform post-conviction procedures act, chapter 49, title 19, Idaho Code, and the statutes of limitations imposed therein.

(~~4~~5) Habeas corpus shall not be used as a substitute for or in addition to proceedings available in child custody matters and proceedings under the Idaho domestic violence crime prevention act, chapter 63, title 39, Idaho Code.

(~~5~~6) Habeas corpus is an individual remedy only.

(~~6~~7) For purposes of this chapter and any other civil challenges to conditions of confinement, the term "conditions of confinement" shall be defined as any civil proceeding with respect to a condition in any state or county institution, ~~prison-or-jail-condition~~ or state, local or private correctional facility, as those terms are defined in section 19-4201A, Idaho Code, arising under state or federal law ~~with respect~~ pertaining to the conditions of confinement or the effects of actions by government officials or employees of a private prison contractor while employed at a private correctional facility in the state of Idaho on the life of a person confined in a state or county institution, ~~prison--or--jail~~ or a state, local or private correctional facility.

SECTION 3. That Section 19-4205, Idaho Code, be, and the same is hereby amended to read as follows:

19-4205. APPLICATION FOR WRIT OF HABEAS CORPUS BY A PRISONER. (1) Application for a writ of habeas corpus by a prisoner shall be made by filing a petition for a writ of habeas corpus in the district court of the county in which the prisoner claims his confinement or aspects of

his confinement violate provisions of the state or federal constitutions.

(2) With respect to a petition filed by an in-state prisoner, t~~T~~he petition must be verified by the oath or affirmation of the prisoner applying and shall specify that the prisoner is alleging state or federal constitutional violations concerning:

(a) The conditions of his confinement;

(b) The revocation of his parole;

(c) Miscalculation of his sentence;

(d) Loss of good time credits; or

(e) A detainer lodged against him.

(3) With respect to a petition filed by an out-of-state prisoner, the petition must be verified by the oath or affirmation of the prisoner applying and shall specify that the prisoner is alleging state or federal constitutional violations concerning the conditions of his confinement, as provided in section 19-4203(3), Idaho Code.

(4) A petition filed by a prisoner under subsections (1), ~~and~~ (2) or (3) of this section shall specify:

(a) The identity and address of the person or officer whom the prisoner believes is responsible for the alleged state or federal constitutional violations, and shall name the persons identified individually as respondents;

(b) The name, if any, and address of the place in which the prisoner is incarcerated;

(c) The name and address of the place in which the prisoner claims the constitutional violation ~~under--subsections--(2)(a) through-(2)(e)-of-this-section~~ occurred; ~~and~~

(d) A short and plain statement of the facts underlying the alleged state or federal constitutional violation; and

(e) Whether the petitioner is an out-of-state prisoner.

(~~4~~5) Neither t~~T~~he state of Idaho, any of its political subdivisions, or any of its agencies, nor any private correctional facility shall ~~not~~ be named as respondents in a prisoner petition for writ of habeas corpus.

SECTION 4. That Section 19-4206, Idaho Code, be, and the same is hereby amended to read as follows:

19-4206. PRISONERS REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES IN CONDITIONS OF CONFINEMENT CASES. (1) Unless a petitioner who is a prisoner establishes to the satisfaction of the court that he is in imminent danger of serious physical injury, no petition for writ of habeas corpus or any other civil action shall be brought by any person confined in a state or county institution, ~~prison--or--jail~~ or in a state, local or private correctional facility, with respect to conditions of confinement until all available administrative remedies have been exhausted. If the institution, ~~prison-or-jail~~ or state, local or private correctional facility does not have a system for administrative remedy, this requirement shall be waived.

(2) At the time of filing, the petitioner shall submit, together with the petition for writ of habeas corpus a true, correct and complete copy of any documentation which demonstrates that he has exhausted administrative remedies described in subsection (1) of this

section.

(3) If at the time of filing the petition for writ of habeas corpus the petitioner fails to comply with this section, the court shall dismiss the petition with or without prejudice.

SECTION 5. That Section 19-4209, Idaho Code, be, and the same is hereby amended to read as follows:

19-4209. PROCEDURES GOVERNING PRISONER HABEAS CORPUS PROCEEDINGS. (1) The court may dismiss with prejudice a petition for writ of habeas corpus under this section, in whole or in part, prior to service of the petition on the respondent, if the court finds:

(a) The petition is frivolous as defined in section 12-122, Idaho Code;

(b) The petition has been brought maliciously or solely to harass;

(c) The petition fails to state a claim of constitutional violation upon which relief can be granted;

(d) The alleged constitutional deprivation is de minimis in nature; or

(e) The relief sought ~~by the prisoner~~ is monetary damages or the return of property.

(2) If the court finds that the petition should not be dismissed, then:

(a) The court shall mail a copy of the petition and order of response to the respondent or the respondent's counsel, if known;

(b) A response must be filed within thirty (30) days from the date the respondent or the respondent's counsel is served with the petition and order for response. If the court finds that exigent circumstances exist which warrant an earlier response, the court shall set forth those circumstances and the allowed time for response; and

(c) If the court dismisses the petition in part, the court may specify which issues and/or allegations remain at issue for response.

(3) If the court orders a response to a petition for writ of habeas corpus under this section, the respondent may file any responsive motion or pleading allowed by Idaho rules of civil procedure.

(4) Upon the filing of a responsive motion or pleading, a prisoner may file a reply to the response or the court may order a reply to the response on its own motion. The court should consider any reply filed only to the extent it is relevant to the issues and allegations raised in the original petition for writ of habeas corpus.

(5) <u>With respect to a petition filed by an in-state prisoner t</u>~~T~~he court should not grant a writ of habeas corpus or order an evidentiary hearing under this section unless, after reviewing the petition for writ of habeas corpus, the response and the reply, if any, the court finds that the prisoner's state or federal constitutional rights may have been violated relative to:

(a) Conditions of confinement;

(b) Revocation of parole;

(c) Miscalculation of his sentence;

(d) Loss of good time credits; or

(e) A detainer lodged against him.

If, after review under this subsection, the court finds that the allegations do not state a state or federal constitutional claim, the court may dismiss the petition without a hearing.

(6) With respect to a petition filed by an out-of-state prisoner, the court should not grant a writ of habeas corpus or order an evidentiary hearing under this section unless, after reviewing the petition for writ of habeas corpus, the response and the reply, if any, the court finds that the out-of-state prisoner's state or federal constitutional rights may have been violated relative to the out-of-state prisoner's conditions of confinement. If, after review under this subsection, the court finds that the allegations do not state a state or federal constitutional claim, the court may dismiss the petition without a hearing.

(7) If the court issues a writ of habeas corpus and sets the matter for evidentiary hearing, the following shall apply:

(a) The hearing shall be set as expeditiously as possible and may be at a place convenient for the court and the parties, including the institution or the state, local or private correctional facility where the prisoner is confined;

(b) The burden of proof during an evidentiary hearing pursuant to a petition for writ of habeas corpus lies with the prisoner; and

(c) As soon as possible after the conclusion of the hearing, the court shall enter its findings of fact and conclusions of law, and either dismiss the petition in part or in its entirety, or grant injunctive relief consistent with this act.

SECTION 6. That Section 19-4211, Idaho Code, be, and the same is hereby amended to read as follows:

19-4211. ISSUANCE OF WRIT OF HABEAS CORPUS. (1) Any court authorized under section 19-4202, Idaho Code, may grant a writ of habeas corpus pursuant to a petition filed by, or, pursuant to section 19-4207, Idaho Code, on behalf of a person not a prisoner ~~under--section--19-4207,--Idaho--Code,~~ if it finds that the restraint of the person's liberty is illegal.

(2) Any court authorized under section 19-4202, Idaho Code, may grant a writ of habeas corpus and order a hearing pursuant to a petition filed by a prisoner, or, pursuant to section 19-4207, Idaho Code, on behalf of a prisoner ~~under-section-19-4207,-Idaho-Code,~~ when:

(a) The court has considered the factual allegations contained in the petition together with any responsive pleading filed by the respondent, and a reply filed by the prisoner, if any;

(b) The court finds that the petitioner is likely to prevail on the merits of his state or federal constitutional challenge;

(c) The court finds that the petitioner will suffer irreparable injury if some relief is not granted;

(d) The court finds that the balance of potential harm to the petitioner substantially outweighs any legitimate governmental interest; and

(e) The court finds that equity favors granting relief to the petitioner.

(3) Any order granting the writ should issue without delay and a

hearing should be scheduled. The court may provide a statement of the issues to be addressed, and whether evidence will be accepted.

(4) If a court issues an order granting the writ and setting the matter for hearing, the court may set the hearing at the state, ~~prison or--county-jail~~ local or private correctional facility or other appropriate place.

SECTION 7. That Section 19-4213, Idaho Code, be, and the same is hereby amended to read as follows:

19-4213. RELIEF AVAILABLE FOR CONSTITUTIONAL VIOLATIONS DURING THE COURSE OF REVOCATION OF PAROLE. (1) If a court finds that an in-state prisoner's constitutional rights have been violated during the course of revocation of his parole, the court may, upon specific findings of fact and conclusions of law, enter an order directing that the parole revocation proceedings be reconvened. The order shall identify the constitutional violation which occurred and direct that the violation be cured.

(2) The Idaho ~~board-of-correction-through--the--Idaho~~ commission for pardons and parole has the exclusive authority to order release of an in-state prisoner on parole pursuant to ~~section-5,-article-X,-of the-constitution-of-the-state-of-Idaho-and~~ sections 20-210 and 20-223, Idaho Code.

SECTION 8. That Section 19-4214, Idaho Code, be, and the same is hereby amended to read as follows:

19-4214. RELIEF AVAILABLE FOR MISCALCULATION OF SENTENCE. (1) If, upon findings of fact and conclusions of law, a court finds that an in-state prisoner's sentence has been miscalculated, the court may order the ~~prisoner's~~ sentence to be recalculated consistent with the court's findings and conclusions.

(2) The court may order the prisoner released under this section only if the prisoner would be entitled to release due to expiration of his sentence correctly calculated.

SECTION 9. That Section 19-4215, Idaho Code, be, and the same is hereby amended to read as follows:

19-4215. RELIEF AVAILABLE FOR LOSS OF GOOD TIME CREDITS. (1) If the court finds that an in-state prisoner has lost good time credits without constitutionally sufficient due process, the court may order a rehearing by the ~~prison-or-jail~~ correctional facility authority.

(2) Any court order requiring rehearing shall specify:

(a) How due process was constitutionally insufficient and direct that the insufficiency be cured; and

(b) Provide that the ~~prison-or-jail~~ officials of the correctional facility shall have not less than thirty (30) days in which to convene the rehearing.

(3) The ~~prison-or-jail~~ correctional facility authority shall have the responsibility for the recalculation and restoration of good time credits. If good time credits are restored to the petitioner as a result of the rehearing, and restoration of good time credits entitles

the petitioner to release, he shall be so released.

SECTION 10. That Section 19-4216, Idaho Code, be, and the same is hereby amended to read as follows:

19-4216. RELIEF AVAILABLE FOR DETAINERS. (1) An in-state prisoner may petition for writ of habeas corpus to challenge the legality of a detainer which has been lodged against him by another state under the interstate agreement on detainers, chapter 50, title 19, Idaho Code.

(2) The court may set a hearing on a petition for writ of habeas corpus to inquire into factual issues involving the legality of the detainer or the legality of delivery of the prisoner to the prosecuting state under the detainer. However, if the petition involves legal issues only, the court shall decide the matter without hearing consistent with section 19-4209, Idaho Code.

SECTION 11. That Section 19-4217, Idaho Code, be, and the same is hereby amended to read as follows:

19-4217. INJUNCTIVE RELIEF AVAILABLE TO PRISONERS AND OTHER INSTITUTIONALIZED PERSONS IN CONDITIONS OF CONFINEMENT CASES. (1) If the court finds that a prisoner's or other institutionalized person's constitutional rights have been violated involving conditions of confinement, the court may order injunctive relief consistent with and subject to the limitations set forth in this chapter.

(2) If the court concludes that injunctive relief is necessary to cure unconstitutional conditions of confinement, the court shall enter an order subject to the following limitations:

(a) Any order for injunctive relief shall be accompanied by specific findings of fact and conclusions of law;

(b) Injunctive relief shall be narrowly drawn and extend no further than necessary to correct the violation of the constitutional right;

(c) Injunctive relief must be the least intrusive means necessary to correct the constitutional violation;

(d) The court shall give substantial weight to any adverse impact on public safety;

(e) The court shall give substantial deference to the discretion of administrators of the institution or the state, local or private correctional facility;

(f) The administrator of the institution, or of the state, local or private correctional facility shall be given all reasonable opportunities to correct state or federal constitutional errors made in the internal operations of the institution and shall be charged with the task of devising constitutionally sound modifications to their operations.

SECTION 12. That Section 19-4219, Idaho Code, be, and the same is hereby amended to read as follows:

19-4219. IMMEDIATE TERMINATION OF ORDER OR DECREE FOR PROSPECTIVE RELIEF IN CONDITIONS OF CONFINEMENT CASES. (1) In any civil action with respect to conditions of confinement, the administrator of the

institution, or of the state, local or private correctional facility, or intervenor shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of an express finding by the court that the relief:

(a) Is narrowly drawn;

(b) Extends no further than necessary to correct the violation of the constitutional right; and

(c) Is the least intrusive means necessary to correct the violation of the constitutional right.

(2) Prospective relief shall not terminate if the court makes written findings based on the record that the prospective relief:

(a) Remains necessary to correct a current or ongoing violation of the constitutional right;

(b) Extends no further than necessary to correct the violation of the constitutional right;

(c) Is narrowly drawn; and

(d) Is the least intrusive means to correct the violation.

(3) Nothing in this section shall prevent the administrator of the institution, or of the state, local or private correctional facility, or intervenor from seeking modification or termination before the relief is terminable under subsection (1) or (2) of this section to the extent that modification or termination would otherwise be legally permissible.

SECTION 13. That Section 19-4221, Idaho Code, be, and the same is hereby amended to read as follows:

19-4221. SUCCESSIVE CLAIMS. In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding if the prisoner has, on two (2) or more prior occasions, while incarcerated or detained in any ~~prison, jail or other~~ state, local or private correctional facility, brought an action or appeal in a court of this state that was dismissed on any ground set forth in section 19-4209(1)(a) through (d), Idaho Code, unless:

(1) The prisoner first obtains leave from the district court having jurisdiction over the case; or

(2) The prisoner's action or petition is submitted for filing by an attorney licensed to practice law in the state of Idaho.

SECTION 14. That Section 19-4222, Idaho Code, be, and the same is hereby amended to read as follows:

19-4222. PRIOR SHOWING OF PHYSICAL INJURY OR MENTAL ILLNESS REQUIRED. No civil action may be brought by a prisoner confined in a ~~jail, prison or other~~ state, local or private correctional facility for mental or emotional injury suffered while in custody without a prior showing of either:

(1) Physical injury; or

(2) Diagnosed severe and disabling mental illness.

SECTION 15. 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 April 12, 2000.

CHAPTER 272
(S.B. No. 1551)

AN ACT

RELATING TO PRISONERS AND CORRECTIONAL FACILITIES; AMENDING CHAPTER 1, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-101A, IDAHO CODE, TO PROVIDE DEFINITIONS; AMENDING CHAPTER 1, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-101B, IDAHO CODE, TO PROVIDE FOR APPLICATION OF ALL IDAHO CRIMINAL LAWS TO OUT-OF-STATE PRISONERS AND PERSONNEL OF PRIVATE CORRECTIONAL FACILITIES; AMENDING SECTION 18-915, IDAHO CODE, TO PROHIBIT ASSAULT OR BATTERY UPON AN EMPLOYEE OF A PRIVATE PRISON CONTRACTOR WHILE EMPLOYED AT A PRIVATE CORRECTIONAL FACILITY IN THE STATE OF IDAHO; AMENDING SECTION 18-915A, IDAHO CODE, TO PROHIBIT REMOVING A FIREARM FROM AN EMPLOYEE OF A PRIVATE CORRECTIONAL FACILITY WITHIN THE STATE; AMENDING SECTION 18-2502, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE AND TO PROHIBIT EMPLOYEES OF ANY CORRECTIONAL FACILITY, INCLUDING A PRIVATE CORRECTIONAL FACILITY, FROM ASSISTING IN AN ESCAPE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-2505, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-2507, IDAHO CODE, TO PROVIDE FOR RECOVERY OF EXPENSES OF PROSECUTION OF A PRISONER IN THE CUSTODY OF THE BOARD OF CORRECTION HOUSED IN A STATE CORRECTIONAL FACILITY, TO PROVIDE THAT THE PROVISIONS OF THE SECTION SHALL APPLY TO PRISONERS IN THE CUSTODY OF THE BOARD OF CORRECTION HOUSED IN A PRIVATE CORRECTIONAL FACILITY UNLESS OTHERWISE PROVIDED BY CONTRACT BETWEEN THE STATE AND THE PRIVATE PRISON CONTRACTOR AND TO PROVIDE FOR RECOVERY OF EXPENSES OF PROSECUTION OF OUT-OF-STATE PRISONERS HOUSED IN A PRIVATE CORRECTIONAL FACILITY; AMENDING SECTION 18-2510, IDAHO CODE, TO PROVIDE PROPER NOMENCLATURE AND TO PROVIDE FOR APPLICATION OF THE SECTION TO A PRIVATE CORRECTIONAL FACILITY HOUSING PRISONERS UNDER THE CUSTODY OF THE BOARD OF CORRECTION OR OUT-OF-STATE PRISONERS; AMENDING SECTION 18-6110, IDAHO CODE, TO PROHIBIT SEXUAL CONTACT WITH AN IN-STATE OR OUT-OF-STATE PRISONER BY ANY OFFICER, EMPLOYEE OR AGENT OF A STATE, LOCAL OR PRIVATE CORRECTIONAL FACILITY; AMENDING SECTION 20-805, IDAHO CODE, TO REQUIRE APPROVAL BY THE CITY OR COUNTY GOVERNING BODY OF ALL RELEASES ON FURLOUGH OR WORK RELEASE OF INMATES HOUSED IN A PRIVATE CORRECTIONAL FACILITY; AMENDING SECTION 20-807, IDAHO CODE, TO PROHIBIT WORK RELEASE, FURLOUGH OR OTHER RELEASE OF OUT-OF-STATE INMATES FROM ANY PRIVATE PRISON FACILITY EXCEPT AS PROVIDED BY ORDINANCE, BY CONTRACT BETWEEN THE CITY OR COUNTY GOVERNING BODY AND THE PRIVATE PRISON CONTRACTOR OR WITH THE EXPRESS APPROVAL OF THE CITY OR COUNTY GOVERNING AUTHORITY; REPEALING SECTIONS 20-810 AND 20-811, IDAHO CODE; AMENDING SECTION

31-3220A, IDAHO CODE, TO PROVIDE THAT INMATE ACCOUNTS SHALL INCLUDE SUCH ACCOUNTS MANAGED BY OFFICIALS OF PRIVATE CORRECTIONAL FACILITIES AND TO PROVIDE A DEFINITION OF "PRISONER"; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 1, 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 18-101A, Idaho Code, and to read as follows:

18-101A. DEFINITIONS. As used in titles 18, 19 and 20, Idaho Code, and elsewhere in the Idaho Code, unless otherwise specifically provided or unless the context clearly indicates or requires otherwise, the following terms shall be defined as follows:

(1) "Correctional facility" means a facility for the confinement of prisoners. The term shall be construed to include references to terms including, but not limited to, "prison," "state prison," "state penitentiary," "governmental detention facility," "penal institution (facility)," "correctional institution," "detention institution (facility)," "county jail," "jail," "private prison (facility)" or "private correctional facility."

(2) "In-state prisoner" means person who has been convicted of a crime in the state of Idaho and is either incarcerated or on parole for that crime or in custody for trial and sentencing, and who is being housed in any state, local or private correctional facility, or who is being transported in any manner within or through the state of Idaho.

(3) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include references to "county jail," or "jail." The term shall also include a private correctional facility housing prisoners under the custody of the state board of correction, the county sheriff or other local law enforcement agency.

(4) "Out-of-state prisoner" or "out-of-state inmate" means a person who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility in the state of Idaho, or who is being transported in any manner within or through the state of Idaho.

(5) "Prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated or on parole for that crime or in custody for trial and sentencing, or who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility, or who is being transported in any manner within or through the state of Idaho. The term shall be construed to include references to terms including, but not limited to, "inmate," "convict," "detainee," and other similar terms, and shall include "out-of-state prisoner" and "out-of-state inmate."

(6) "Private correctional facility" or "private prison (facility)" means a correctional facility constructed or operated in the state of Idaho by a private prison contractor.

(7) "Private prison contractor" means any person, organization, partnership, joint venture, corporation or other business entity engaged in the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private correctional facilities or any combination of these services.

(8) "State correctional facility" means a facility for the confinement of prisoners, owned or operated by or under the control of the state of Idaho. The term shall include references to "state prison," "state penitentiary" or "state penal institution (facility)." The term shall also include a private correctional facility housing prisoners under the custody of the board of correction.

SECTION 2. That Chapter 1, 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 18-101B, Idaho Code, and to read as follows:

18-101B. CRIMINAL LAWS APPLICABLE TO OUT-OF-STATE PRISONERS AND PERSONNEL OF PRIVATE CORRECTIONAL FACILITIES. (1) An out-of-state prisoner and personnel of a private prison contractor employed at a private correctional facility in the state of Idaho shall be subject to all criminal laws of the state of Idaho.

(2) Any offense which would be a criminal act if committed by an in-state prisoner housed in a state, local or private correctional facility, or in custody during transport within or through the state of Idaho, including escape from such facility or during transport, and any penalty for such offense, shall apply in all respects to an out-of-state prisoner.

(3) Any offense which would be a criminal act if committed by an officer, employee or agent of a state or local correctional facility, and any penalty for such offense, shall apply in all respects to the officers, employees and agents of a private correctional facility located in the state of Idaho.

SECTION 3. That Section 18-915, Idaho Code, be, and the same is hereby amended to read as follows:

18-915. ASSAULT OR BATTERY UPON CERTAIN PERSONNEL -- PUNISHMENT. Any person who commits a crime provided for in this chapter against or upon a justice, judge, magistrate, prosecuting attorney, public defender, peace officer, bailiff, marshal, sheriff, police officer, correctional officer, employee of the department of correction, employee of a private prison contractor while employed at a private correctional facility in the state of Idaho, employees of the department of water resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code, jailer, parole officer, officer of the state department of law enforcement, fireman, social caseworkers or social work specialists of the department of health and welfare, employee of a state secure confinement facility for juveniles,

employee of a juvenile detention facility, a teacher at a detention facility or a juvenile probation officer, emergency medical technician certified by the department of health and welfare, emergency medical technician-ambulance certified by the department of health and welfare, advanced emergency medical technician and EMT-paramedic certified by the state board of medicine, United States marshal, or federally commissioned law enforcement officer or their deputies or agents and the perpetrator knows or has reason to know of the victim's status, the punishment shall be as follows:

(a) For committing battery with intent to commit a serious felony the punishment shall be imprisonment in the state prison not to exceed twenty-five (25) years.

(b) For committing any other crime in this chapter the punishment shall be doubled that provided in the respective section.

(c) For committing a violation of the provisions of section 18-901 or 18-903, Idaho Code, against the person of a justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, <u>or of a private correctional facility,</u> or of an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility or a juvenile probation officer and the person committing the offense knows or reasonably should know that such victim is a justice, judge or magistrate, jailer or correctional officer <u>or other staff of the department of correction, or of a private correctional facility,</u> an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility or a juvenile probation officer engaged in the performance of his duties, and the victim is engaged in the performance of his duties, the offense shall be a felony punishable by imprisonment in ~~the state prison~~ <u>a correctional facility</u> for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

SECTION 4. That Section 18-915A, Idaho Code, be, and the same is hereby amended to read as follows:

18-915A. REMOVING A FIREARM FROM A LAW ENFORCEMENT OFFICER. (1) A person may not knowingly remove or attempt to remove a firearm from the possession of another person if:

(a) The other person is lawfully acting within the course and scope of employment; and

(b) The person knows or has reason to know that the other person is employed as any of the following:

(i) A law enforcement officer who, in an official capacity, is authorized to make arrests; or

(ii) An employee of the Idaho board of correction~~s~~, ~~of~~ the Idaho department of juvenile corrections, ~~of~~ any prison, jail, detention or booking facility <u>or private correctional facility</u> within the state, or ~~of~~ the commission of pardons and parole.

(2) A person who violates this section is guilty of a felony.

(3) A sentence imposed for a violation of this section may be imposed separate from and consecutive to or concurrent with a sentence

for any offense based on the act or acts establishing the offense under this section.

SECTION 5. That Section 18-2502, Idaho Code, be, and the same is hereby amended to read as follows:

18-2502. OFFICERS ASSISTING IN ESCAPE. ~~Every keeper of a prison,~~ Any sheriff, deputy sheriff, ~~constable or jailor, or person employed as a guard~~ peace officer, correctional officer or other employee of a correctional facility, as defined in section 18-101A, Idaho Code, including a private correctional facility, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the state prison not exceeding ten (10) years, and fine not exceeding ten thousand dollars ($10,000). Every such officer or person who negligently suffers such escape is guilty of a misdemeanor.

SECTION 6. That Section 18-2505, Idaho Code, be, and the same is hereby amended to read as follows:

18-2505. ESCAPE BY ONE CHARGED WITH, CONVICTED OF, OR ON PROBATION FOR A FELONY -- ESCAPE BY JUVENILE. (1) Every prisoner charged with, convicted of, or on probation for a felony who is confined in any ~~jail or prison including the state penitentiary or~~ correctional facility, as defined in section 18-101A, Idaho Code, including any private ~~prison~~ correctional facility, or who while outside the walls of such ~~jail or prison~~ correctional facility in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such ~~jail or prison~~ correctional facility, who escapes or attempts to escape from such officer or person, or from such ~~jail or prison~~ correctional facility, or from such factory, farm or other place without the walls of such ~~jail or prison~~ correctional facility, shall be guilty of a felony, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged.

(2) Any person under the age of eighteen (18) years charged with, found to have committed, or on probation for an offense which would be a felony if committed by an adult who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of any officer or person shall be subject to proceedings under chapter 5, title 20, Idaho Code, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to sections 20-508 or 20-509, Idaho Code, the juvenile shall be guilty of a felony for a violation of this section and shall be subject to adult criminal proceedings.

SECTION 7. That Section 18-2507, Idaho Code, be, and the same is hereby amended to read as follows:

18-2507. EXPENSE OF PROSECUTION -- HOW PAID. Whenever a person is prosecuted under any of the provisions of section 18-2505, Idaho Code, and whenever a ~~state convict~~ prisoner in the custody of the board of

correction housed in ~~the~~ a state ~~prison~~ correctional facility, as defined in section 18-101A, Idaho Code, shall be prosecuted for any crime committed therein, the clerk of the district court shall make out a statement of all the costs incurred by the county for the prosecution of such case, and for the guarding and keeping of such ~~convict~~ prisoner, and when certified by the judge who tried the case, such statement shall be audited by the board of examiners. If approved, the board of examiners shall submit the claim, with a request for an appropriation, to the legislature at its first session after the rendition of such claim. If the legislature appropriates funds for such claim, the amount shall be paid by the board of examiners to the treasurer of the county where the trial was had. The provisions of this section shall apply to prosecution of a prisoner in the custody of the board of correction and housed in a private correctional facility unless otherwise provided for in any contract between the state of Idaho and the private prison contractor entered into pursuant to chapter 2, title 20, Idaho Code.

Costs of prosecution of out-of-state prisoners housed in a private correctional facility shall be recoverable from the private prison contractor, as provided in section 20-809, Idaho Code.

SECTION 8. That Section 18-2510, Idaho Code, be, and the same is hereby amended to read as follows:

18-2510. ILLICIT CONVEYANCE OF ARTICLES INTO CORRECTIONAL FACILITIES. (1) If any person delivers or procures to be delivered, or has in his possession with intent to be delivered in any manner, to a ~~convict~~ prisoner of any state correctional facility, or deposits or conceals in or about the facility or dependencies thereon, or upon any lands belonging or pertaining thereto, or in any vehicle going into the premises belonging to the said facility, any letter, article or thing with the intent that a ~~convict~~ prisoner confined in said facility shall obtain or receive the same, or if any person receives from any ~~convict~~ prisoner of said facility, any letter, article or thing with intent to convey the same out of the facility contrary to the rules ~~and--regulations~~ thereof, and without the knowledge and permission of the warden of said facility, or if any person shall purchase, exchange, take or receive from any ~~convict~~ prisoner thereof while he may be working outside said facility, any letter, article or thing, whether state or other property, manufactured or used in and about said facility, without the knowledge and permission of the warden of said facility, such person shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding three hundred dollars ($300), or imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment.

(2) As used in this section, a~~A~~ correctional facility is a facility for housing persons committed or transferred to the custody of the board of correction, ~~except--for~~ or a private correctional facility housing prisoners under the custody of the board of correction or housing out-of-state prisoners, as defined in section 18-101A, Idaho Code, but shall not include facilities operated by, or under the control of, other agencies of state, county or municipal government.

SECTION 9. That Section 18-6110, Idaho Code, be, and the same is hereby amended to read as follows:

18-6110. SEXUAL CONTACT WITH ~~AN INMATE~~ PRISONER. It is a felony for any officer, employee or agent of a ~~jail or~~ state, local or private correctional facility, as those terms are defined in section 18-101A, Idaho Code, to have sexual contact with ~~an inmate of~~ a prisoner, whether an in-state or out-of-state prisoner, as those terms are defined in section 18-101A, Idaho Code, housed in such facility. For the purposes of this section "sexual contact" means sexual intercourse, genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex.

Any person found guilty of sexual contact with ~~an inmate~~ a prisoner is punishable by imprisonment in the state prison for a term not to exceed life.

SECTION 10. That Section 20-805, Idaho Code, be, and the same is hereby amended to read as follows:

20-805. CONTRACTS WITH A PRIVATE PRISON CONTRACTOR. (1) A board of county commissioners or the governing body of a city, may enter into a contract with a private prison contractor for the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private prison facilities or any combination of these services, subject to the following requirements and limitations:

(a) Any request for proposals, any original contract, any contract renewal, any price or cost adjustment or any other amendment to any contract for the incarceration of individuals in a private prison facility shall be reviewed and approved by the contracting authority;

(b) No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the contracting authority that the contractor possesses the necessary qualifications and experience to provide the services specified in the contract; that the contractor can provide the necessary qualified personnel to implement the terms of the contract; that the financial condition of the contractor is such that the terms of the contract can be fulfilled; that the contractor has the ability to comply with applicable court orders and corrections standards; and that the proposed private prison facilities or the correctional services proposed by the contractor meet constitutional minimums;

(c) The contract shall provide for the assumption of liability by the private prison contractor for all claims arising from the services performed under the contract by the private prison contractor;

(d) No contract authorized by the provisions of this section shall be awarded until the private prison contractor demonstrates to the satisfaction of the contracting authority that the contractor can obtain insurance or provide self-insurance for the contractor and its officers, guards, employees and agents against all

claims, including claims based on violations of civil rights, arising from the services performed under the contract by the private contractor and to indemnify the contracting authority against all claims, including claims based on violations of civil rights, arising from the services performed under the contract and to compensate the contracting authority for any losses incurred due to the operation of private prison facilities;

(e) If the contract includes construction, the contract shall require a performance bond approved by the contracting authority that is adequate and appropriate for the proposed construction contract;

(f) Except as otherwise permitted under the constitution or laws of the state of Idaho, no contract awarded pursuant to this section shall provide for the encumbrance of funds beyond the amount available for a fiscal year.

(2) Any contract between a contracting authority and a private prison contractor, whereby the contractor provides for the housing, care, and control of inmates in a facility operated by the contractor, shall contain, in addition to other provisions, terms and conditions:

(a) A requirement that the contractor provide the services in a facility which meets correctional standards satisfying constitutional minimums, state and federal laws and applicable court orders;

(b) If a private prison contractor enters into a contract with a board of county commissioners for a private prison facility to be located on private land within the limits of any city, it shall be required that the contractor obtain written authorization from the governing body of the city in which the facility is to be located;

(c) If a private prison facility is to be located on land owned by the county or the city or other publicly owned land which is not subject to real property taxes, the contract may provide for the payment of a fee to the contracting authority which shall be in lieu of property taxes, as compensation for the costs of regulating, monitoring and providing services to the facility;

(d) A requirement that the private prison contractor provide training to its personnel to a level acceptable to the contracting authority. The provisions of this section shall not be construed to confer peace officer status upon any employee of the private prison contractor or to authorize the use of firearms except to prevent escape from the facility or from custody while being transported to or from the facility or to prevent an act which would cause death or serious bodily injury to any person. The provisions of this section shall not be construed to confer county or city employee status upon any employee of the private prison contractor.

(e) A requirement that the private prison contractor, its officers, guards, employees, and agents immediately notify the county sheriff and any other law enforcement or other governmental entities, agencies or personnel named in the contract or required to be informed as provided in this chapter of any riot, rebellion, escape or other emergency situation occurring at the facility, and a requirement that the private prison contractor reimburse costs as provided in section 20-809, Idaho Code.

(3) Contracts awarded under the provisions of this section shall, at a minimum, comply with the following:

(a) Provide for internal and perimeter security to protect the public, employees and inmates;

(b) Provide that the private prison contractor shall not benefit financially from the labor of inmates nor shall any inmate ever be placed in a position of authority over another inmate. Any profits realized from the operation of a prison enterprise program shall revert to the contracting authority;

(c) Impose discipline on inmates only in accordance with applicable rules, policies and procedures satisfying constitutional minimums, state and federal laws and applicable court orders;

(d) Provide proper food, clothing, housing and medical care as provided for in the contract.

(4) The contracting authority or its designee, as provided in the contract, shall monitor the performance of the private prison contractor. Included in the powers and responsibilities of the contracting authority or its designee, when acting as the contract monitor of the private prison contract are:

(a) A determination if the requirements of the contract are being satisfactorily performed;

(b) A determination whether the private prison contractor and its personnel are complying with the provisions of this chapter;

(c) A determination if applicable ordinances, policies and procedures of the contracting authority are being followed by the private prison contractor and its personnel;

(d) A determination whether the facility is being operated in a manner which adequately safeguards and protects the safety of the public;

(e) Approval of all inmate releases on furlough or work release;

(f) The enactment of ordinances or the adoption of written policies or procedures interpreting or making specific application of the provisions of this section.

SECTION 11. That Section 20-807, Idaho Code, be, and the same is hereby amended to read as follows:

20-807. OUT-OF-STATE INMATES. (1) A board of county commissioners may authorize a private prison contractor operating a private prison facility within the county and the governing body of a city may authorize a private prison contractor operating a private prison facility within the city to house minimum to medium security inmates convicted of offenses committed against the laws of a governmental entity other than the state of Idaho or its political subdivisions.

(2) Out-of-state inmates may be housed in a private prison facility only if the following requirements are met:

(a) The custody level capacity and availability in the private prison facility is adequate to house the inmates;

(b) The private prison contractor and the board of county commissioners or the governing body of the city, in cooperation with state and local law enforcement agencies, and other appropriate governmental entities and agencies, have developed a written plan explaining the procedure to be used to coordinate law enforcement

and other necessary activities in response to any riot, rebellion, escape or other emergency situation occurring in the facility.

(c) The private prison facility satisfies standards for the care, custody, treatment and control of inmates which comply with constitutional minimums, state and federal laws and applicable court orders and any additional standards required by the county or the city;

(d) Each inmate to be released from custody must be released in the sending governmental entity's jurisdiction;

(e) Before transferring the inmate to Idaho, the receiving facility shall review:

(i) All records concerning the sending governmental entity's classification of the inmate, including records relating to the inmate's conduct while confined in the sending governmental entity; and

(ii) Appropriate medical information concerning the inmate, including certification of tuberculosis screening or treatment and certification that the inmate has undergone HIV testing with negative results.

(f) The sending governmental entity will not transfer and the receiving facility will not accept an inmate who has a record of institutional violence involving the use of a deadly weapon or a pattern of violence while confined in a facility within the sending governmental entity's jurisdiction or a record of escape or attempted escape from secure custody;

(g) The receiving facility will determine the inmate's custody level in order to ensure that the custody level assignments for the facility as a whole are compatible with the construction security level availability in the facility. If it is determined by the county or the city or the private prison contractor that the inmate poses a substantial risk to the community, prison population or staff or should be classified as maximum security, the inmate will be returned to the sending governmental entity; and

(3) The private prison contractor shall reimburse costs as specified in section 20-809, Idaho Code.

(4) Neither this section nor any other provision of this chapter shall be construed to authorize the release of an out-of-state inmate confined in a private prison facility on work release, furlough or other release from the facility except as provided in any contract authorized in this chapter or with the express written approval of the board of county commissioners of the county in which the facility is located or the governing body of the city in which the facility is located, or as provided by county or city ordinance.

(5) The provisions of this section shall not be construed as a limitation upon the authority of the state of Idaho, a county or a city of this state to incarcerate, detain or place a person convicted of an offense committed against the laws of the United States, a territory of the United States, another state or a political subdivision thereof in a correctional facility, county jail or other governmental detention facility in this state pursuant to the laws of the United States, the state of Idaho or other applicable law.

SECTION 12. That Sections 20-810 and 20-811, Idaho Code, be, and the same are hereby repealed.

SECTION 13. That Section 31-3220A, Idaho Code, be, and the same is hereby amended to read as follows:

31-3220A. PRISONER INABILITY TO PAY FEES AT TIME OF FILING OF ACTION -- DISMISSAL OF ACTION. (1) For the purposes of this section, the following definitions shall apply:

(a) "Action" means a civil suit, action, proceeding, or appeal of any such action, including habeas corpus, but excluding proceedings brought pursuant to chapter 49, title 19, Idaho Code.

(b) "Indigent prisoner" means a prisoner who has had no funds in his inmate account for the twelve (12) months preceding filing of the action, or the period of his incarceration, whichever is less.

(c) "Inmate account" means an account managed by officials of ~~county jails or state prisons~~ state, local or private correctional facilities, as defined in section 18-101A, Idaho Code, to which the prisoner has access to purchase personal property from the ~~jail or prison~~ correctional facility's commissary in addition to property and supplies provided by the county, or state or private correctional facility to meet the prisoner's basic needs.

(d) "Prisoner" ~~means a person who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing~~ shall have the meaning provided in section 18-101A, Idaho Code.

(2) A prisoner who seeks to file an action without payment of court fees or with partial payment of court fees required in sections 31-3201 and 31-3201A, Idaho Code, shall file the following at the time of filing of an action:

(a) A motion to proceed without payment of court fees or for partial payment of court fees under this section;

(b) An affidavit of inability to pay court fees as set forth in section 31-3220(3), Idaho Code; and

(c) A certified copy of his inmate account that reflects the activity of his account over his period of incarceration or for twelve (12) months, whichever is less. The copy of the prisoner's inmate account shall be certified by a custodian of inmate accounts of the office of the county sheriff, ~~or~~ the department of correction, or the private correctional facility.

Upon filing of the action and motion to proceed under this section, the prisoner shall also serve a copy of each document filed in compliance with this subsection upon counsel for the county sheriff, ~~or~~ the department of correction, or the private correctional facility.

(3) If the court finds that the prisoner is an indigent prisoner, the court may order the action to proceed without payment of any court fees.

(4) If the court finds that the prisoner is not an indigent prisoner, the court shall order the prisoner to pay all or part of the court fees as set forth in sections 31-3201 and 31-3201A, Idaho Code.

(5) The court may dismiss an action filed under this section, in whole or in part, on its own motion or by motion of a party, upon a finding that:

(a) The nonindigent prisoner has failed to pay the court fees under subsection (4) of this section within thirty (30) days of the entry of the order for court fees, or any time thereafter; or

(b) Any allegation in the prisoner's affidavit filed under this section is false.

(6) If the action or any part of it is dismissed without prejudice under subsection (5) of this section, and the prisoner refiles the action, the following shall apply:

(a) The requirements under this section must be met again in their entirety; and

(b) No amount paid for court fees in any action, or any part thereof, shall be credited to the court fees required under sections 31-3201 and 31-3201A, Idaho Code.

(7) The court may refuse further filings under this section until the order for court fees has been satisfied in any previous action filed under this section.

(8) The office of the attorney general, the county prosecutor, or other counsel for the defendant or respondent, is authorized to receive information from the county sheriff, or department of correction, or private correctional facility in order to verify the financial information submitted by a prisoner pursuant to this section.

(9) The court may request an official or officials of the county jail, or department of correction, or private correctional facility to file an affidavit concerning the allegations in the prisoner's affidavit or concerning the merits of the action prior to determination whether to proceed under this section.

(10) The court may require the prisoner to file an affidavit that the claim has not been previously brought against the same parties or from the same operative facts in any state or federal court.

(11) The court may dismiss an action or a portion of the action under this section, before or after service, on its own motion or by motion of a party, upon a finding that:

(a) Any allegation in the affidavit or the action is false;

(b) The action is frivolous;

(c) The action is malicious; or

(d) The action fails to state a claim upon which relief can be granted.

(12) If a portion of the action is dismissed, the court's order dismissing the action shall also designate the issues and the defendant or respondent upon which the action is to proceed.

(13) The court shall award reasonable costs and attorney fees to the defendant or respondent if the court finds that:

(a) Any allegation in the prisoner's affidavit is false;

(b) The action or any part of the action is frivolous or malicious; or

(c) The action or any part of the action is dismissed for failure to state a claim upon which relief can be granted.

(14) Orders entered under this section are not subject to interlocutory appeal.

(15) Nothing in this section shall prevent a prisoner from authorizing payment beyond that required under the order for filing fees.

(16) Nothing in this section shall be construed to prohibit a prisoner from filing an action without payment of filing fees if he is

found to be an indigent prisoner as defined in subsection (1)(b) of this section.

(17) If the court authorizes the commencement of the action or any part of the action without payment of fees upon a finding that the prisoner is an indigent prisoner, and the court later finds that a prisoner is no longer an indigent prisoner, the court may order the prisoner to comply with the requirements of subsection (2) of this section and enter an order for court fees. The court's finding under this subsection may be based on information contained in affidavits or other information available to the court.

(18) The court may develop a form questionnaire which it may require by local rule to be filed to implement this statute.

(19) This section is intended as a procedural guideline only, and nothing herein shall be interpreted to create a liberty interest for prisoners entitling them to due process protection under the Idaho constitution or the United States constitution.

SECTION 14. 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 April 12, 2000.

CHAPTER 273
(S.B. No. 1397, As Amended in the House)

AN ACT

RELATING TO SETTING THE UNITED STATES FLAG AND STATE FLAG AT HALF-STAFF; AMENDING CHAPTER 8, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-818, IDAHO CODE, TO PROVIDE THAT FLAGS AT STATE AND LOCAL GOVERNMENT BUILDINGS SHALL BE FLOWN AT HALF-STAFF FOR DEATHS IN THE LINE OF DUTY FOR POLICE, FIREFIGHTERS, PARAMEDICS OR EMTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 8, 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 67-818, Idaho Code, and to read as follows:

67-818. FLAGS FLOWN AT HALF-STAFF -- DEATH IN LINE OF DUTY FOR POLICE, FIREFIGHTERS, PARAMEDICS OR EMTS. The governor, upon timely notification and verification of the death of a federal, state or local law enforcement officer, firefighter, paramedic or emergency medical technician who is employed or volunteering for an agency in the state of Idaho and who died in the line of duty, shall direct that the flag of the United States and the state flag be flown at half-staff, from the time of notification to the governor until the day following the memorial service, at the state capitol building and at other state and local government buildings. The flags shall be flown

upon an existing flagstaff or flagstaffs or, at the option of the governor, a flagstaff or flagstaffs erected at an appropriate site, after consultation with organizations representing law enforcement officers, firefighters, paramedics or emergency medical technicians regarding the location and design of the flagstaff or flagstaffs. The flag flown over the capitol building in honor of the deceased shall be presented to the family.

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 April 13, 2000.

CHAPTER 274
(S.B. No. 1365, As Amended in the House)

AN ACT

RELATING TO GOVERNANCE OF RESIDENTIAL OR ASSISTED LIVING FACILITIES AND SERVICES; AMENDING SECTION 15-2-616, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 31-3502, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-3503, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-3513, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-1301, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-1301a, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO DEFINE CONDITIONS FOR A WAIVER; AMENDING CHAPTER 13, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-1301B, IDAHO CODE, TO AUTHORIZE AND GOVERN NURSING FACILITY CONVERSIONS; AMENDING SECTION 39-2411, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3301, IDAHO CODE, TO CLARIFY LEGISLATIVE INTENT; AMENDING SECTION 39-3302, IDAHO CODE, TO FURTHER DEFINE TERMS, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-3303, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 39-3304, 39-3305, 39-3306 AND 39-3307, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3310, IDAHO CODE, TO SPECIFY CONDITIONS FOR REVIEW; AMENDING SECTION 39-3311, IDAHO CODE, TO INCLUDE REFERENCE TO AUTHORIZED PROVIDER; AMENDING SECTION 39-3313, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3314, IDAHO CODE, TO STRIKE OBSOLETE LANGUAGE; AMENDING SECTION 39-3315, IDAHO CODE, TO INCLUDE REFERENCE TO AUTHORIZED PROVIDER AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-3316, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 39-3318, 39-3319 AND 39-3320, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3321, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO GOVERN QUALIFICATIONS OF ADMINISTRATOR OR OPERATOR; AMENDING SECTION 39-3322, IDAHO CODE, TO GOVERN REQUIREMENTS FOR FACILITY STAFF; AMENDING SECTIONS 39-3324 AND 39-3325, IDAHO CODE,

TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3330, IDAHO CODE, TO PROVIDE MEMBERSHIP OF THE BOARD AND CARE COUNCIL AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 39-3331, 39-3340, 39-3341, 39-3342, 39-3345, 39-3348, 39-3349, 39-3350, 39-3352, 39-3353 AND 39-3354A, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3355, IDAHO CODE, TO GOVERN INSPECTIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 39-3357, 39-3358 AND 39-3359, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3370, IDAHO CODE, TO PROVIDE THE PURPOSE OF CERTIFIED FAMILY HOMES AND TO GOVERN WAIVERS; AMENDING SECTION 39-3371, IDAHO CODE, TO PROVIDE AUTHORITY TO GOVERN CERTIFIED FAMILY HOMES, TO AUTHORIZE WAIVERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 39-3372, 39-3373, 39-3374, 39-3375 AND 39-3378, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3379, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO GOVERN INSPECTIONS; AMENDING SECTIONS 39-3380, 39-3381 AND 39-3382, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3383, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-3384, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3385, IDAHO CODE, TO GOVERN CONDITIONS OF A SERVICE PLAN; AMENDING SECTIONS 39-3386, 39-3387, 39-3388 AND 39-3389, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3393, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 39-3501, IDAHO CODE, TO REVISE LEGISLATIVE INTENT, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-3502, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTIONS 39-3503, 39-3505, 39-3506 AND 39-3507, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3510, IDAHO CODE, TO GOVERN REQUIREMENTS FOR PERIODIC REVIEW; AMENDING SECTION 39-3511, IDAHO CODE, TO INCLUDE REFERENCE TO AUTHORIZED PROVIDER; AMENDING SECTION 39-3513, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3515, IDAHO CODE, TO INCLUDE REFERENCE TO AUTHORIZED PROVIDER AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 39-3516, 39-3518, 39-3519 AND 39-3520, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3521, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO GOVERN QUALIFICATIONS OF ADMINISTRATOR OR OPERATOR; AMENDING SECTIONS 39-3522, 39-3524 AND 39-3525, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3530, IDAHO CODE, TO INCREASE THE SIZE OF THE RESIDENTIAL OR ASSISTED LIVING COUNCIL FOR THE ELDERLY AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 39-3531, 39-3532, 39-3533, 39-3540, 39-3541, 39-3542, 39-3545, 39-3548, 39-3549, 39-3550, 39-3552, 39-3553 AND 39-3554A, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3555, IDAHO CODE, TO GOVERN REQUIREMENTS FOR INSPECTIONS; AMENDING SECTIONS 39-3557, 39-3558 AND 39-3559, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3560, IDAHO CODE, TO SPECIFY PURPOSES OF CERTIFIED FAMILY HOMES AND TO AUTHORIZE A WAIVER; AMENDING SECTION 39-3561, IDAHO CODE, TO AUTHORIZE A WAIVER OF CERTAIN PROHIBITIONS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 39-3562, 39-3563, 39-3564 AND 39-3568, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3569, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO

GOVERN INSPECTION INTERVALS; AMENDING SECTIONS 39-3570, 39-3571 AND 39-3572, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3573, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING CHAPTER 35, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-3573A, IDAHO CODE, TO GOVERN PHYSICIAN'S ORDERS FOR CERTIFIED FAMILY HOMES; AMENDING SECTION 39-3574, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTIONS 39-3575, 39-3576, 39-3577 AND 39-3578, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-3580, IDAHO CODE, TO PROVIDE A CORRECT REFERENCE AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-4803, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-5303, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 39-5304 AND 39-5308, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 39-5601, IDAHO CODE, TO PROVIDE A STATEMENT OF LEGISLATIVE INTENT; AMENDING SECTION 39-5602, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-5603, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO FURTHER DEFINE CONDITIONS RELATED TO PROVISION OF PERSONAL ASSISTANCE SERVICES; AMENDING SECTION 39-5604, IDAHO CODE, TO REQUIRE HEALTH AND BACKGROUND CHECKS; AMENDING SECTION 39-5605, IDAHO CODE, TO GOVERN TRAINING OF PERSONAL ASSISTANTS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-5606, IDAHO CODE, TO CLARIFY PAYMENT PROVISIONS; AMENDING CHAPTER 56, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-5607, IDAHO CODE, TO SPECIFY THE EFFECT OF PERSONAL ASSISTANCE AGENCY RATES; AMENDING SECTION 39-5608, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE CORRECT CODE REFERENCES; AMENDING CHAPTER 56, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-5609, IDAHO CODE, TO PROVIDE CREATION AND MEMBERSHIP OF THE PERSONAL ASSISTANCE OVERSIGHT COMMITTEE; AMENDING SECTION 54-1601, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-1705, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 54-4201, 54-4202, 54-4203, 54-4204, 54-4205, 54-4206, 54-4207 AND 54-4208, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-4209, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 54-4210, 54-4211, 54-4212 AND 54-4213, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 56-101, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 56-120, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 56-201, 63-701, 63-3022K, 66-402, 67-2601 AND 67-2602, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-6532, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 15-2-616, Idaho Code, be, and the same is hereby amended to read as follows:

15-2-616. RESTRICTION ON DEVISES TO NURSING HOME OR RESIDENTIAL ~~CARE-HOME~~ OR ASSISTED LIVING FACILITY OPERATORS. A devise or bequest

involving either real or personal property, directly or indirectly, to any person who owns, operates or is employed at a nursing home, residential ~~care-home~~ or assisted living facility or any home, including the testator's home, whether or not licensed, in which the testator was a resident within one (1) year of his death shall be presumed to have been the result of undue influence, rebuttable by clear and convincing evidence. This section shall apply to all property passing by testate succession after July 1, 1983, regardless of when the will was written; provided, this section shall in no way limit or affect the rights of a beneficiary who is related to the testator, or who is a charitable or benevolent society or corporation; provided further that the foregoing limitations shall not apply to wills of persons whose death is caused by accidental means and whose wills are executed prior to the accident which results in death.

SECTION 2. 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~~ <u>or assisted living</u> 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 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.

SECTION 3. That Section 31-3503, Idaho Code, be, and the same is hereby amended to read as follows:

31-3503. POWERS AND DUTIES OF BOARDS OF COUNTY COMMISSIONERS. The boards of county commissioners in their respective counties shall, under such limitations and restrictions as are prescribed by law:

(1) Care for and maintain the medically indigent residents of their counties as provided in this chapter up to ten thousand dollars ($10,000) per claim in the aggregate over a twelve (12) month period with the remainder being paid by the state catastrophic health care cost program pursuant to section 31-3519, Idaho Code.

(2) Have the right to contract, transfer patients, negotiate provider agreements, and all other powers incident to the duties created by this chapter.

(3) From July 1, 1997, through June 30, 1998, pay for emergency services for a nonresident to the point of stabilization as set forth in section 31-3507, Idaho Code, and when necessary, for costs of transfer to the nonresident's place of residence, up to five thousand dollars ($5,000) per claim in the aggregate over a twelve (12) month period with the remainder being paid by the state catastrophic health care cost program pursuant to section 31-3519, Idaho Code, unless such nonresident is from a state which has a reciprocal agreement pursuant to section 31-3503B, Idaho Code, and qualifies for necessary medical services under that agreement.

(4) Have the jurisdiction and power to provide county hospitals

and public general hospitals for the county and others who are sick, injured, maimed, aged and infirm and to erect, enlarge, purchase, lease, or otherwise acquire, and to officer, maintain and improve hospitals, hospital grounds, nurses' homes, shelter care facilities and residential ~~care-homes~~ or assisted living facilities as defined in section 39-3301, Idaho Code, superintendent's quarters, medical clinics, as that term is defined in section 39-1319, Idaho Code, medical clinic grounds or any other necessary buildings, and to equip the same, and to replace equipment, and for this purpose said boards may levy an additional tax of not to exceed six hundredths percent (.06%) of the market value for assessment purposes on all taxable property within the county. The term "public general hospitals" as used in this subsection shall be construed to include nursing homes.

SECTION 4. That Section 31-3513, Idaho Code, be, and the same is hereby amended to read as follows:

31-3513. ELECTION FOR ISSUANCE OF BONDS. The county commissioners may, when they deem the welfare of their counties require it, or when petitioned thereto by a number of resident taxpayers of their respective counties equal to five ~~per-cent~~ percent (5%) of the number of persons voting for the secretary of state of the state of Idaho, at the election next preceding the date of such petition, submit to the qualified electors of said county at any election held as provided in section 34-106, Idaho Code, the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing such hospital, hospital grounds, nurses' homes, nursing homes, residential ~~care-homes~~ or assisted living facilities, shelter care facilities, medical clinics, superintendent's quarters, or any other necessary buildings, and equipment, and may on their own initiative submit to the qualified electors of the county at any general election the proposition whether negotiable coupon bonds of the county to the amount stated in such proposition shall be issued and sold for the purpose of providing for the extension and enlargement of existing hospital, hospital grounds, nurses' homes, nursing homes, residential ~~care-homes~~ or assisted living facilities, shelter care facilities, medical clinics or grounds, superintendent's quarters, or any other necessary buildings, and equipment, and when authorized thereto by two-thirds (2/3) vote at such election, shall issue and sell such coupon bonds and use the proceeds therefrom for the purposes authorized by such election. Said proposition may be submitted to the qualified electors at an election held subject to the provisions of section 34-106, Idaho Code, if the board of county commissioners shall by resolution so determine. No person shall be qualified to vote at any election held under the provisions of this section unless he shall possess all the qualifications required of electors under the general laws of this state.

The board shall be governed in calling and holding such election and in the issuance and sale of such bonds, and in the providing for the payment of the principal and interest thereon by the provisions of sections 31-1901 through 31-1909, Idaho Code, and by the provisions of chapter 2, title 57, Idaho Code; provided, however, that when such bonds have been issued and sold and a period of two (2) years or more

has elapsed from the date of sale of said bonds and for any reason the proceeds from the sale of said bonds or other moneys appropriated for the purpose for which said bonds were issued, have not been used for the purpose for which they were appropriated or said bond issue made, the board may, with the written consent of all of the bondholders first having been obtained, submit to the qualified electors, as herein defined, the question of spending such moneys for a definite purpose. The purpose for which it is decided to spend such moneys shall be clearly and plainly stated on the ballot. If a majority of the qualified electors shall vote in favor of spending such moneys for the purpose stated, the board of county commissioners shall proceed in the same manner as if such different purpose had been the original purpose for such bond issue or appropriation. Provided, further that if less than a majority of the qualified electors shall vote in favor of spending such moneys for such different purpose, or if no such election should be had, when all of the bonds shall have been retired, such excess moneys shall be placed in the general fund.

SECTION 5. That Section 39-1301, Idaho Code, be, and the same is hereby amended to read as follows:

39-1301. DEFINITIONS. For purposes of this chapter the following definitions will apply:

(a) "Hospital" means a facility which:

(1) Is primarily engaged in providing, by or under the supervision of physicians,

(a) concentrated medical and nursing care on a twenty-four (24) hour basis to inpatients experiencing acute illness; and

(b) diagnostic and therapeutic services for medical diagnosis and treatment, psychiatric diagnosis and treatment, and care of injured, disabled, or sick persons; and

(c) rehabilitation services for injured, disabled, or sick persons; and

(d) obstetrical care.

(2) Provides for care of two (2) or more individuals for twenty-four (24) or more consecutive hours.

(3) Is staffed to provide professional nursing care on a twenty-four (24) hour basis.

(b) "~~Skilled n~~Nursing facility" (nursing home) means a facility whose design and function shall provide area, space and equipment to meet the health needs of two (2) or more individuals who, at a minimum, require inpatient care and services for twenty-four (24) or more consecutive hours for unstable chronic health problems requiring daily professional nursing supervision and licensed nursing care on a twenty-four (24) hour basis, restorative, rehabilitative care, and assistance in meeting daily living needs. Medical supervision is necessary on a regular, but not daily, basis.

~~(c) "Intermediate-care-facility" (nursing-home) means a facility: (1) Whose design and function shall provide area, space and equipment to meet the restorative, rehabilitative, recreational, intermittent health needs, and daily living needs of two (2) or more individuals who require in-residence care and services for twenty-four (24) or more consecutive hours;~~

~~(2)--Whose-design-and-function-will-provide-for-regular--but--less than-daily-medical-and-skilled-nursing-care.~~

~~(d)~~ "Intermediate care facility for the mentally retarded (ICFMR)" means a nonnursing home facility, designed and operated to meet the unique educational, training, habilitative and medical needs of the developmentally disabled through the provision of active treatment.

(~~e~~d) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(~~f~~e) "Government unit" means the state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof.

(~~g~~f) "Licensing agency" means the department of health and welfare.

(~~h~~g) "Board" means the board of health and welfare.

(~~i~~h) "Physician" means an individual licensed to practice medicine and surgery by the Idaho state board of medicine or the Idaho state board of podiatry.

(i) "Authorized provider" means an individual who is a nurse practitioner or clinical nurse specialist, licensed to practice in Idaho in accordance with the Idaho nurse practice act; or a physician's assistant, licensed by the Idaho state board of medicine.

SECTION 6. That Section 39-1301a, Idaho Code, be, and the same is hereby amended to read as follows:

39-1301~~a~~A. WAIVERS FOR ~~PERSONAL--CARE-SERVICES~~ CERTIFIED FAMILY HOMES ~~FROM-NURSING-FACILITY-AND-INTERMEDIATE-CARE-FACILITY~~ -- DEFINITIONS. ~~The--Idaho--department--of--health--and-welfare-shall-have-the authority-to--grant--personal--care--services--homes--that--have--been approved--pursuant--to--IDAPA-16.03.09.146.06.f.ix,-a-waiver-from-sections-39-1301(b)-and-(c)-(1),-Idaho-Code,-to-permit-no-more--than--two (2)-persons,-both-of-whom-meet-the-level-of-care-defined-in-those-sections,--to--reside-in-the-same-personal-care-services-home,-regardless of-payor-source.-Before-granting-a--waiver--under--this--section,--the department--shall-require,-when-feasible,-written-statements-from-each of-the-two-(2)-persons-or-their-legal-representatives-evidencing-their desire-to-reside-in-the-same-personal-care-services-home~~ (1) Chapter 13, title 39, Idaho Code, shall not have the effect of preventing two (2) persons in need of the care described in section 39-1301(b), Idaho Code, from residing in a certified family home when:

(a) Each of the persons has given a written statement to the department requesting the arrangement and each person making the request is informed, not coerced, and competent; and

(b) The department finds the arrangement safe and effective; and

(c) The department issues a written waiver permitting the arrangement.

(2) The department shall use negotiated rulemaking when promulgating rules to carry out the provisions of this section to ensure a person's ability to choose services and service provider is considered.

(3) The department shall revoke any waiver granted pursuant to

this section where it is determined there is a threat to the life or safety of either person or where one (1) of the persons leaves the ~~personal care services home~~ living arrangement permanently or notifies the department in writing that ~~they do~~ he does not wish to reside in the ~~personal care services home~~ setting with the other individual. Any waiver granted under this section shall be reviewed annually.

SECTION 7. That Chapter 13, 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 39-1301B, Idaho Code, and to read as follows:

39-1301B. NURSING FACILITY CONVERSIONS. (1) A nursing facility that voluntarily reduces the number of its licensed beds to provide residential and assisted living services, certified family home services, adult day health services, respite care, hospice, outpatient therapy services, congregate meals, home health, senior wellness clinic, or other services provided under a medicaid home and community-based services waiver for the aged or disabled may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any portion thereof, shall comply with the same life safety code requirements as existed at the time the nursing facility voluntarily reduced its licensed beds.

(2) To convert beds back to nursing facility beds under this section, the nursing home must:

(a) Give notice of its intent to preserve conversion options to the department no later than thirty (30) days after the effective date of the license reduction; and

(b) Give notice to the department and any affected participant of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given, at a minimum, one (1) year prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given a minimum of ninety (90) days prior to the effective date of license modification reflecting the restored beds.

(3) Conversion of beds back to nursing facility use under this section must be completed no later than four (4) years after the effective date of the license reduction. However, for good cause shown, the four (4) year period for conversion may be extended by the department for an additional four (4) year period.

SECTION 8. That Section 39-2411, Idaho Code, be, and the same is hereby amended to read as follows:

39-2411. PERSONS, ACTIVITIES OR ENTITIES NOT SUBJECT TO REGULATION UNDER THIS CHAPTER. The following are not subject to regulation for the purposes of this chapter:

(1) A family member;

(2) An organization that provides only meal service in a person's residence;

(3) Entities furnishing durable medical equipment that does not involve the delivery of professional services beyond those necessary to set up and monitor the proper functioning of the equipment and educate the user on its proper use;

(4) A professional licensed person who independently provides services in the home;

(5) An employee or volunteer of an agency who provides nonprofessional services only as an employee or volunteer;

(6) Facilities and institutions including, but not limited to, nursing homes, hospitals, boarding homes, developmental disability residential programs, or other facilities and institutions, only when providing services to persons residing within the facility or institution if the delivery of the services is regulated by the state;

(7) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

(8) In-home assessments by licensed professionals of an ill, disabled, or infirm person's ability to adapt to the home environment that does not result in regular ongoing care at home by that licensed professional;

(9) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets' beliefs genuinely held by such adherents;

(10) A medicare approved dialysis center operating a medicare approved home dialysis program;

(11) Case management services which do not include the direct delivery of home health, hospice, or home care services;

(12) A medicare certified hospice agency; and

(13) A state authorized personal ~~care-service-provider~~ assistance agency or personal assistant as defined in chapter 56, title 39, Idaho Code.

SECTION 9. That Section 39-3301, Idaho Code, be, and the same is hereby amended to read as follows:

39-3301. LEGISLATIVE INTENT AND DECLARATION. The purpose of a ~~board--and-care~~ residential or assisted living facility in Idaho is to provide a humane, safe, and home-like living arrangement for persons who are mentally ill, developmentally disabled or physically disabled who need some assistance with activities of daily living and personal care but do not require the ~~level-of~~ care ~~provided-by-nursing-facilities-or-other-institutions~~ identified under section 39-1301(b), Idaho Code, other than for short exceptional stays.

The state will encourage the development of facilities tailored to the needs of individual populations which operate in integrated settings in communities where sufficient supportive services exist to provide the resident, if appropriate, an opportunity to work and be involved in recreation and education opportunities alongside people who are not mentally ill, developmentally disabled or physically disabled. Additional services can be made available in the facility to

meet the resident's identified needs.

The facilities shall be operated and staffed by individuals who have the knowledge and experience required to provide safe and appropriate services to all residents of the facility. The operators shall protect the rights and provide appropriate services to meet the needs of the individual residents.

The department will be responsible for monitoring and enforcing the provisions of this chapter. This responsibility includes, but is not limited to, monitoring the condition of the facility, the individualized, written plan of care including activities of daily living and support services to be provided, and the development of enforcement procedures when violations occur.

Nothing in this chapter is intended to reduce or eliminate any duty of the department or any other public or private entity for provision of services for any resident.

SECTION 10. That Section 39-3302, Idaho Code, be, and the same is hereby amended to read as follows:

39-3302. DEFINITIONS. As used in this chapter:

(1) "Activities of daily living" means the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(2) "Administrator/operator" means any person who has responsibility for day-to-day administration or operation of a licensed residential ~~care~~ or assisted living facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled.

(3) "Adult" means a person who has attained the age of eighteen (18) years.

~~(4) "Adult-foster-care-family"-means-all-individuals--related--by blood--or-marriage,-other-than-residents,-residing-in-the-adult-foster care-home.~~

~~(5)--"Adult-foster-care-home"-means-a-family-home-in-which-two-(2) or-less-adults-are-placed-to-live-who-are-not-able-to-reside-in--their own--home--and--who-require-family-care,-help-in-daily-living,-protection,-security,-and-encouragement-toward-independence-(may-be-referred to-as-a-"home").~~

~~(6)~~ "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of mentally ill, developmentally disabled, or elderly residents.

(~~7~~5) "Assessment" means the conclusion reached using uniform criteria developed by the department and relevant councils for determining a person's need for care and services.

(~~8~~6) "Board" means the board of health and welfare.

(~~9~~7) "Board and care council" means the interdisciplinary group appointed by the director to advise the agency on matters of policy relating to ~~board-and-care~~ residential or assisted living facilities and certified family homes.

(8) "Care provider" means an adult member of the home family responsible for maintaining the certified family home. The care provider and the legal owner may not necessarily be the same person.

(~~10~~9) "Certificate" means a one (1) year certificate issued by the certifying agent of the department to ~~adult-foster-care~~ certified family homes complying with this chapter.

(10) "Certified family home" means a family home in which two (2) or fewer adults are placed to live who are not able to reside in their own home and who require family care, help in daily living, protection, security, and encouragement toward independence (may be referred to as a "home"). Notwithstanding the foregoing, upon application by the owner the department may authorize not more than four (4) adults to be placed in a certified family home which is owner-occupied.

(11) "Certifying agent" means a person ~~representing-the-areas-of social-services,-mental-health-or-developmental--disabilities,~~ acting under the authority of the department to participate in the certification, inspection, and regulation of ~~an-adult-foster-care~~ certified family homc.

(12) "Client" means any person who receives financial aid and/or services from an organized program of the department.

(13) "Continuing" means personal assistance services required over an extended period of time.

(14) "Department" means the Idaho department of health and welfare.

(15) "Director" means the director of the Idaho department of health and welfare.

(16) "Facility" means a licensed residential ~~care~~ or assisted living facility ~~which-provides-services-to-individuals-who-are-mentally ill,-developmentally-disabled-or-physically-disabled~~ or ~~an-adult--foster-care~~ certified family home.

(17) ~~"Foster--care--provider"--means-an-adult-member-of-the-foster care-family-responsible-for-maintaining-the-adult--foster--care--home. The--foster--care--provider-and-the-legal-owner-may-not-necessarily-be the-same-person.~~

(~~18~~) "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board, or other agency thereof.

(18) "Home family" means all individuals related by blood or marriage, other than residents, residing in the certified family home.

(19) ~~"Him-or-his"-means-him-or-her.~~

(~~20~~) "License" means a basic permit to operate a licensed residential ~~care~~ or assisted living facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled.

(2~~1~~0) "Licensee" means the holder of a license to operate a licensed residential ~~care~~ or assisted living facility under this chapter.

(2~~2~~1) "Licensing agency" means the unit of the department of health and welfare that conducts inspections and surveys and issues licenses based on compliance with this chapter.

(2~~3~~2) "Negotiated service agreement" means the agreement reached by the resident and/or their representative and the facility, based on the assessment, physician's orders if any, admission records if any, and desires of the clients, and which outlines services to be provided and the obligations of facility and resident.

(23) "Authorized provider" means an individual who is a nurse

practitioner or clinical nurse specialist, licensed by the Idaho state board of nursing, or a physician assistant, licensed by the Idaho state board of medicine.

(24) "Person" means any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(25) "Personal assistance" means the provision by the staff of the facility of one (1) or more of the following services:

(a) Assisting the resident with activities of daily living.

(b) Arranging for supportive services.

(c) Being aware of the resident's general whereabouts.

(d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and well-being.

(26) "Political subdivision" means a city or county.

(27) "Representative of the department" means an employee of the department.

(28) "Resident" means an adult who ~~resides~~ lives in a licensed residential ~~care~~ or assisted living facility or ~~an adult foster care~~ certified family home ~~who may be mentally ill, developmentally disabled, physically disabled and/or elderly and for whom appropriate care is given~~ and who requires personal assistance or supervision.

(29) "Residential ~~care~~ or assisted living facility" means a facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more developmentally disabled, physically disabled ~~and/~~or mentally ill adults not related to the owner.

(30) "Room and board" means lodging and meals.

(31) "Qualified mental health professional" means a person who is qualified, by training and experience as defined by rules promulgated by the board, to provide services to the mentally ill.

(32) "Qualified mental retardation professional" means a person who is qualified, by training and experience as defined by rules promulgated by the board, to provide services to the mentally retarded.

(33) "Substantial compliance" means there are no deficiencies which ~~would~~ endanger the health, safety, or welfare of the residents. It also means deficiencies affecting resident welfare including resident rights, resident property, and the opportunity, where appropriate, to work and be involved in recreation and education opportunities in the community.

(34) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts, and assistance with activities of daily living. The operator is responsible for providing appropriate supervision based on each resident's negotiated service agreement.

(35) "Supportive services" means the specific services that are provided to the resident in the community and that are required by the negotiated service agreement or reasonably requested by the resident.

SECTION 11. That Section 39-3303, Idaho Code, be, and the same is hereby amended to read as follows:

39-3303. PAYMENT LEVELS. Clients of the department who are mentally ill, developmentally disabled or physically disabled and are receiving financial aid as set out in sections 56-207, 56-208 and 56-209a, Idaho Code, seeking placement in a licensed residential care or assisted living facility or certified family home will be assessed by ~~a~~ the department. Based upon the assessed need, the specific types of services and supports required will determine the level of payment to be received by the resident according to the following criteria:

(1) Level I. The client requires room, board, and supervision and may require one (1) or more of the following:

(a) Minimal assistance with activities of daily living and non-medical personal assistance.

(b) Minimal assistance with mobility, i.e., client is independently mobile.

(c) Minimal assistance in an emergency, i.e., client is capable of self-preservation in an emergency.

(d) Minimal assistance with medications, i.e., client does not require medication management or supervision.

(e) Minimal behavior management substantiated by the client's history.

(2) Level II. The client requires room, board, and supervision and may require one (1) or more of the following:

(a) Moderate assistance with activities of daily living and non-medical personal assistance.

(b) Moderate assistance with mobility, but easily mobile with assistance.

(c) Moderate assistance in an emergency, but client is capable of self-preservation with assistance.

(d) Moderate assistance with medications.

(e) Moderate assistance with behavior management.

(3) Level III. The client requires room, board, and staff up and awake on a twenty-four (24) hour basis and may require one (1) or more of the following:

(a) Extensive assistance with activities of daily living.

(b) Extensive personal assistance.

(c) Extensive assistance with mobility and may be immobile without extensive assistance.

(d) Extensive assistance in an emergency and may be incapable of self-preservation without assistance.

(e) Extensive assistance with and monitoring of medications.

(f) Extensive assistance with training and/or behavior management.

(4) Other levels and amounts as determined by the department pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

SECTION 12. That Section 39-3304, Idaho Code, be, and the same is hereby amended to read as follows:

39-3304. TYPES OF FACILITIES. The state will foster the development of, and provide incentives for, licensed residential care or assisted living facilities serving specific mentally ill and developmentally or physically disabled populations which are small in size to

provide for family and home-like arrangements. Small facilities of eight (8) beds or less for the developmentally or physically disabled population and fifteen (15) beds or less for the mentally ill population will provide residents with the opportunity for normalized and integrated living in typical homes in neighborhoods and communities.

SECTION 13. That Section 39-3305, Idaho Code, be, and the same is hereby amended to read as follows:

39-3305. RULES. The board shall have the authority to adopt, amend, repeal and enforce such reasonable rules as may be necessary or proper to carry out the purpose and intent of this chapter which are designed to protect the health, safety and individual rights of residents in licensed residential ~~care~~ or assisted living facilities and provide adequate nutrition, supervision, and therapeutic recreational activities and to enable the department to exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with any statute of this state. These rules~~, regulations,~~ and standards shall be promulgated in accordance with the provisions of the Idaho administrative procedure act.

SECTION 14. That Section 39-3306, Idaho Code, be, and the same is hereby amended to read as follows:

39-3306. STATE LICENSING TO SUPERSEDE LOCAL REGULATION. This chapter and the rules promulgated pursuant to this chapter shall supersede any program of any political subdivision of the state which licenses or sets standards for licensed residential ~~care~~ or assisted living facilities.

SECTION 15. That Section 39-3307, Idaho Code, be, and the same is hereby amended to read as follows:

39-3307. ADMISSIONS. (1) A licensed residential ~~care~~ or assisted living facility shall not admit or retain any resident requiring a level of services or type of service for which the facility is not licensed or which the facility does not provide or arrange for, or if the facility does not have the staff, appropriate in numbers and with appropriate skills, to provide.

(2) The department shall develop rules governing admissions to licensed residential ~~care~~ or assisted living facilities.

SECTION 16. That Section 39-3310, Idaho Code, be, and the same is hereby amended to read as follows:

39-3310. PERIODIC REVIEW. The negotiated service agreement ~~may~~ shall be reviewed ~~as necessary but must be reviewed at least every six (6) months~~ when a significant change in condition or function occurs or at least every twelve (12) months.

SECTION 17. That Section 39-3311, Idaho Code, be, and the same is hereby amended to read as follows:

39-3311. PHYSICIAN'S ORDER. A physician's or authorized provider's order shall include the following:

(1) A history and physical documenting any medical or health problems of the resident which are relevant to the services needed by the resident.

(2) A description of the functional abilities of the resident including his specific strengths and limitations.

(3) The specific needs of the resident for personal assistance.

SECTION 18. That Section 39-3313, Idaho Code, be, and the same is hereby amended to read as follows:

39-3313. ADMISSION AGREEMENTS. Upon admission to a licensed residential ~~care~~ or assisted living facility, the facility and the resident shall enter into an admission agreement. The agreement shall be in writing and shall be signed by both parties. The board shall promulgate rules governing admission agreements which may be integrated with the negotiated service agreement.

SECTION 19. That Section 39-3314, Idaho Code, be, and the same is hereby amended to read as follows:

39-3314. TERMINATION OF ADMISSION AGREEMENTS. Admission agreements may only be terminated pursuant to rules ~~and regulations~~ promulgated by the board.

SECTION 20. That Section 39-3315, Idaho Code, be, and the same is hereby amended to read as follows:

39-3315. ADMISSION RECORDS. Records required for admission to a facility shall be maintained and updated for administrative purposes only and shall be confidential. Their availability, subject to Idaho department of health and welfare rules, chapter 1, title 5, ~~chapter 1,~~ shall be limited to administration, professional consultants, the resident's physician or authorized provider, and representatives of the licensing agency. They shall include at least the following information:

(1) Name and social security number.

(2) Permanent address if other than the facility.

(3) Marital status and sex.

(4) Birthplace and date of birth.

(5) Name, address and telephone number of responsible agent or agency.

(6) Personal physician or authorized provider and dentist.

(7) Admission date and by whom admitted.

(8) Results of a physical or health status examination performed by a licensed physician or ~~nurse-practitioner~~ authorized provider within six (6) months prior to admission.

(9) A list of medications, treatments and diet prescribed for the resident which is signed and dated by the physician or authorized provider giving the order(s).

(10) The results of an assessment of any developmentally disabled or mentally ill person which support the ability of the facility to

meet the needs of the resident.

(11) Psychosocial history, current within six (6) months prior to admission, completed by a licensed social worker, psychologist, psychiatrist, or licensed physician for clients of the department. For residents who are either developmentally disabled or mentally ill, the psychosocial history shall be performed by either a qualified mental retardation professional or qualified mental health professional.

(12) Religious affiliation if resident chooses to so state.

(13) Interested relatives and friends other than those in subsection (5) of this section. Names, addresses and telephone numbers of family members and/or significant others.

(14) Resident assessment.

SECTION 21. That Section 39-3316, Idaho Code, be, and the same is hereby amended to read as follows:

39-3316. RESIDENT RIGHTS. A licensed residential care or assisted living facility must protect and promote the rights of each resident, including each of the following rights:

(1) Resident records. Each facility must maintain and keep current a record of the following information on each resident:

(a) A copy of the resident's current negotiated service agreement and physician's order.

(b) Written acknowledgement that the resident has received copies of the rights.

(c) A record of all personal property and funds which the resident has entrusted to the facility, including copies of receipts for the property.

(d) Information about any specific health problems of the resident which may be useful in a medical emergency.

(e) The name, address and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident.

(f) Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record.

(g) The current admission agreement between the resident and the facility.

(2) Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups.

(3) Humane care and environment (dignity and respect).

(a) Each resident shall have the right to humane care and a humane environment, including the following:

1. The right to a diet which is consistent with any religious or health-related restrictions.

2. The right to refuse a restricted diet.

3. The right to a safe and sanitary living environment.

(b) Each resident shall have the right to be treated with dignity and respect, including:

1. The right to be treated in a courteous manner by staff.

2. The right to receive a response from the facility to any request of the resident within a reasonable time.

(4) Personal possessions. Each resident shall have the right to:

(a) Wear his own clothing.

(b) Determine his own dress or hair style.

(c) Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity.

(d) Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property.

(5) Personal funds. Residents whose board and care is paid for by public assistance shall retain, for their personal use, the difference between their total income and the applicable board and care allowance established by department rules.

(a) A facility shall not require a resident to deposit his personal funds with the facility.

(b) Once the facility accepts the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this subparagraph.

(6) Management of personal funds. Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(a) The facility must deposit any amount of a resident's personal funds in excess of one hundred dollars ($100) in an interest-bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a noninterest-bearing account or petty cash fund.

(b) The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(c) Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate. For clients of the department, the remaining balance of funds shall be refunded to the department.

(7) Access and visitation rights. Each facility must permit:

(a) Immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician.

(b) Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives.

(c) Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident.

(d) Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the res-

ident, subject to the resident's right to deny or withdraw consent at any time.

(8) Employment. Each resident shall have the right to refuse to perform services for the facility except as contracted for by the resident and the operator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident shall be consistent with state and federal law.

(9) Confidentiality. Each resident shall have the right to confidentiality of personal and clinical records.

(10) Freedom from abuse, neglect, and restraints. Each resident shall have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience.

(11) Freedom of religion. Each resident shall have the right to practice the religion of his choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

(12) Control and receipt of health-related services. Each resident shall have the right to control his receipt of health-related services, including:

(a) The right to retain the services of his own personal physician, and dentist and other health care professionals.

(b) The right to select the pharmacy or pharmacist of his choice.

(c) The right to confidentiality and privacy concerning his medical or dental condition and treatment.

(13) Grievances. Each resident shall have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(14) Participation in resident and family groups. Each resident shall have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(15) Participation in other activities. Each resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(16) Examination of survey results. Each resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the department with respect to the facility and any plan of correction in effect with respect to the facility.

(17) Other rights. Each resident shall have any other right established by the department.

SECTION 22. That Section 39-3318, Idaho Code, be, and the same is hereby amended to read as follows:

39-3318. FACILITY RESPONSE TO INCIDENTS AND COMPLAINTS. (1) In addition to any other requirements of this chapter, the licensed residential care or assisted living facility shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the owner, licensee, or person designated by the owner or licensee is notified of the incident, that the owner, licensee, or person designated by the owner or licensee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a response of action taken or a reason why no action needs to be taken. In the case of anonymous complaints, the administrator/operator shall document the action taken or a reason why no action needs to be taken.

(2) In order to assure the opportunity for complaints from the residents, the neighborhood, and the community to be made directly to the owner, licensee, or person designated by the owner or licensee, each facility shall establish a regular time when the owner, licensee, or person designated by the owner or licensee will be present to respond to such incidents or complaints.

SECTION 23. That Section 39-3319, Idaho Code, be, and the same is hereby amended to read as follows:

39-3319. ACCESS BY ADVOCATES AND REPRESENTATIVES. A licensed residential care or assisted living facility shall permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to:

(1) Visit, talk with, and make personal, social and legal services available to all residents.

(2) Inform residents of their rights and entitlements, and their corresponding obligations under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals.

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and social security benefits, as well as in all other matters in which residents are aggrieved, which may be provided individually, or in a group basis, and may include organizational activity, counseling, and litigation.

(4) Engage in all other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights.

(5) Communicate privately and without restrictions with any resident who consents to the communication.

(6) Observe all common areas of the facility.

SECTION 24. That Section 39-3320, Idaho Code, be, and the same is hereby amended to read as follows:

39-3320. RESIDENT COUNCILS. (1) Every licensed residential care or assisted living facility over fifteen (15) beds shall assist the residents in establishing and maintaining a resident council. The council shall be composed of residents of the facility and may include

their family members. The council may extend membership to advocates, friends and others.

(2) The council shall have the following duties:

(a) To assist the facility in developing a grievance procedure.

(b) To communicate resident opinions and concerns.

(c) To obtain information from the facility and disseminate the information to the residents.

(d) To identify problems and participate in the resolution of those problems.

(e) To act as a liaison with the community.

(3) This section may be waived provided that the operator meets regularly with residents and that residents decline to participate in a formal council and appropriate documentation exists to indicate the residents' decision.

SECTION 25. That Section 39-3321, Idaho Code, be, and the same is hereby amended to read as follows:

39-3321. QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR/OPERATOR. Each licensed residential ~~care~~ or assisted living facility must employ at least one (1) full-time administrator licensed by the board responsible for licensing residential ~~care~~ or assisted living administrators for the state of Idaho who:

(1) Is of good moral and responsible character and has not been convicted, or is not under the influence or control of anyone convicted, of ~~any felony or defrauding the federal government:~~

(a) A criminal offense related to the delivery of an item or service under medicare, medicaid or other state health care program; or

(b) A criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service; or

(c) A criminal offense related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct; or

(d) A criminal offense resulting in death or injury to a person.

(2) Has sufficient physical, emotional, and mental capacity to carry out the requirements of this chapter.

(3) Has sufficient management and administrative ability to carry out the requirements of this chapter.

Multiple facilities under one (1) administrator may be allowed by the department based on an approved plan of operation.

SECTION 26. That Section 39-3322, Idaho Code, be, and the same is hereby amended to read as follows:

39-3322. QUALIFICATIONS AND REQUIREMENTS FOR FACILITY STAFF. Each facility must employ or arrange for sufficient trained staff to fully meet the needs of its residents and the requirements of this chapter. The facility shall have sufficient staff to provide care during all hours required in each resident's negotiated service plan. Additional staff may be required if physical plant and disability of residents indicate that staff assistance in emergencies is required. Benchmarks

shall be established in the assessment criteria where the need for certified nursing assistants or licensed nurses is indicated. Licensed ~~r~~Residential ~~care~~ or assisted living facilities shall not retain residents who require ~~routine nursing care on a daily basis~~ the care provided by nursing facilities under section 39-1301(b), Idaho Code, other than for short exceptional stays pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

SECTION 27. That Section 39-3324, Idaho Code, be, and the same is hereby amended to read as follows:

39-3324. STAFF TRAINING. All employees of a licensed residential ~~care~~ or assisted living facility shall receive department approved orientation and continuing education pertinent to their job responsibilities.

SECTION 28. That Section 39-3325, Idaho Code, be, and the same is hereby amended to read as follows:

39-3325. REQUIREMENTS FOR LOCATION AND PHYSICAL ENVIRONMENT OF FACILITIES. (1) Licensed ~~r~~Residential ~~care~~ or assisted living facilities shall:

(a) Be located in geographical areas which are accessible to supportive services and are free from conditions which would pose a danger to the residents.

(b) Be maintained internally and externally in good repair and condition.

(c) Be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(d) Be maintained in such a manner as to be free from fire/safety hazards.

(2) The department shall promulgate rules ~~and regulations~~ concerning physical structure, fire safety, health and sanitation, household items and furnishings, diet, self-administered medications, and rooms.

SECTION 29. That Section 39-3330, Idaho Code, be, and the same is hereby amended to read as follows:

39-3330. BOARD AND CARE COUNCIL. (1) The department shall establish a state level board and care council consisting of twenty (20) members appointed by the director. The director, or his designee, shall serve as chairman of the council. The members of the council shall be:

(a) The representative of the department's adult services unit or his designee.

(b) The representative of the department's mental health unit or his designee.

(c) The representative of the department's developmental disabilities unit or his designee.

(d) The state ombudsman for the elderly or his designee.

(e) The director of the state protection and advocacy system or his designee.

(f) An advocate for mentally ill citizens in the state.

(g) An advocate for physically disabled citizens in the state.

(h) The director of the state developmental disabilities council or his designee.

(i) ~~Six (6)~~ Four (4) administrators or licensees of licensed residential ~~care~~ or assisted living facilities, one (1) of whom shall be the president of the state association representing residential ~~care~~ or assisted living facilities and two (2) of whom shall be designees representing such association.

(j) ~~Two (2) adult-foster-care~~ Four (4) certified family home providers, certified pursuant to this chapter.

(k) Three (3) residents of licensed residential ~~care~~ or assisted living facilities who are mentally ill, developmentally disabled or physically disabled or individuals residing in ~~adult-foster care~~ certified family homes.

(2) In appointing the first members of the council who are not state agency representatives, the director shall appoint eight (8) members for a term of two (2) years and seven (7) members for a term of three (3) years. After the initial appointment, members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member.

SECTION 30. That Section 39-3331, Idaho Code, be, and the same is hereby amended to read as follows:

39-3331. POWERS AND DUTIES. The board and care council shall have the following powers and duties:

(1) To make policy recommendations regarding the coordination of licensing, certifying and enforcement standards in ~~board-and-care~~ residential or assisted living facilities and certified family homes and the provision of services to residents of ~~board-and-care~~ residential or assisted living facilities and certified family homes.

(2) To advise the department regarding methods for identification of unlicensed ~~board-and-care~~ residential or assisted living facilities and uncertified family homes.

(3) To advise the agency during development and revision of rules. ~~and regulations.~~

(4) To review and comment upon proposed rules. ~~and regulations.~~

(5) To submit an annual report to the legislature stating opinions and recommendations which would further the state's capability in addressing ~~board-and-care~~ residential or assisted living facility and certified family home issues.

SECTION 31. That Section 39-3340, Idaho Code, be, and the same is hereby amended to read as follows:

39-3340. LICENSING OF RESIDENTIAL ~~CARE~~ OR ASSISTED LIVING FACILITIES FOR THE MENTALLY ILL, DEVELOPMENTALLY DISABLED AND PHYSICALLY DISABLED. After July 1, 1991, no person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential ~~care~~ or assisted living facility in the state without a cur-

rent valid license issued by the licensing agency of the department.

SECTION 32. That Section 39-3341, Idaho Code, be, and the same is hereby amended to read as follows:

39-3341. INITIAL APPLICATION AND ISSUANCE OF A LICENSE. Any person or governmental unit proposing to operate a residential ~~care~~ or assisted living facility shall apply for a license to the licensing agency specifying the types of residents to be served and the level(s) of care to be provided.

SECTION 33. That Section 39-3342, Idaho Code, be, and the same is hereby amended to read as follows:

39-3342. APPLICATION. The applicant shall apply for a license upon forms provided by the licensing agency giving such information as the licensing agency shall require including, but not limited to:

(1) Evidence satisfactory to the licensing agency of the ability of the applicant to comply with the provisions of this chapter and with the rules~~;--regulations-and-standards~~ adopted under this chapter by the department.

(2) Evidence satisfactory to the department that the applicant is of reputable and responsible character.

(3) The evidence shall include, but not be limited to:

(a) A criminal record clearance;

(b) Fingerprinting;

(c) Employment history;

(d) Credit report;

(e) Character references.

(4) If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, like evidence shall be submitted as to the members or shareholders holding ten percent (10%) or more interest thereof, and the administrator/operator of the licensed residential ~~care~~ or assisted living facility.

(5) Evidence satisfactory to the licensing agency that the applicant has sufficient financial resources to maintain the standards of service required by rules~~;--regulations-and-standards~~ adopted pursuant to this chapter.

(6) Evidence satisfactory to the licensing agency that the administrator/operator has successfully completed the department approved orientation.

(7) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities in Idaho as specified in section 39-3345, Idaho Code, or any other jurisdiction.

(8) Any other information as may be required by the licensing agency for the proper administration and enforcement of the provisions of this chapter.

(9) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in ~~regulations~~ rules of the department has not been provided, or not provided in the form requested by the

licensing agency, or both.

(10) A signed statement that the person desiring issuance or renewal of a license has read and understands the provisions of this chapter and residential ~~care~~ or assisted living facility rules which apply to individuals who are mentally ill, developmentally disabled or physically disabled.

SECTION 34. That Section 39-3345, Idaho Code, be, and the same is hereby amended to read as follows:

39-3345. DENIAL OR REVOCATION OF A LICENSE. The licensing agency may deny the issuance of a license or revoke any license when persuaded by a preponderance of evidence that such conditions exist as to endanger the health or safety of any resident, or when the facility is not in substantial compliance with ~~the~~ any provisions of this chapter ~~and~~ or the rules~~, regulations and standards~~ promulgated pursuant to this chapter.

SECTION 35. That Section 39-3348, Idaho Code, be, and the same is hereby amended to read as follows:

39-3348. ~~REGULATIONS~~ RULES PROVIDED. Upon initial licensure, residential ~~care~~ or assisted living facilities shall be provided a printed copy of all applicable ~~regulations~~ rules by the department, without charge.

SECTION 36. That Section 39-3349, Idaho Code, be, and the same is hereby amended to read as follows:

39-3349. RESPONSIBILITY FOR INSPECTIONS AND LICENSING -- NONTRANSFERABILITY OF LICENSES. The licensing agency shall inspect and license residential ~~care~~ or assisted living facilities. A license is not transferable.

SECTION 37. That Section 39-3350, Idaho Code, be, and the same is hereby amended to read as follows:

39-3350. CONSULTING SERVICES. The department may provide consulting services upon request to any residential ~~care~~ or assisted living facility to assist in the identification or correction of deficiencies and in the upgrading of the quality of care provided by the facility.

SECTION 38. That Section 39-3352, Idaho Code, be, and the same is hereby amended to read as follows:

39-3352. UNLICENSED RESIDENTIAL ~~CARE~~ OR ASSISTED LIVING FACILITIES. (1) No unlicensed residential ~~care~~ or assisted living facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled shall operate in this state.

(2) A facility shall be deemed to be an "unlicensed residential ~~care~~ or assisted living facility" and "maintained and operated to provide ~~residential care~~ services" if it is unlicensed and not exempt from licensure, and any one (1) of the following conditions is satis-

fied:

(a) The facility is, or is held out as or represented as, providing care, supervision and services.

(b) The facility accepts or retains residents who demonstrate the need for care, supervision, and services, as defined in this chapter or the rules adopted pursuant to this chapter.

(3) Upon discovery of an unlicensed residential ~~care~~ or assisted living facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled, the department shall refer residents to the appropriate placement or adult protective services agency if either of the following conditions exist:

(a) There is an immediate threat to the resident's health and safety.

(b) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

(4) A person found to be operating a residential ~~care~~ or assisted living facility which provides services to individuals who are mentally ill, developmentally disabled or physically disabled, without a license shall be guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed five thousand dollars ($5,000).

(5) In the event the county attorney in the county where the alleged violation occurred fails or refuses to act within thirty (30) days of notification of the violation, the attorney general is authorized to prosecute violations under the provisions of this section.

SECTION 39. That Section 39-3353, Idaho Code, be, and the same is hereby amended to read as follows:

39-3353. PLACEMENT OF PERSONS INTO AN UNLICENSED RESIDENTIAL ~~CARE~~ OR ASSISTED LIVING FACILITY. No person or public agency employee shall place, refer, or recommend placement of a person into a residential ~~care~~ or assisted living facility which is operating without a license.

Failure to comply with the provisions of this subsection shall constitute a misdemeanor.

SECTION 40. That Section 39-3354A, Idaho Code, be, and the same is hereby amended 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~~ or assisted living 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 41. That Section 39-3355, Idaho Code, be, and the same is hereby amended to read as follows:

39-3355. INSPECTIONS. (1) The licensing agency shall cause to be made such inspections and investigations ~~as it may deem necessary~~ at least every twelve (12) months to determine compliance with this chapter and applicable rules ~~and standards~~.

(2) All inspections for such purposes will be made unannounced and without prior notice at intervals determined by the licensing agency.

(3) An inspector shall have full access and authority to examine, among other things, quality of care and service delivery, a facility's records, resident accounts, physical premises, including buildings, grounds and equipment, and any other areas necessary to determine compliance with this chapter and applicable rules ~~and standards~~.

(4) An inspector shall have authority to interview the licensee, administrator/operator, staff and residents. Interviews with residents shall be confidential and conducted privately unless otherwise specified by the resident.

(5) The licensing agency shall notify the facility, in writing, of all deficiencies and shall approve a reasonable length of time for compliance by the facility.

(6) Current lists of deficiencies, including plans of correction, shall be available to the public upon request in the individual facilities or by written request to the regional office of the department or the licensing agency.

SECTION 42. That Section 39-3357, Idaho Code, be, and the same is hereby amended to read as follows:

39-3357. ENFORCEMENT PROCESS. (1) If the licensing agency finds, on the basis of inspections as defined in this chapter or otherwise, that a residential ~~care~~ or assisted living facility no longer meets a requirement of this chapter, and further finds that the facility's deficiencies:

(a) Immediately jeopardize the health or safety of its residents, the department shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in section 39-3358(1)(c), Idaho Code, or prohibit the facility from keeping or admitting residents and may provide, in addition, for one (1) or more of the other remedies described in section 39-3358, Idaho Code.

(b) Do not immediately jeopardize the health or safety of its residents, the department shall provide for one (1) or more of the remedies described in section 39-3358, Idaho Code.

(2) Nothing in this section shall be construed as restricting the remedies available to the department to remedy a facility's deficiencies. If the department finds that a facility meets the requirements of this chapter, but, as of a previous period, intentionally did not meet such requirements, the department may provide for a civil money penalty under section 39-3358(1)(b), Idaho Code, for the days in which it finds that the facility was not in compliance with such requirements.

SECTION 43. That Section 39-3358, Idaho Code, be, and the same is hereby amended to read as follows:

39-3358. SPECIFIED REMEDIES. (1) The department shall establish at least the following remedies:

(a) Prohibit the facility from admitting residents or prohibit a facility from keeping or admitting residents with a specific diagnosis.

(b) A civil money penalty assessed and collected, with interest, for each day the facility is or was out of compliance with a requirement of this chapter. Funds collected by the department as a result of imposition of such a penalty shall be applied to the protection of the health or property of residents of residential ~~care~~ <u>or assisted living</u> facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(c) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while:

(i) There is an orderly closure of the facility.

(ii) Improvements are made in order to bring the facility into compliance with all the requirements of this chapter.

(iii) The temporary management under this clause shall not be terminated until the department has determined that the facility has the management capability to ensure continued compliance with all the requirements of this chapter.

(d) The authority, in the case of an emergency, to summarily suspend the license, to close the facility, and/or to transfer residents in that facility to other facilities.

(2) The department shall also specify criteria as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

SECTION 44. That Section 39-3359, Idaho Code, be, and the same is

hereby amended to read as follows:

39-3359. TRANSFER OF RESIDENTS. The department may transfer residents from a residential ~~care~~ or assisted living facility to an alternative placement on the following grounds:

(1) As a result of a violation of a provision of this chapter or an applicable rule, ~~regulation or standard,~~ the facility is unable or unwilling to provide an adequate level of meals, lodging, personal assistance or supervision to persons residing in the facility at the time of the violation.

(2) A violation of a resident's rights as provided in section 39-3316, Idaho Code.

(3) The number of residents currently in the facility exceeds the number of residents the facility is licensed to serve.

(4) The facility is operating without a license.

(5) A violation of a provision of this chapter or an applicable rule~~, regulation or standard~~ results in conditions that present an imminent danger.

SECTION 45. That Section 39-3370, Idaho Code, be, and the same is hereby amended to read as follows:

39-3370. PURPOSE OF ~~ADULT FOSTER CARE~~ CERTIFIED FAMILY HOMES. The purpose of ~~an adult foster care~~ certified family home in Idaho is to provide a residential alternative designed ~~to help delay the need for individuals to enter residential care facilities, skilled nursing facilities, or institutional care, and~~ to allow ~~such~~ individuals to remain in more normal family-style living, usually within their own communities. ~~Families who provide adult foster care share their homes with adults who need assistance in daily living. Persons who live in adult foster care are those~~ Certified family homes provide a home to persons who are elderly~~,~~ or unable to live alone and~~/or~~ whose mental, emotional, developmental, and physical conditions ~~are such that the care given~~ can be met by the ~~foster~~ care provider. ~~will meet the person's needs. Individuals requiring nursing home care, or who are unable to administer their own medication, are not suitable for adult foster care~~ The home must obtain a waiver under section 39-1301A, Idaho Code, to care for two (2) persons requiring the care described in section 39-1301(b), Idaho Code. Homes may add services which allow an individual's needs to be met.

SECTION 46. That Section 39-3371, Idaho Code, be, and the same is hereby amended to read as follows:

39-3371. RULES. The board shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the standards for ~~certifying adult foster care~~ certified family homes pursuant to this act including, but not limited to, the following:

(1) A home shall not be certified for more than two (2) adults, however, upon an application by the owner and upon a finding by the department that residents can be cared for safely and appropriately based on the residents' specific needs, the department may authorize

not more than four (4) adults to be placed in a certified family home which is owner-occupied and which applies to the department for the authorization. Certification as a four (4) resident certified family home shall not be transferable to another person or entity. Four (4) resident certified family homes shall be subject to all statutes and rules governing certified family homes but shall not be subject to the residential or assisted living administrator licensing requirements of chapter 42, title 54, Idaho Code, section 39-3340, Idaho Code, licensing of residential or assisted living facilities for the mentally ill, developmentally disabled and physically disabled, or section 39-3540, Idaho Code, licensing of residential or assisted living facilities for the elderly. This provision implementing four (4) resident certified family homes shall be effective on July 1, 2001. Prior to the effective date, the department shall promulgate rules for four (4) resident certified family homes through the negotiated rulemaking process. Nothing in this subsection shall be construed to authorize increased group size for providers of any form of care other than certified family homes.

(2) ~~An--adult--foster~~ care provider may be a couple or a single individual.

(3) A home cannot be approved as a certified ~~for--adult--foster care~~ family home if it also provides room and board for other persons.

(4) A home cannot be approved as a certified ~~for-adult-foster care~~ family home and for child foster care at the same time, unless a waiver of this requirement is granted by the department.

(5) The ~~adult-foster~~ care provider must have sufficient income to maintain the home and the services offered.

(6) Information obtained by the ~~foster~~ care provider shall be held confidential except to representatives of the department to provide services or determine compliance with this chapter or upon consent of the individual or his legal guardian.

(7) ~~Record-keeping~~ Recordkeeping and reporting requirements as may be deemed necessary.

(8) Requirements to assure the safety and adequate care of residents.

SECTION 47. That Section 39-3372, Idaho Code, be, and the same is hereby amended to read as follows:

39-3372. APPLICATION FOR CERTIFICATION. An application for certification shall be made to regional offices of the department upon forms provided by the department and shall contain such information as the department reasonably requires which will include a background check and fingerprinting with the Idaho department of law enforcement. Following receipt of an application, the department shall conduct a study, including a visit to the home, to determine the capability of the provider to provide ~~adult-foster~~ care as a certified family home.

SECTION 48. That Section 39-3373, Idaho Code, be, and the same is hereby amended to read as follows:

39-3373. ISSUANCE AND RENEWAL OF CERTIFICATION. Each certificate shall be issued only for the home and foster care provider named in

the application and shall not be transferable or assignable. Each ~~adult-foster-care~~ certified family home is required to renew ~~their~~ its certification annually. The application for renewal shall be filed with the regional office of the department within thirty (30) days prior to the date of expiration. The existing certificate, unless suspended or revoked, shall remain in force and effect until the department has acted upon the application renewal when such application for renewal is timely filed.

SECTION 49. That Section 39-3374, Idaho Code, be, and the same is hereby amended to read as follows:

39-3374. TEMPORARY CERTIFICATION. Upon initial investigation, should an applicant for a certificate be unable to meet a standard because of conditions that are unlikely to endure beyond six (6) months, the department may grant a temporary certificate pending the satisfactory correction of all deficiencies and provided that the deficiencies do not jeopardize the health and safety of residents. No more than one (1) provisional certificate shall be issued to the same ~~adult--foster--care~~ certified family home in any twelve (12) month period.

SECTION 50. That Section 39-3375, Idaho Code, be, and the same is hereby amended to read as follows:

39-3375. DENIAL OR REVOCATION OF A CERTIFICATE. The department may deny the issuance of a certificate or revoke any certificate when persuaded by a preponderance of evidence that such conditions exist as to endanger the health or safety of any resident, or when the home is not in substantial compliance with the provisions of this chapter or rules ~~and-regulations~~ promulgated pursuant to this chapter.

SECTION 51. That Section 39-3378, Idaho Code, be, and the same is hereby amended to read as follows:

39-3378. ~~REGULATIONS~~ RULES PROVIDED. Upon initial certification, ~~adult--foster--care~~ certified family homes shall be provided a printed copy of all applicable ~~regulations~~ rules by the department, without charge.

SECTION 52. That Section 39-3379, Idaho Code, be, and the same is hereby amended to read as follows:

39-3379. MANDATORY INSPECTIONS. For the purpose of determining whether every ~~adult-foster-care~~ certified family home consistently maintains conformity with the ~~standards~~ rules established under the authority herein, the department, through a certifying agent, shall visit the premises of each home ~~as-it-deems-necessary-but-in-any-event at-intervals-not-to-exceed-six-(6)~~ at least every twelve (12) months.

SECTION 53. That Section 39-3380, Idaho Code, be, and the same is hereby amended to read as follows:

39-3380. ENFORCEMENT PROCESS. Section 39-3357, Idaho Code, governing residential ~~care~~ or assisted living facilities shall also govern ~~adult-foster-care~~ certified family homes.

SECTION 54. That Section 39-3381, Idaho Code, be, and the same is hereby amended to read as follows:

39-3381. OPERATING WITHOUT CERTIFICATION -- MISDEMEANOR. Any person who operates ~~an adult-foster-care~~ certified family home within the state without first obtaining certification as provided in this chapter shall be guilty of a misdemeanor.

SECTION 55. That Section 39-3382, Idaho Code, be, and the same is hereby amended to read as follows:

39-3382. PLACEMENT OF PERSONS INTO AN UNLICENSED ~~ADULT--FOSTER CARE~~ CERTIFIED FAMILY HOME. Section 39-3353, Idaho Code, governing residential ~~care~~ or assisted living facilities shall also govern ~~unlicensed adult-foster-care~~ uncertified family homes.

SECTION 56. That Section 39-3383, Idaho Code, be, and the same is hereby amended to read as follows:

39-3383. NEGOTIATED SERVICE AGREEMENT. The negotiated service agreement as set out in section 39-33~~08~~09, Idaho Code, shall govern the content, preparation and review of the negotiated service agreement for residents of ~~adult-foster-care~~ certified family homes.

SECTION 57. That Section 39-3384, Idaho Code, be, and the same is hereby amended to read as follows:

39-3384. PHYSICIAN'S ORDER FOR ~~NONCLIENTS OF THE DEPARTMENT~~ CERTIFIED FAMILY HOMES. The physician's order as set out in section 39-3311, Idaho Code, governing licensed residential ~~care~~ or assisted living facilities shall also govern ~~adult-foster-care~~ certified family homes.

SECTION 58. That Section 39-3385, Idaho Code, be, and the same is hereby amended to read as follows:

39-3385. WRITTEN SERVICE PLAN. The department and the ~~foster~~ care providers serving clients of the department shall negotiate a written plan annually. The purpose of the plan shall be to ensure that a client receives ~~services necessary to maintain him at the highest level of independence~~ the level of care based upon the negotiated service agreement as described in section 39-3309, Idaho Code. The plan is to establish a basis for coordination and communication between the ~~foster~~ home family and the department. The plan shall be maintained in the home.

SECTION 59. That Section 39-3386, Idaho Code, be, and the same is hereby amended to read as follows:

39-3386. ~~FOSTER~~ CARE AGREEMENTS. Each ~~foster~~ care provider shall negotiate a written, signed and dated agreement between the ~~foster~~ care provider and a resident specifying the amount of monthly payment to be paid by the resident and the method for payment.

SECTION 60. That Section 39-3387, Idaho Code, be, and the same is hereby amended to read as follows:

39-3387. RESIDENT RIGHTS. Section 39-3316, Idaho Code, governing licensed residential ~~care~~ or assisted living facilities shall also govern ~~adult-foster-care~~ certified family homes.

SECTION 61. That Section 39-3388, Idaho Code, be, and the same is hereby amended to read as follows:

39-3388. TRAINING. The department shall insure that ~~foster-care~~ providers receive, at a minimum, training which shall include the rights of the resident, and a basic understanding of the psychosocial and physical needs of residents to be served. The department will specify annual continuing education requirements for ~~foster~~ care providers.

SECTION 62. That Section 39-3389, Idaho Code, be, and the same is hereby amended to read as follows:

39-3389. PHYSICAL AND ENVIRONMENTAL STANDARDS. Standards shall be developed through the regulatory process by the department to insure a safe, sanitary and comfortable environment for residents of ~~adult-foster-care~~ certified family homes.

SECTION 63. That Section 39-3393, Idaho Code, be, and the same is hereby amended to read as follows:

39-3393. APPLICATION OF PROVISIONS. The provisions of section 39-33~~08~~9, Idaho Code, governing licensed residential ~~care~~ or assisted living facilities, shall also apply to ~~adult--foster--care~~ certified family homes. Any individual providing care and housing commercially to the developmentally disabled or the mentally ill shall, at a minimum, meet the requirements of this chapter or other provisions of law governing care and housing for the mentally ill, developmentally disabled or physically disabled if those provisions are more restrictive.

SECTION 64. That Section 39-3501, Idaho Code, be, and the same is hereby amended to read as follows:

39-3501. LEGISLATIVE INTENT AND DECLARATION. The purpose of a licensed residential ~~care~~ or assisted living facility for the elderly in Idaho is to provide a humane, safe, and home-like housing and living arrangement for persons who are elderly, who need some assistance with activities of daily living and personal care and to delay the need for a more expensive nursing facility or other institutional care as long as possible. Occupancy in a residential ~~care~~ or assisted living facility for the elderly will be considered the person's primary

residence.

It is the intent of the legislature that residential ~~care~~ or assisted living facilities for the elderly be available to meet the needs of those residing in these facilities by recognizing the capabilities of individuals to direct their care. ~~and self-medication or to use supervised self-medication techniques when ordered and approved by an individual licensed to prescribe medication.~~

Nothing in this chapter is intended to reduce or eliminate any duty of the department or any other public or private entity for provision of services for any resident.

SECTION 65. That Section 39-3502, Idaho Code, be, and the same is hereby amended to read as follows:

39-3502. DEFINITIONS. As used in this chapter:

(1) "Activities of daily living" means the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(2) "Administrator/operator" means any person who has responsibility for day-to-day administration or operation of a licensed residential ~~care~~ or assisted living facility for the elderly.

(3) "Adult" means a person who has attained the age of eighteen (18) years.

(4) ~~"Adult-foster-care-family" means all individuals related by blood or marriage, other than residents, residing in the adult-foster care home.~~

~~(5)--"Adult foster care home" means a family home in which two (2) or fewer adults are placed to live who are not able to reside in their own home and who require family care, help in daily living, protection and security (may be referred to as a "home").~~

~~(6)~~ "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by the facility.

(~~7~~5) "Assessment" means the conclusion reached using uniform criteria developed by the department and relevant councils for determining a person's need for care and services.

(~~8~~6) "Board" means the board of health and welfare.

(7) "Care provider" means an adult member or members of the home family responsible for maintaining the certified family home. The care provider(s) and the legal owner may not necessarily be the same person.

(~~9~~8) "Certificate" means a one (1) year certificate issued by the certifying agent of the department to ~~adult foster care~~ certified family homes complying with this chapter.

(9) "Certified family home" means a family home in which two (2) or fewer adults are placed to live who are not able to reside in their own home and who require family care, help in daily living, protection and security (may be referred to as a "home"). Notwithstanding the foregoing, upon application by the owner the department may authorize not more than four (4) adults to be placed in a certified family home which is owner-occupied.

(10) "Certifying agent" means a person ~~representing the areas of~~

~~social--services--or--mental-health,~~ acting under the authority of the department to participate in the certification, inspection, and regulation of ~~an-adult-foster-care~~ family home.

(11) "Client" means any person who receives financial aid and/or services from an organized program of the department.

(12) "Continuing" means personal assistance services required over an extended period of time.

(13) "Department" means the Idaho department of health and welfare.

(14) "Director" means the director of the Idaho department of health and welfare.

(15) "Facility" means a licensed residential ~~care~~ or assisted living facility for the elderly or certified family home.

(16) ~~"Foster-care-provider"-means-an-adult-member--or--members--of the--foster--care--family-responsible-for-maintaining-the-adult-foster care-home.-The-foster-care-provider(s)-and-the--legal--owner--may--not necessarily-be-the-same-person.~~

~~(17)~~ "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board or other agency thereof.

(17) "Home family" means all individuals related by blood or marriage, other than residents, residing in the certified family home.

(18) ~~"Him-or-his"-means-him-or-her.~~

~~(19)~~ "License" means a basic permit to operate a licensed residential ~~care~~ or assisted living facility for the elderly.

(~~20~~19) "Licensee" means the holder of a license to operate a licensed residential ~~care~~ or assisted living facility for the elderly under this chapter.

(2~~1~~0) "Licensing agency" means the unit of the department of health and welfare that conducts inspections and surveys and issues licenses based on compliance with this chapter.

(2~~2~~1) "Mixed populations" means that two (2) or more of the following populations: mentally ill, developmentally disabled, physically disabled, and/or elderly, are provided care and/or housing within the facility.

(2~~3~~2) "Negotiated service agreement" means the agreement reached by the resident and/or their representative and the facility, based on the assessment, physician's orders if any, admission records if any, and desires of the client, and which outlines services to be provided and the obligations of facility and resident.

(2~~4~~3) "Person" means any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(2~~5~~4) "Personal assistance" means the provision by the staff of the facility of one (1) or more of the following services:

(a) Assisting the resident with activities of daily living.

(b) Arranging for supportive services.

(c) Being aware of the resident's general whereabouts.

(d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and well-being.

(25) "Authorized provider" means an individual who is a nurse practitioner or clinical nurse specialist, licensed by the Idaho state

board of nursing, or a physician assistant, licensed by the Idaho state board of medicine.

(26) "Political subdivision" means a city or county.

(27) "Representative of the department" means an employee of the department.

(28) "Resident" means an ~~individual~~ adult who~~,-by-reason-of-age-or infirmity,--requires--personal--assistance--and--who-is-not-related-by blood-or-marriage-to-the-licensee-of-the-facility~~ lives in a licensed residential or assisted living facility or certified family home and who requires personal assistance or supervision.

(29) "Residential ~~care~~ or assisted living council for the elderly" means the interdisciplinary group appointed by the director to advise the agency and legislature on matters of policy relating to residential ~~care~~ or assisted living facilities for the elderly.

(30) "Residential ~~care~~ or assisted living facility for the elderly" means a facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more elderly adults not related to the owner.

(31) "Room and board" means lodging and meals.

(32) "Substantial compliance" means there are no deficiencies which ~~would~~ endanger the health, safety or welfare of the residents. It also means deficiencies affecting resident welfare including resident rights, resident property, and the opportunity, where appropriate, to work and be involved in recreation and education opportunities in the community.

(33) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts and assistance with activities of daily living. The operator is responsible for providing appropriate supervision based on each resident's negotiated service agreement.

(34) "Supportive services" means the specific services that are provided to the resident in the community and that are required by the negotiated service agreement or reasonably requested by the resident.

SECTION 66. That Section 39-3503, Idaho Code, be, and the same is hereby amended to read as follows:

39-3503. PAYMENT LEVELS. Clients of the department receiving financial aid as set out in sections 56-207, 56-208 and 56-209a, Idaho Code, seeking placement in a licensed residential ~~care~~ or assisted living facility for the elderly or an~~-adult-foster-care~~ certified family home will be assessed by the department. Based upon the assessed need, the specific types of services and supports required will determine the level of payment to be received by the resident according to the following criteria:

(1) Level I. The client requires room, board, and supervision and may require one (1) or more of the following:

(a) Minimal assistance with activities of daily living and nonmedical personal assistance.

(b) Minimal assistance with mobility, i.e., client is independently mobile.

(c) Minimal assistance in an emergency, i.e., client is capable

of self-preservation in an emergency.

(d) Minimal assistance with medications, i.e., client does not require medication management or supervision.

(e) Minimal behavior management substantiated by the client's history.

(2) Level II. The client requires room, board and supervision and may require one (1) or more of the following:

(a) Moderate assistance with activities of daily living and non-medical personal assistance.

(b) Moderate assistance with mobility, but easily mobile with assistance.

(c) Moderate assistance in an emergency, but client is capable of self-preservation with assistance.

(d) Moderate assistance with medications.

(e) Moderate assistance with behavior management.

(3) Level III. The client requires room, board, and staff up and awake on a twenty-four (24) hour basis and may require one (1) or more of the following:

(a) Extensive assistance with activities of daily living.

(b) Extensive personal assistance.

(c) Extensive assistance with mobility and may be immobile without extensive assistance.

(d) Extensive assistance in an emergency and may be incapable of self-preservation without assistance.

(e) Extensive assistance with and monitoring of medications.

(f) Extensive assistance with training and/or behavior management.

(4) Other levels and amounts as determined by the department pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

SECTION 67. That Section 39-3505, Idaho Code, be, and the same is hereby amended to read as follows:

39-3505. RULES. The board shall have the authority to adopt, amend, repeal and enforce such reasonable rules as may be necessary or proper to carry out the purpose and intent of this chapter which are designed to protect the health, safety and individual rights of residents in residential ~~care~~ <u>or assisted living</u> facilities for the elderly and provide adequate nutrition, supervision, and therapeutic recreational activities and to enable the department to exercise the powers and perform the duties conferred upon it in this chapter, not inconsistent with any statute of this state. Providers who care for a mixed population shall comply with the rules that are the most restrictive based on the populations being served. These rules shall be promulgated in accordance with the provisions of the Idaho administrative procedure act. Rules will be adopted July 1, 1996, but prior to that time, the existing rules as provided by this section will apply.

SECTION 68. That Section 39-3506, Idaho Code, be, and the same is hereby amended to read as follows:

39-3506. STATE LICENSING TO SUPERSEDE LOCAL REGULATION. The provisions of this chapter, and the rules promulgated pursuant to this chapter, shall supersede any program of any political subdivision of the state which licenses or sets standards for residential care or assisted living facilities for the elderly.

SECTION 69. That Section 39-3507, Idaho Code, be, and the same is hereby amended to read as follows:

39-3507. ADMISSIONS. (1) A licensed residential care or assisted living facility for the elderly shall not admit or retain any resident requiring a level of services or type of service for which the facility is not licensed or which the facility does not provide or arrange for, or if the facility does not have the staff, appropriate in numbers and with appropriate skills, to provide.

(2) The department shall develop rules governing admissions to licensed residential care or assisted living facilities for the elderly.

SECTION 70. That Section 39-3510, Idaho Code, be, and the same is hereby amended to read as follows:

39-3510. PERIODIC REVIEW. The negotiated service agreement may must be reviewed ~~as necessary but must be reviewed~~ when a significant change in condition or function occurs, or at least every ~~six (6)~~ twelve (12) months.

SECTION 71. That Section 39-3511, Idaho Code, be, and the same is hereby amended to read as follows:

39-3511. PHYSICIAN'S ORDER. A physician's or authorized provider's order shall include the following:

(1) A history and physical documenting any medical or health problems of the resident which are relevant to the services needed by the resident.

(2) A description of the functional abilities of the resident including his specific strengths and limitations.

(3) The specific needs of the resident for personal assistance.

SECTION 72. That Section 39-3513, Idaho Code, be, and the same is hereby amended to read as follows:

39-3513. ADMISSION AGREEMENTS. Upon admission to a licensed residential care or assisted living facility for the elderly, the facility and the resident shall enter into an admission agreement. The agreement shall be in writing and shall be signed by both parties. The board shall promulgate rules governing admission agreements which may be integrated with the negotiated service agreement.

SECTION 73. That Section 39-3515, Idaho Code, be, and the same is hereby amended to read as follows:

39-3515. ADMISSION RECORDS. Records required for admission to a

facility shall be maintained and updated for administrative purposes only and shall be confidential. Their availability, subject to Idaho department of health and welfare rules, chapter 1, title 5, ~~chapter 1,~~ shall be limited to administration, professional consultants, the resident's physician or authorized provider, and representatives of the licensing agency. They shall include at least the following information:

(1) Name and social security number.

(2) Permanent address if other than the facility.

(3) Marital status and sex.

(4) Birthplace and date of birth.

(5) Name, address and telephone number of responsible agent or agency.

(6) Personal physician or authorized provider and dentist.

(7) Admission date and by whom admitted.

(8) Results of a physical or health status examination performed by a licensed physician or ~~nurse--practitioner~~ authorized provider within six (6) months prior to admission.

(9) A list of medications, treatments and diet prescribed for the resident which is signed and dated by the physician or authorized provider giving the order(s).

(10) Religious affiliation if resident chooses to so state.

(11) Interested relatives and friends other than those in subsection (5) of this section. Names, addresses and telephone numbers of family members and/or significant others.

(12) Resident assessment.

SECTION 74. That Section 39-3516, Idaho Code, be, and the same is hereby amended to read as follows:

39-3516. RESIDENT RIGHTS. A licensed residential ~~care~~ or assisted living facility for the elderly must protect and promote the rights of each resident, including each of the following rights:

(1) Resident records. Each facility must maintain and keep current a record of the following information on each resident:

(a) A copy of the resident's current negotiated service agreement and physician's order.

(b) Written acknowledgement that the resident has received copies of the rights.

(c) A record of all personal property and funds which the resident has entrusted to the facility, including copies of receipts for the property.

(d) Information about any specific health problems of the resident which may be useful in a medical emergency.

(e) The name, address and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident.

(f) Any other health-related, emergency or pertinent information which the resident requests the facility to keep on record.

(g) The current admission agreement between the resident and the facility.

(2) Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written

and telephone communications, visits, and meetings of family and resident groups.

(3) Humane care and environment (dignity and respect).

(a) Each resident shall have the right to humane care and a humane environment, including the following:

(i) The right to a diet which is consistent with any religious or health-related restrictions.

(ii) The right to refuse a restricted diet.

(iii) The right to a safe and sanitary living environment.

(b) Each resident shall have the right to be treated with dignity and respect, including:

(i) The right to be treated in a courteous manner by staff.

(ii) The right to receive a response from the facility to any request of the resident within a reasonable time.

(4) Personal possessions. Each resident shall have the right to:

(a) Wear his own clothing.

(b) Determine his own dress or hair style.

(c) Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity.

(d) Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property.

(5) Personal funds. Residents whose board and care is paid for by public assistance shall retain, for their personal use, the difference between their total income and the applicable board and care allowance established by department rules.

(a) A facility shall not require a resident to deposit his personal funds with the facility.

(b) Once the facility accepts the written authorization of the resident, the facility must hold, safeguard and account for such personal funds under a system established and maintained by the facility in accordance with this subparagraph.

(6) Management of personal funds. Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(a) The facility must deposit any amount of a resident's personal funds in excess of one hundred dollars ($100) in an interest-bearing account, or accounts, that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a noninterest-bearing account or petty cash fund.

(b) The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident, or a legal representative of the resident, reasonable access to such record.

(c) Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds, and a final accounting of such funds, to the individual administering the resident's estate. For clients of the department, the remain-

ing balance of funds shall be refunded to the department.

(7) Access and visitation rights. Each facility must permit:

(a) Immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designee, or by the resident's individual physician.

(b) Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives.

(c) Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident.

(d) Reasonable access to a resident by any entity or individual that provides health, social, legal or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(8) Employment. Each resident shall have the right to refuse to perform services for the facility except as contracted for by the resident and the operator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident shall be consistent with state and federal law.

(9) Confidentiality. Each resident shall have the right to confidentiality of personal and clinical records.

(10) Freedom from abuse, neglect and restraints. Each resident shall have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience.

(11) Freedom of religion. Each resident shall have the right to practice the religion of his choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

(12) Control and receipt of health-related services. Each resident shall have the right to control his receipt of health-related services, including:

(a) The right to retain the services of his own personal physician, ~~and~~ dentist and other health care professionals.

(b) The right to select the pharmacy or pharmacist of his choice.

(c) The right to confidentiality and privacy concerning his medical or dental condition and treatment.

(13) Grievances. Each resident shall have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(14) Participation in resident and family groups. Each resident shall have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(15) Participation in other activities. Each resident shall have the right to participate in social, religious and community activities

that do not interfere with the rights of other residents in the facility.

(16) Examination of survey results. Each resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the department with respect to the facility and any plan of correction in effect with respect to the facility.

(17) Other rights. Each resident shall have any other right established by the department.

SECTION 75. That Section 39-3518, Idaho Code, be, and the same is hereby amended to read as follows:

39-3518. FACILITY RESPONSE TO INCIDENTS AND COMPLAINTS. (1) In addition to any other requirements of this chapter, the licensed residential ~~care~~ or assisted living facility for the elderly shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the owner, licensee, or person designated by the owner or licensee is notified of the incident, that the owner, licensee or person designated by the owner or licensee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a response of action taken or a reason why no action needs to be taken. In the case of anonymous complaints, the administrator/operator shall document the action taken or a reason why no action needs to be taken.

(2) In order to assure the opportunity for complaints from the residents, the neighborhood and the community to be made directly to the owner, licensee, or person designated by the owner or licensee, each facility shall establish a regular time when the owner, licensee, or person designated by the owner or licensee will be present to respond to such incidents or complaints.

SECTION 76. That Section 39-3519, Idaho Code, be, and the same is hereby amended to read as follows:

39-3519. ACCESS BY ADVOCATES AND REPRESENTATIVES. A licensed residential ~~care~~ or assisted living facility for the elderly shall permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to:

(1) Visit, talk with, and make personal, social and legal services available to all residents.

(2) Inform residents of their rights and entitlements, and their corresponding obligations under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals.

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, as well as in all other matters in which residents are aggrieved, which may be provided individually or in a group basis, and may include organizational activity, counseling and litigation.

(4) Engage in all other methods of assisting, advising and repre-

senting residents so as to extend to them the full enjoyment of their rights.

(5) Communicate privately and without restrictions with any resident who consents to the communication.

(6) Observe all common areas of the facility.

SECTION 77. That Section 39-3520, Idaho Code, be, and the same is hereby amended to read as follows:

39-3520. RESIDENT COUNCILS. (1) Every licensed residential ~~care~~ or assisted living facility for the elderly over fifteen (15) beds shall assist the residents in establishing and maintaining a resident council. The council shall be composed of residents of the facility and may include their family members. The council may extend membership to advocates, friends and others.

(2) The council shall have the following duties:

(a) To assist the facility in developing a grievance procedure.

(b) To communicate resident opinions and concerns.

(c) To obtain information from the facility and disseminate the information to the residents.

(d) To identify problems and participate in the resolution of those problems.

(e) To act as a liaison with the community.

(3) This section may be waived provided that the operator meets regularly with residents and that residents decline to participate in a formal council and appropriate documentation exists to indicate the residents' decision.

SECTION 78. That Section 39-3521, Idaho Code, be, and the same is hereby amended to read as follows:

39-3521. QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR/OPERATOR. Each licensed residential ~~care~~ or assisted living facility for the elderly must employ at least one (1) full-time administrator licensed by the board responsible for licensing residential ~~care~~ or assisted living administrators for the state of Idaho who:

(1) Is of good moral and responsible character and has not been convicted, or is not under the influence or control of anyone convicted, of ~~any felony or defrauding the federal government~~:

(a) A criminal offense related to the delivery of an item or service under medicare, medicaid or other state health care program; or

(b) A criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service; or

(c) A criminal offense related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct; or

(d) A criminal offense resulting in death or injury to a person.

(2) Has sufficient physical, emotional and mental capacity to carry out the requirements of this chapter.

(3) Has sufficient management and administrative ability to carry

out the requirements of this chapter.

Multiple facilities under one (1) administrator may be allowed by the department based upon an approved plan of operation.

SECTION 79. That Section 39-3522, Idaho Code, be, and the same is hereby amended to read as follows:

39-3522. QUALIFICATIONS AND REQUIREMENTS FOR FACILITY STAFF. Each facility must employ or arrange for sufficient~~ly~~ trained staff to fully meet the needs of its residents and the requirements of this chapter. The facility shall have sufficient staff to provide care during all hours required in each resident's negotiated service plan. Additional staff may be required if physical plant conditions and disability of residents indicate that staff assistance in emergencies is required. Benchmarks shall be established in the assessment criteria where the need for certificated nursing assistants or licensed nurses is indicated. Licensed r~~R~~esidential ~~care~~ or assisted living facilities shall not retain residents who require ~~routine nursing care on a daily basis~~ the care provided by nursing facilities under section 39-1301(b), Idaho Code, other than for short exceptional stays pursuant to negotiated rulemaking as defined in chapter 52, title 67, Idaho Code.

SECTION 80. That Section 39-3524, Idaho Code, be, and the same is hereby amended to read as follows:

39-3524. STAFF TRAINING. All employees of a licensed residential ~~care~~ or assisted living facility for the elderly shall receive department approved orientation and continuing education pertinent to their job responsibilities.

SECTION 81. That Section 39-3525, Idaho Code, be, and the same is hereby amended to read as follows:

39-3525. REQUIREMENTS FOR LOCATION AND PHYSICAL ENVIRONMENT OF FACILITIES. (1) Licensed r~~R~~esidential ~~care~~ or assisted living facilities for the elderly shall:

(a) Be located in geographical areas which are accessible to supportive services and are free from conditions which would pose a danger to the residents.

(b) Be maintained internally and externally in good repair and condition.

(c) Be maintained in a clean and sanitary manner, including proper sewage disposal, food handling and hygiene practices.

(d) Be maintained in such a manner as to be free from fire/safety hazards.

(2) The department shall promulgate rules concerning physical structure, fire safety, health and sanitation, household items and furnishings, diet, self-administered medications and rooms.

SECTION 82. That Section 39-3530, Idaho Code, be, and the same is hereby amended to read as follows:

39-3530. RESIDENTIAL ~~CARE~~ OR ASSISTED LIVING COUNCIL FOR THE ELDERLY. (1) The department shall establish a residential ~~care~~ or assisted living council for the elderly consisting of ~~eight~~ twelve (~~8~~12) members appointed by the director. The director, or his designee, shall serve as chairman of the council. The members of the council shall be:

(a) The state ombudsman for the elderly or his designee.

(b) The director of the bureau of facility standards or his designee.

(c) An advocate for individuals who are elderly in the state.

(d) Four (4) administrators or licensees of licensed residential ~~care~~ or assisted living facilities for the elderly, one (1) of whom shall represent facilities licensed for nine (9) beds or less, one (1) of whom shall represent facilities licensed for ten (10) to sixty (60) beds, one (1) of whom shall represent facilities licensed for sixty-one (61) beds or more, and one (1) of whom represents a combination of nursing facility and residential ~~care~~ or assisted living facility.

(e) Four (4) certified family home providers certified under this chapter.

(2) In appointing the first members of the council who are not state agency representatives, the director shall appoint one (1) member for a term of one (1) year, one (1) member for a term of two (2) years and two (2) members for a term of three (3) years. After the initial appointments, members who are not state agency representatives shall serve three (3) year terms. A vacancy shall be filled for the remainder of the unexpired term from the same class of persons represented by the outgoing member.

SECTION 83. That Section 39-3531, Idaho Code, be, and the same is hereby amended to read as follows:

39-3531. POWERS AND DUTIES. The residential ~~care~~ or assisted living council for the elderly shall have the following powers and duties:

(1) To make policy recommendations regarding the coordination of licensing, certifying and enforcement standards in residential ~~care~~ or assisted living facilities for the elderly and the provision of services to residents of board and care facilities.

(2) To advise the department regarding methods for identification of unlicensed residential ~~care~~ or assisted living facilities for the elderly.

(3) To advise the agency during development and revision of rules.

(4) To review and comment upon proposed rules.

(5) To submit an annual report to the legislature stating opinions and recommendations which would further the state's capability in addressing residential ~~care~~ or assisted living for the elderly issues.

SECTION 84. That Section 39-3532, Idaho Code, be, and the same is hereby amended to read as follows:

39-3532. MEETINGS. The residential ~~care~~ or assisted living coun-

cil for the elderly shall meet as necessary but not less than two (2) times a year. Meetings of the council shall be open to the public. The department shall provide:

(1) Staff necessary to assist the council in performing its duties.

(2) Space for meetings of the council.

SECTION 85. That Section 39-3533, Idaho Code, be, and the same is hereby amended to read as follows:

39-3533. REIMBURSEMENT OF EXPENSES. Members of the residential ~~care~~ or assisted living council for the elderly shall be reimbursed by the department for their actual expenses incurred in the performance of their duties.

SECTION 86. That Section 39-3540, Idaho Code, be, and the same is hereby amended to read as follows:

39-3540. LICENSING OF RESIDENTIAL ~~CARE~~ OR ASSISTED LIVING FACILITIES FOR THE ELDERLY. After July 1, 1993, no person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct or maintain a residential ~~care~~ or assisted living facility for the elderly in the state without a current valid license issued by the licensing agency of the department.

SECTION 87. That Section 39-3541, Idaho Code, be, and the same is hereby amended to read as follows:

39-3541. INITIAL APPLICATION AND ISSUANCE OF A LICENSE. Any person or governmental unit proposing to operate a residential ~~care~~ or assisted living facility for the elderly shall apply for a license to the licensing agency specifying the types of residents to be served and the level(s) of care to be provided.

SECTION 88. That Section 39-3542, Idaho Code, be, and the same is hereby amended to read as follows:

39-3542. APPLICATION. The applicant shall apply for a license upon forms provided by the licensing agency giving such information as the licensing agency shall require including, but not limited to:

(1) Evidence satisfactory to the licensing agency of the ability of the applicant to comply with the provisions of this chapter and with the rules adopted under this chapter by the department.

(2) Evidence satisfactory to the department that the applicant is of reputable and responsible character.

(3) The evidence shall include, but not be limited to:

(a) A criminal record clearance;

(b) Fingerprinting;

(c) Employment history;

(d) Credit report;

(e) Character references.

(4) If the applicant is a firm, association, organization, part-

nership, business trust, corporation or company, like evidence shall be submitted as to the members or shareholders holding ten percent (10%) or more interest thereof, and the administrator/operator of the residential ~~care~~ or assisted living facility for the elderly.

(5) Evidence satisfactory to the licensing agency that the applicant has sufficient financial resources to maintain the standards of service required by rules adopted pursuant to this chapter.

(6) Evidence satisfactory to the licensing agency that the administrator/operator has successfully completed the department approved orientation.

(7) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities in Idaho as specified in section 39-3545, Idaho Code, or any other jurisdiction.

(8) Any other information as may be required by the licensing agency for the proper administration and enforcement of the provisions of this chapter.

(9) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in rules of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(10) A signed statement that the person desiring issuance or renewal of a license has read and understands the provisions of this chapter and residential ~~care~~ or assisted living facilities for the elderly rules.

SECTION 89. That Section 39-3545, Idaho Code, be, and the same is hereby amended to read as follows:

39-3545. DENIAL OR REVOCATION OF A LICENSE. The licensing agency may deny the issuance of a license or revoke any license when persuaded by a preponderance of evidence that such conditions exist as to endanger the health or safety of any resident, or when the facility is not in substantial compliance with ~~the~~ any provisions of this chapter ~~and~~ or the rules promulgated pursuant to this chapter.

SECTION 90. That Section 39-3548, Idaho Code, be, and the same is hereby amended to read as follows:

39-3548. RULES PROVIDED. Upon initial licensure, residential ~~care~~ or assisted living facilities for the elderly shall be provided a printed copy of all applicable rules by the department, without charge.

SECTION 91. That Section 39-3549, Idaho Code, be, and the same is hereby amended to read as follows:

39-3549. RESPONSIBILITY FOR INSPECTIONS AND LICENSING -- NONTRANSFERABILITY OF LICENSES. The licensing agency shall inspect and license residential ~~care~~ or assisted living facilities for the elderly. A license is not transferable.

SECTION 92. That Section 39-3550, Idaho Code, be, and the same is hereby amended to read as follows:

39-3550. CONSULTING SERVICES. The department may provide consulting services upon request to any residential ~~care~~ or assisted living facility for the elderly to assist in the identification or correction of deficiencies and in the upgrading of the quality of care provided by the facility.

SECTION 93. That Section 39-3552, Idaho Code, be, and the same is hereby amended to read as follows:

39-3552. UNLICENSED RESIDENTIAL ~~CARE~~ OR ASSISTED LIVING FACILITIES FOR THE ELDERLY. (1) No unlicensed residential ~~care~~ or assisted living facility for the elderly shall operate in this state.

(2) A facility shall be deemed to be an "unlicensed residential ~~care~~ or assisted living facility for the elderly" and "maintained and operated to provide residential ~~care~~ or assisted living for the elderly" if it is unlicensed and not exempt from licensure, and any one (1) of the following conditions is satisfied:

(a) The facility is, or is held out as or represented as, providing care, supervision and services.

(b) The facility accepts or retains residents who demonstrate the need for care, supervision and services, as defined by this chapter or the rules adopted pursuant to this chapter.

(3) Upon discovery of an unlicensed residential ~~care~~ or assisted living facility for the elderly, the department shall refer residents to the appropriate placement or adult protective services agency if either of the following conditions exist:

(a) There is an immediate threat to the resident's health and safety.

(b) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license.

(4) A person found to be operating a residential ~~care~~ or assisted living facility for the elderly without a license shall be guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed five thousand dollars ($5,000).

(5) In the event the county attorney in the county where the alleged violation occurred fails or refuses to act within thirty (30) days of notification of the violation, the attorney general is authorized to prosecute violations under the provisions of this section.

SECTION 94. That Section 39-3553, Idaho Code, be, and the same is hereby amended to read as follows:

39-3553. PLACEMENT OF PERSONS INTO AN UNLICENSED RESIDENTIAL ~~CARE~~ OR ASSISTED LIVING FACILITY FOR THE ELDERLY. No person or public agency employee shall place, refer or recommend placement of a person into a residential ~~care~~ or assisted living facility for the elderly which is operating without a license.

Failure to comply with the provisions of this subsection shall constitute a misdemeanor.

SECTION 95. That Section 39-3554A, Idaho Code, be, and the same is hereby amended 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~~ or assisted living 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.

SECTION 96. That Section 39-3555, Idaho Code, be, and the same is hereby amended to read as follows:

39-3555. INSPECTIONS. (1) The licensing agency shall cause to be made ~~such~~ inspections and investigations ~~as it may deem necessary~~ at least every twelve (12) months to determine compliance with the provisions of this chapter and applicable rules.

(2) All inspections for such purposes will be made unannounced and without prior notice at intervals determined by the licensing agency.

(3) An inspector shall have full access and authority to examine, among other things, quality of care and service delivery, a facility's records, resident accounts, physical premises, including buildings, grounds and equipment, and any other areas necessary to determine compliance with the provisions of this chapter and applicable rules.

(4) An inspector shall have authority to interview the licensee, administrator/operator, staff and residents. Interviews with residents shall be confidential and conducted privately unless otherwise specified by the resident.

(5) The licensing agency shall notify the facility, in writing, of all deficiencies and shall approve a reasonable length of time for compliance by the facility.

(6) Current lists of deficiencies, including plans of correction,

shall be available to the public upon request in the individual facilities or by written request to the regional office of the department or the licensing agency.

SECTION 97. That Section 39-3557, Idaho Code, be, and the same is hereby amended to read as follows:

39-3557. ENFORCEMENT PROCESS. (1) If the licensing agency finds, on the basis of inspections as defined in this chapter or otherwise, that a residential **care** or assisted living facility for the elderly no longer meets a requirement of this chapter, and further finds that the facility's deficiencies:

(a) Immediately jeopardize the health or safety of its residents, the department shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in section 39-3558(1)(c), Idaho Code, or prohibit the facility from keeping or admitting residents and may provide, in addition, for one (1) or more of the other remedies described in section 39-3558, Idaho Code.

(b) Do not immediately jeopardize the health or safety of its residents, the department shall provide for one (1) or more of the remedies described in section 39-3558, Idaho Code.

(2) Nothing in this section shall be construed as restricting the remedies available to the department to remedy a facility's deficiencies. If the department finds that a facility meets the requirements of this chapter, but, as of a previous period, intentionally did not meet such requirements, the department may provide for a civil money penalty under section 39-3558(1)(b), Idaho Code, for the days in which it finds that the facility was not in compliance with such requirements.

SECTION 98. That Section 39-3558, Idaho Code, be, and the same is hereby amended to read as follows:

39-3558. SPECIFIED REMEDIES. (1) The department shall establish at least the following remedies:

(a) Prohibit the facility from admitting residents or prohibit a facility from keeping or admitting residents with a specific diagnosis.

(b) A civil money penalty assessed and collected, with interest, for each day the facility is or was out of compliance with a requirement of this chapter. Funds collected by the department as a result of imposition of such a penalty shall be applied to the protection of the health or property of residents of residential **care** or assisted living facilities for the elderly that the department finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(c) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while:

(i) There is an orderly closure of the facility.

(ii) Improvements are made in order to bring the facility into compliance with all the requirements of this chapter.

(iii) The temporary management under this clause shall not be terminated until the department has determined that the facility has the management capability to ensure continued compliance with all the requirements of this chapter.

(d) The authority, in the case of an emergency, to summarily suspend the license, to close the facility, and/or to transfer residents in that facility to other facilities.

(2) The department shall also specify criteria as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

SECTION 99. That Section 39-3559, Idaho Code, be, and the same is hereby amended to read as follows:

39-3559. TRANSFER OF RESIDENTS. The department may transfer residents from a residential ~~care~~ or assisted living facility for the elderly to an alternative placement on the following grounds:

(1) As a result of a violation of a provision of this chapter or an applicable rule the facility is unable or unwilling to provide an adequate level of meals, lodging, personal assistance or supervision to persons residing in the facility at the time of the violation.

(2) A violation of a resident's rights as provided in section 39-3516, Idaho Code.

(3) The number of residents currently in the facility exceeds the number of residents the facility is licensed to serve.

(4) The facility is operating without a license.

(5) A violation of a provision of this chapter or an applicable rule results in conditions that present an imminent danger.

SECTION 100. That Section 39-3560, Idaho Code, be, and the same is hereby amended to read as follows:

39-3560. PURPOSE OF ~~ADULT-FOSTER-CARE~~ CERTIFIED FAMILY HOMES. The purpose of ~~an adult-foster-care~~ certified family home in Idaho is to provide a residential alternative designed to allow elderly persons to remain in more normal family-style living, usually within their own communities. ~~Families who provide adult-foster-care share their homes with elderly persons who are able to administer their own medications but who need assistance with activities of daily living. Persons who live in adult-foster-care are those~~ Certified family homes provide a home to persons who are elderly~~,~~ or unable to live alone and~~/or~~ whose mental, emotional and physical conditions ~~are such that the care given~~ can be met by the ~~foster~~ care provider. ~~will meet the person's needs. Individuals requiring nursing home care, or who are unable to administer their own medication, are not suitable for adult-foster-care~~ The home must obtain a waiver under section 39-1301A, Idaho Code, to care

for two (2) persons requiring the care described in section 39-1301(b), Idaho Code. Homes may add services which will allow an individual's needs to be met.

SECTION 101. That Section 39-3561, Idaho Code, be, and the same is hereby amended to read as follows:

39-3561. RULES. The board shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the standards for ~~certifying adult foster care~~ certified family homes pursuant to this act including, but not limited to, the following:

(1) A home shall be certified for no more than two (2) adults, however, upon an application by the owner and upon a finding by the department that residents can be cared for safely and appropriately based on the residents' specific needs, the department may authorize not more than four (4) adults to be placed in a certified family home which is owner-occupied and which applies to the department for the authorization. Certification as a four (4) resident certified family home shall not be transferable to another person or entity. Four (4) resident certified family homes shall be subject to all statutes and rules governing certified family homes but shall not be subject to the residential or assisted living administrator licensing requirements of chapter 42, title 54, Idaho Code, section 39-3340, Idaho Code, licensing of residential or assisted living facilities for the mentally ill, developmentally disabled and physically disabled, or section 39-3540, Idaho Code, licensing of residential or assisted living facilities for the elderly. This provision implementing four (4) resident certified family homes shall be effective on July 1, 2001. Prior to the effective date, the department shall promulgate rules for four (4) resident certified family homes through the negotiated rulemaking process. Nothing in this subsection shall be construed to authorize increased group size for providers of any form of care other than certified family homes.

(2) ~~An--adult--foster~~ care provider may be a couple or a single individual.

(3) A home cannot be approved as a certified for ~~adult--foster~~ family home care if it also provides room and board for other persons.

(4) A home cannot be approved as a certified ~~for adult foster care~~ family home and for child foster care at the same time, unless a waiver is granted by the department.

(5) The ~~adult foster~~ care provider must have sufficient income to maintain the home and the services offered.

(6) Information obtained by the ~~foster~~ care provider shall be held confidential except to representatives of the department to provide services or determine compliance with this chapter or upon consent of the individual or his legal guardian.

(7) Recordkeeping and reporting requirements as may be deemed necessary.

(8) Requirements to assure the safety and adequate care of residents.

(9) Until July 1, 1994, residential care facilities serving four (4) or fewer residents and holding a valid license or with an applica-

tion for a license pending with the department as of July 1, 1994, shall have the option of being certified as ~~an adult foster care~~ certified family home. Certification as ~~an adult foster care~~ certified family home under this subsection shall not be transferable to another person or entity. ~~Adult foster care~~ Certified family home providers certified under this subsection shall not be subject to ~~residential care administrator~~ the licensing requirements of chapter 42, title 54, Idaho Code, ~~or~~ section 39-3340, Idaho Code, ~~licensing--of--residential care--facilities--for--the--mentally ill, developmentally disabled and physically disabled,~~ or section 39-3540, Idaho Code~~, licensing of residential care facilities for the elderly~~. This provision in and of itself shall not be construed to authorize increased group size for providers of any form of care other than ~~adult foster--care~~ certified family homes.

SECTION 102. That Section 39-3562, Idaho Code, be, and the same is hereby amended to read as follows:

39-3562. APPLICATION FOR CERTIFICATION. An application for certification shall be made to regional offices of the department upon forms provided by the department and shall contain such information as the department reasonably requires which will include a background check and fingerprinting with the Idaho department of law enforcement. Following receipt of an application, the department shall conduct a study, including a visit to the home, to determine the capability of the provider to provide ~~adult foster~~ care as a certified family home.

SECTION 103. That Section 39-3563, Idaho Code, be, and the same is hereby amended to read as follows:

39-3563. ISSUANCE AND RENEWAL OF CERTIFICATION. Each certificate shall be issued only for the home and ~~foster care~~ provider named in the application and shall not be transferable or assignable. Each ~~adult foster care~~ certified family home is required to renew ~~their~~ its certification annually. The application for renewal shall be filed with the regional office of the department within thirty (30) days prior to the date of expiration. The existing certificate, unless suspended or revoked, shall remain in force and effect until the department has acted upon the application renewal when such application for renewal is timely filed.

SECTION 104. That Section 39-3564, Idaho Code, be, and the same is hereby amended to read as follows:

39-3564. TEMPORARY CERTIFICATION. Upon initial investigation, should an applicant for a certificate be unable to meet a standard because of conditions that are unlikely to endure beyond six (6) months, the department may grant a temporary certificate pending the satisfactory correction of all deficiencies and provided that the deficiencies do not jeopardize the health and safety of residents. No more than one (1) provisional certificate shall be issued to the same ~~adult--foster--care~~ certified family home in any twelve (12) month period.

SECTION 105. That Section 39-3568, Idaho Code, be, and the same is hereby amended to read as follows:

39-3568. RULES PROVIDED. Upon initial certification, ~~adult-foster care~~ certified family homes shall be provided a printed copy of all applicable rules by the department, without charge.

SECTION 106. That Section 39-3569, Idaho Code, be, and the same is hereby amended to read as follows:

39-3569. MANDATORY INSPECTIONS. For the purpose of determining whether every ~~adult-foster-care~~ certified family home consistently maintains conformity with the standards established under the authority herein, the department, through a certifying agent, shall visit the premises of each home ~~as-it-deems-necessary-but-in-any-event-at intervals-not-to-exceed-six~~ at least every twelve (~~6~~12) months.

SECTION 107. That Section 39-3570, Idaho Code, be, and the same is hereby amended to read as follows:

39-3570. ENFORCEMENT PROCESS. Section 39-3557, Idaho Code, governing residential ~~care~~ or assisted living facilities shall also govern ~~adult-foster-care~~ certified family homes.

SECTION 108. That Section 39-3571, Idaho Code, be, and the same is hereby amended to read as follows:

39-3571. OPERATING WITHOUT CERTIFICATION -- MISDEMEANOR. Any person who operates ~~an-adult-foster-care~~ certified family home within the state without first obtaining certification as provided in this chapter shall be guilty of a misdemeanor.

SECTION 109. That Section 39-3572, Idaho Code, be, and the same is hereby amended to read as follows:

39-3572. PLACEMENT OF PERSONS INTO AN ~~UNLICENSED--ADULT--FOSTER CARE~~ UNCERTIFIED FAMILY HOME. Section 39-3553, Idaho Code, governing residential ~~care~~ or assisted living facilities shall also govern ~~unlicensed-adult-foster-care~~ uncertified family homes.

SECTION 110. That Section 39-3573, Idaho Code, be, and the same is hereby amended to read as follows:

39-3573. NEGOTIATED SERVICE AGREEMENT. The negotiated service agreement as set out in section 39-35~~08~~9, Idaho Code, shall govern the content, preparation and review of the negotiated service agreement for residents of ~~adult-foster-care~~ certified family homes.

SECTION 111. 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 39-3573A, Idaho Code, and to read as follows:

39-3573A. PHYSICIAN'S ORDER FOR CERTIFIED FAMILY HOMES. The physician's order as set out in section 39-3511, Idaho Code, governing licensed residential or assisted living facilities for the elderly shall also govern certified family homes.

SECTION 112. That Section 39-3574, Idaho Code, be, and the same is hereby amended to read as follows:

39-3574. WRITTEN SERVICE PLAN. The department and the ~~foster~~ care providers serving clients of the department shall negotiate a written plan annually. The purpose of the plan shall be to ensure that a client receives the level of care based upon the negotiated service agreement as described in section~~s 39-3503 and 39-3508~~ 39-3509, Idaho Code. The plan is to establish a basis for coordination and communication between the ~~foster~~ home family and the department. The plan shall be maintained in the home.

SECTION 113. That Section 39-3575, Idaho Code, be, and the same is hereby amended to read as follows:

39-3575. ~~FOSTER CARE~~ AGREEMENTS. Each ~~foster~~ care provider shall negotiate a written, signed and dated agreement between the ~~foster~~ care provider and a resident specifying the amount of monthly payment to be paid by the resident and the method for payment.

SECTION 114. That Section 39-3576, Idaho Code, be, and the same is hereby amended to read as follows:

39-3576. RESIDENT RIGHTS. Section 39-3516, Idaho Code, governing licensed residential ~~care~~ or assisted living facilities shall also govern ~~adult foster care~~ certified family homes.

SECTION 115. That Section 39-3577, Idaho Code, be, and the same is hereby amended to read as follows:

39-3577. TRAINING. The department shall insure that ~~foster~~ care providers receive, at a minimum, training which shall include the rights of the resident, and a basic understanding of the psychosocial and physical needs of residents to be served. The department will specify annual continuing education requirements for ~~foster~~ care providers.

SECTION 116. That Section 39-3578, Idaho Code, be, and the same is hereby amended to read as follows:

39-3578. PHYSICAL AND ENVIRONMENTAL STANDARDS. Standards shall be developed through the regulatory process by the department to insure a safe, sanitary and comfortable environment for residents of ~~adult foster care~~ certified family homes.

SECTION 117. That Section 39-3580, Idaho Code, be, and the same is hereby amended to read as follows:

39-3580. APPLICATION OF PROVISIONS. The provisions of section 39-3508~~9~~, Idaho Code, governing licensed residential ~~care~~ or assisted living facilities, shall also govern ~~adult-foster-care~~ certified family homes. Any individual providing care and housing commercially to the elderly general public shall at a minimum meet the requirements of this chapter or other provision of law governing care and housing for the elderly if those provisions are more restrictive.

SECTION 118. That Section 39-4803, Idaho Code, be, and the same is hereby amended to read as follows:

39-4803. IMMUNIZATION REGISTRY. (1) The department of health and welfare shall provide for the establishment of a voluntary registry of the immunization status of Idaho children against childhood diseases. The registry may be maintained and its data disclosed as set out herein to further the following purposes:

(a) To make immunizations readily available to every Idaho citizen that desires to have their child immunized;

(b) To increase the voluntary immunization rate in Idaho to the maximum extent possible without mandating such immunizations;

(c) To recognize and respect the rights of parents and guardians to make health care decisions for their children;

(d) To provide for timely reminders to parents of children in the registry.

(2) The name of a child or information relating to the immunization status of that child may be collected or included in the registry only upon the separate and specific written authorization of a parent, guardian or other person legally responsible for the care of the child. Such authorization may not be part of a general authorization or release. The registry may contain only the following information for each child:

(a) The child's name, address and birth date;

(b) The name and address of each parent of the child;

(c) The month, day, year and type of each immunization that has been administered to the child;

(d) The name, address and phone number of each provider that has administered an immunization to the child;

(e) If requested by a parent or guardian, any statement made pursuant to subsection (4) of this section;

(f) Other information as authorized or requested by a parent or guardian.

(3) The department of health and welfare may only disclose information relating to an individual child in the registry to the following upon a specific request:

(a) Employees of the health district in which the child resides or seeks medical services;

(b) Health records staff of the school or school district in which the child is enrolled;

(c) The operator of a licensed child care facility in which the child is enrolled;

(d) Persons who are legally responsible for the long-term care of the child, including operators of licensed ICF/MR's and residential ~~care~~ or assisted living facilities, adoptive and foster par-

ents and a guardian appointed pursuant to chapter 5, title 15, Idaho Code;

(e) Any health care provider rendering treatment to the child, and the provider's agents;

(f) Any person possessing a lawful release, properly executed by the child's parent or guardian;

(g) A parent of the child;

(h) Any hospital where the child is receiving care.

(4) A parent or guardian of the child shall have free and open access to all information in the registry that relates to their child or themselves. Upon the written request of a parent or guardian, the department of health and welfare shall:

(a) Cause all information relating to the child to be removed from the registry and any databases or files of other entities or persons to which information in the database has been disclosed;

(b) Include in the registry the statement of a physician or parent pursuant to section 39-4802(2) or 39-1118(2), Idaho Code.

(5) All information contained in the registry or disclosed from it is confidential and may not be sold and may only be disclosed as specifically authorized in this section. A person or entity to whom information is disclosed from the registry may not thereafter disclose it to others. Any person who discloses or authorizes disclosure of any information contained in the registry, except as authorized in this section is guilty of a misdemeanor and is liable for civil damages in the amount of one hundred dollars ($100) for each violation.

SECTION 119. That Section 39-5303, Idaho Code, be, and the same is hereby amended to read as follows:

39-5303. DUTY TO REPORT CASES OF ABUSE, NEGLECT OR EXPLOITATION OF VULNERABLE ADULTS. (1) Any physician, nurse, employee of a public or private health facility, or a state licensed or certified residential facility serving vulnerable adults, medical examiner, dentist, ombudsman for the elderly, osteopath, optometrist, chiropractor, podiatrist, social worker, police officer, pharmacist, physical therapist, or home care worker who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected or exploited shall immediately report such information to the commission. Provided however, that ~~skilled~~ nursing facilities defined in section 39-1301(b), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department. When there is reasonable cause to believe that abuse or sexual assault has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult, any person required to report under this section shall also report such information within four (4) hours to the appropriate law enforcement agency.

(2) Failure to report as provided under this section is a misdemeanor subject to punishment as provided in section 18-113, Idaho Code. If an employee at a state licensed or certified residential facility fails to report abuse or sexual assault that has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult as provided under this section, the department shall also have the authority to:

(a) Revoke the facility's license and/or contract with the state to provide services;
(b) Deny payment;
(c) Assess and collect a civil monetary penalty with interest from the facility owner and/or facility administrator;
(d) Appoint temporary management;
(e) Close the facility and/or transfer residents to another certified facility;
(f) Direct a plan of correction;
(g) Ban admission of persons with certain diagnoses or requiring specialized care;
(h) Ban all admissions to the facility;
(i) Assign monitors to the facility; or
(j) Reduce the licensed bed capacity.

Any action taken by the department pursuant to this subsection shall be appealable as provided in chapter 52, title 67, Idaho Code.

(3) Any person, including any officer or employee of a financial institution, who has reasonable cause to believe that a vulnerable adult is being abused, neglected or exploited may report such information to the commission or its contractors.

(~~3~~4) The commission and its contractors shall make training available to officers and employees of financial institutions in identifying and reporting instances of abuse, neglect or exploitation involving vulnerable adults.

(~~4~~5) Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such report, or who is authorized to provide supportive or emergency services pursuant to the provisions of this chapter, shall be immune from any civil or criminal liability on account of such report, testimony or services provided in good faith, except that such immunity shall not extend to perjury, reports made in bad faith or with malicious purpose nor, in the case of provision of services, in the presence of gross negligence under the existing circumstances.

(~~5~~6) Any person who makes a report or allegation in bad faith, with malice or knowing it to be false, shall be liable to the party against whom the report was made for the amount of actual damages sustained or statutory damages in the amount of five hundred dollars ($500), whichever is greater, plus attorney's fees and costs of suit. If the court finds that the defendant acted with malice or oppression, the court may award treble actual damages or treble statutory damages, whichever is greater.

SECTION 120. That Section 39-5304, Idaho Code, be, and the same is hereby amended to read as follows:

39-5304. REPORTING REQUIREMENTS, INVESTIGATION, EMERGENCY ACCESS. (1) When a report is required pursuant to this chapter, such report shall be made immediately to the commission or appropriate contractor. Provided however, that ~~skilled~~ nursing facilities defined in section 39-1301(b), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department. If known, the report shall contain the name and address of the vulnerable adult; the caretaker; the alleged perpetrator; the nature and extent of suspected

abuse, neglect or exploitation; and any other information that will be of assistance in the investigation.

(2) If the allegations in the report indicate that an emergency exists, the commission or contractor must initiate an investigation immediately, and initiate contact with the alleged vulnerable adult within twenty-four (24) hours. All other investigations must be initiated within seventy-two (72) hours.

(3) The investigation shall include a determination of the nature, extent and cause of the abuse, neglect, or exploitation, examination of evidence and consultation with persons thought to have knowledge of the circumstances and identification, if possible, of the person alleged to be responsible for the abuse, neglect or exploitation of the vulnerable adult.

(4) The investigation shall include an interview with the vulnerable adult, if possible. The commission or contractor shall conduct the interview, preferably, by means of a personal visit with the vulnerable adult in the adult's dwelling. If that is not possible, the interview may occur in the local office of the commission or contractor, or by telephone conversation, or by any other means available to the commission or contractor.

(5) Upon completion of an investigation, the commission or contractor shall prepare a written report of the investigation. The name of the person making the original report or any person mentioned in the report shall not be disclosed unless those persons specifically request such disclosure or unless the disclosure is made pursuant to a request to law enforcement for emergency access, a court order or hearing.

If the abuse, neglect, or exploitation is substantiated to have occurred in a state certified or licensed facility, a copy of the findings shall be sent to the licensing and certification office of the department.

If the commission or contractor determines that a report is unsubstantiated and that no other law has been violated, all records related to the report shall be expunged no later than three (3) years following the completion of the investigation.

SECTION 121. That Section 39-5308, Idaho Code, be, and the same is hereby amended to read as follows:

39-5308. INTERAGENCY COOPERATION. (1) In performing the duties set forth in this chapter, the commission or contractor may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health directors, and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel, and any other person or entity deemed necessary due to their specialized training in providing services to vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to vulnerable adults.

(2) The commission shall provide to the department on at least a quarterly basis a listing of all alleged perpetrators against whom an

allegation of adult abuse, neglect or exploitation has been substantiated. Upon request, all available supportive information shall be provided to enable the department to conduct criminal background checks and other required investigations.

(3) The department shall provide to the commission or contractor any report received under this chapter from a ~~skilled~~ nursing facility defined in section 39-1301(b), Idaho Code, or an employee of such facility.

(4) The commission or contractor shall provide the department with any report received under this chapter involving allegations of abuse, neglect or exploitation occurring in a ~~skilled~~ nursing facility as defined in section 39-1301(b), Idaho Code.

(5) The commission, contractors and the department shall use interagency staffing when necessary and share client and facility information necessary to provide services to vulnerable adults.

SECTION 122. That Section 39-5601, Idaho Code, be, and the same is hereby amended to read as follows:

39-5601. LEGISLATIVE INTENT. The purpose and intent of this chapter is to authorize personal ~~care~~ assistance services for medicaid eligible ~~recipients~~ participants in the ~~recipient's~~ participant's home and community. It is further the purpose of this chapter to help maintain these eligible ~~recipients~~ participants in their own homes in order to provide for the greatest degree of independence and self-reliance possible.

Personal ~~care~~ assistance services are an integral component of the long-term care service delivery system and they are to be designed to provide a range of services for persons who are elderly and for persons with disabilities. These services are to help individuals compensate for functional limitations and are to be delivered over a sustained period of time to persons who lost or never acquired some degree of functional capacity. ~~Personal care s~~Services will be viewed as ~~services which enhance~~ enhancing the quality of life, individual choice, consumer control, independence and community integration.

~~Community-centered, in-home, medically related~~ Personal assistance services related to functional need shall be provided~~, for as long as possible, that will~~ in order to maintain the independence, privacy, and dignity of the individual in the least restrictive, most cost-effective setting.

The participant and, at the option of the participant, the family of the ~~recipient~~ participant, if available, ~~and/or the recipient~~ shall be involved in the development of the individual service plan ~~of care to insure the plan will enhance the existing base of support provided by the family~~ based on the participant's needs identified through an assessment conducted by the department.

SECTION 123. That Section 39-5602, Idaho Code, be, and the same is hereby amended to read as follows:

39-5602. DEFINITIONS. As used in this chapter, the following terms shall have the following meanings:

(1) ~~"Associated services" means those tasks performed which do~~

~~not--require--hands-on--care-such-as-incidental-housekeeping,-cooking,-laundry,-shopping,--and--transportation--included--in--the--care--plan~~
"Attendant care" means services provided under a medicaid home and community-based services waiver that involve personal and medically orientated tasks dealing with the functional needs of the participant and accommodating the participant's needs for long-term maintenance, supportive care or IADLs. These services may include, but are not limited to, personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or participant. Services shall be based on the participant's abilities and limitations, regardless of age, medical diagnosis or other category of disability.

(2) "Case management" means a service which coordinates multiple services for individual ~~clients~~ participants through a process of assessment, planning, arranging for and monitoring services.

(3) "Department" means the department of health and welfare of the state of Idaho.

(4) "Director" means the director of the department of health and welfare.

(5) "Eligible ~~recipient~~ participant" or "~~recipient~~ participant" means an individual determined eligible by the department for ~~the-services-provided-in-the-state--plan--for~~ Idaho medicaid services, as authorized by title XIX, of the social security act, as amended.

(6) "Fiscal intermediary services" means services that allow the participant receiving personal assistance services, or his designee or legal representative, to choose the level of control he will assume in recruiting, selecting, managing, training, and dismissing his personal assistant regardless of who the employer of record is, and allows the participant control over the manner in which services are delivered.

(7) "Individual service plan" means a document which outlines all services including, but not limited to, personal assistance services and IADLs, required to maintain the individual in his or her home and community.

(8) "Instrumental activities of daily living (IADL)" means those activities performed in supporting the activities of daily living, including, but not limited to: managing money, preparing meals, shopping, light housekeeping, using the telephone, or getting around in the community.

(9) "Personal assistance agency" means an entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides payroll and benefits for personal assistants working for them, is the employer of record and in fact, and may provide fiscal intermediary services.

(10) "Personal assistance services" includes attendant care and personal care services.

(6~~1~~11) "Personal ~~care-attendant~~ assistant" means a~~n~~ person--~~whose name--appears-on-the-Idaho-state-board-of-nurse's-registry-of-certificated-nurse-aid's-(CNA)-or-is--determined--by--the--director--to--meet equivalent-requirements-and-holds,-or-works-for-a-provider-agency-that holds,--a--valid--Idaho--medicaid-provider-agreement-for-personal-care services;-and-provides-hands-on~~ individual who directly provides personal ~~care~~ assistance services.

(~~7~~12) "Personal care services" means services ordered by a physi-

cian or authorized provider that involve personal and medically orientated tasks dealing with the ~~physical requirements~~ functional needs of the ~~patient--performed in the patient's home~~ participant and accommodating the ~~patient's~~ participant's needs for long-term maintenance, supportive care or ~~associated--services~~ IADLs. These services may include, but are not limited to, personal assistance and medical tasks that can be done by unlicensed persons or delegated to unlicensed persons by a health care professional or participant. Services shall be based on the participant's abilities and limitations, regardless of age, medical diagnosis or other category of disability.

~~(8)--"Plan--of-care"-means-a-document-which-outlines-all-services, including-but-not-limited-to,--personal--care--services,--required--to maintain-the-individual-in-his-or-her-community.~~

(9~~1~~3) "Provider" means a personal ~~care--attendant--or-provider~~ assistance agency.

~~(10)-"Provider-agency"--means--an--entity--that--recruits,--hires, fires,--trains,-supervises,-schedules,-oversees-quality-of-work,-takes responsibility-for-care-given,-and-provides-payroll-and--benefits--for care-providers-working-for-them.~~

(1~~1~~4) "Representative" means an employee of the department of health and welfare.

(15) "Voucher service option" means a method of service provision whereby the participant receives vouchers to pay for personal assistance services.

SECTION 124. That Section 39-5603, Idaho Code, be, and the same is hereby amended to read as follows:

39-5603. STANDARDS FOR PROVISION OF PERSONAL ~~CARE~~ ASSISTANCE SERVICES. The director shall have the power and it shall be his duty to promulgate and adopt appropriate rules necessary to implement and enforce standards for provision of personal ~~care~~ assistance services.

The following standards for provision of personal ~~care~~ assistance services and other provisions contained throughout this chapter and rules shall apply to ~~recipients~~ participants and providers receiving or providing personal ~~care~~ assistance services either as a medicaid option service or a waivered service, unless prohibited by federal law or contents of the federal waiver agreement.

(1) Personal care services shall be included as a state plan service under medicaid. ~~Services--under-a-waiver-shall-be-available-to those-individuals-who-would-not-qualify-for-medicaid-in-the-absence-of a-waiver-or-to-those-whose-needs-cannot-be-met-with-personal-care-services-under-the-plan.~~

(2) Personal care services shall be ordered by a physician or authorized provider.

(3) Attendant care shall be included as a service under medicaid home and community-based waiver(s).

(4) All attendant care services must be authorized by the department or its designee.

(5) The department will establish by rule maximum hours per month of personal care services available to the individual ~~recipient~~ participant under the state medicaid plan.

(~~4~~6) The department shall enter into agreements with providers

for the provision of personal ~~care~~ assistance services. The department may deny provider status or revoke that status when a provider is found to endanger the health, person or property of the ~~recipient~~ participant, or is in violation of rules promulgated by the department or the provider agreement.

(~~5~~7) A provider agency shall have the responsibility for the following:

(a) Recruitment, hiring, firing, training, supervision, scheduling, payroll, and the assurance of quality of service, of its personal ~~care-attendants~~ assistants;

(b) Complying with state and federal labor and tax laws, rules and regulations;

(c) Maintaining liability insurance coverage;

(d) Provision of an appropriately qualified nurse ~~to-complete-the plan--of--care-and-ongoing-supervision-of-the-recipients-care~~ when required;

(e) Assignment of a qualified personal ~~care--attendant~~ assistant to each authorized ~~recipient~~ participant after consultation with and prior approval of that ~~recipient~~ participant;

(f) Assuring all personal ~~care--attendants~~ assistants providing services~~,--whether--themselves--or-their-agent,~~ meet the standards and qualifications of this chapter;

(g) Billing medicaid for services approved and authorized; ~~by them;~~

(h) ~~Making-referrals-for-personal-care-service-recipients~~ Referring participants to case management services based on established criteria;

(i) Providing for care by a qualified replacement when the regular personal ~~care--attendant~~ assistant is unable to provide the services, and providing for unanticipated services approved on the individual service plan ~~of-care~~ when requested by the ~~recipient~~ participant; and

(j) Conducting, at least annually, ~~client~~ participant satisfaction/quality control reviews available to the department and general public.

(8) A personal assistance agency that provides fiscal intermediary services shall have the responsibility for the following:

(a) To assure compliance with legal requirements related to the employment of participant/family directed personal assistants; and

(b) To offer supportive services to enable participants or families to perform required employer tasks themselves; and

(c) To bill the medicaid program for services approved and authorized by the department; and

(d) To collect any participant contribution due; and

(e) To pay personal assistants for services; and

(f) To perform all necessary withholding as required by state and federal labor and tax laws, rules and regulations; and

(g) To offer a full range of services and perform all services contained in a written agreement between the participant and the provider.

(~~6~~9) Personal ~~care--attendants~~ assistants are not employees of the state. ~~The-department-will-provide-a-qualified-nurse-to--establish a--plan--of--care--and-ongoing-care-supervision,-where-a-personal-care~~

~~attendant-is-providing-service.~~

(~~7~~10) Case management shall be made available to personal ~~care service-recipients~~ assistance participants where and when appropriate. In order to avoid a conflict of interest, case management shall not be provided by the same agency that provides personal ~~care~~ assistance services to the ~~recipient~~ participant. ~~Services-provided-by-case--managers-include-but-are-not-limited-to:~~

~~(a)--Comprehensive-assessment;~~

~~(b)--Assistance-with-eligibility-and-application-processes;~~

~~(c)--Service-plan-development;~~

~~(d)--Service-plan-implementation;~~

~~(e)--Reassessment-and-service-termination-planning;-and~~

~~(f)--Supportive--functions--which--may--include--client--advocacy, assistance,-consultation,-including-training-to-enable-the-recipient--to-manage-and-evaluate-the-care-they-receive,-family-support, crisis-intervention-or-follow-up-after-termination-from-case--management-when-necessary.~~

(~~8~~11) The department's regional medicaid staff shall review and approve the individual service plan, ~~of-care,~~ authorize personal ~~care~~ assistance services, the hours of service, and make appropriate referrals for case management for eligible individuals.

(~~9~~12) The department shall establish and maintain a community awareness program that will educate Idaho citizens regarding the purpose and function of all long-term care alternatives including, but not limited to, personal ~~care~~ assistance services and individual ~~recipient~~ participant rights. This program will be developed in cooperation with other state agencies including, but not limited to, the ~~office~~ commission on aging and the ~~division-of-vocational--rehabilitation~~ state independent living council.

(~~10~~3) It shall be the responsibility of the ~~recipient,-his-parents or--guardian~~ participant or his designee or legal representative, when ~~possible~~ appropriate, to select the provider of personal ~~care~~ assistance services.

(~~11~~4) The department shall provide the ~~recipient~~ participant, his ~~parents-or-guardian~~ designee or legal representative, with a list of available providers of personal ~~care~~ assistance services; however, this does not relieve the ~~recipient,~~ participant or his ~~parents--or guardian~~ designee or legal representative of the responsibility of provider selection.

(~~12~~5) In those cases where the ~~recipient,~~ participant or his ~~parents--or--guardian~~ designee or legal representative cannot arrange for personal ~~care~~ assistance services or asks for help in making arrangements, a representative of the department may arrange for or help arrange for personal ~~care~~ assistance services on behalf of the ~~recipient~~ participant.

SECTION 125. That Section 39-5604, Idaho Code, be, and the same is hereby amended to read as follows:

39-5604. ~~PROVIDERS--OF--PERSONAL--CARE--SERVICES~~ HEALTH AND BACKGROUND CHECKS. The director shall require~~,--for--both--personal--care attendants--and~~ providers ~~agencies,~~ to obtain health tests or screens, criminal background and nurse's aide registry checks, and licenses

and/or certifications necessary to protect the health, person and property of the ~~recipient-to-be-served~~ participant for any personal assistant acting as an employee, agent, or contractor of a provider. He may deny provider status or revoke that status when a ~~care~~ provider or an employee, agent, or contractor of a provider, is found to endanger the health, person or property of the ~~recipient~~ participant.

SECTION 126. That Section 39-5605, Idaho Code, be, and the same is hereby amended to read as follows:

39-5605. TRAINING OF ~~PROVIDERS~~ PERSONAL ASSISTANTS. The director may require a ~~provider~~ personal assistant to successfully complete a training program established by the rules before beginning to provide personal ~~care~~ assistance services. Those providing personal ~~care~~ assistance services when the rule is established will be given a reasonable period of time to obtain the required training. The director may establish different training requirements for different services provided and for ~~providers~~ personal assistants serving ~~recipients~~ participants with ~~special~~ intensive needs. The department shall conduct training to include, but not be limited to, administrative rules, billing procedures and service requirements.

SECTION 127. That Section 39-5606, Idaho Code, be, and the same is hereby amended to read as follows:

39-5606. PAYMENT TO BE MADE TO PROVIDER. Within the appropriations provided by law, and as authorized by rule, the department shall reimburse the provider for personal ~~care~~ assistance services received by the ~~recipient~~ participant. To qualify for reimbursement, personal ~~care~~ assistance services must be ~~prescribed-by-a--physician~~ delivered in accordance with the ~~recipient's~~ participant's individual service plan ~~of-care~~ and ~~be-provided-by-an-individual-who-is:~~

~~(a)--A-personal-care-attendant;~~

~~(b)--Supervised-by-a-registered-nurse;-and~~

~~(c)--Not-a-member-of-the-recipient's-family~~ all federal requirements.

The department will establish annually uniform reimbursement rates for providers. This rate will be based on the prevailing hourly rate paid for comparable positions in the state for nursing home industry employees. Providers ~~agencies~~ shall also receive a fifty-five percent (55%) supplemental component to cover travel, administration, training and all payroll taxes and fringe benefits. ~~Personal--care--attendant rates--shall-have-a-supplemental-component-to-cover-training,-worker's compensation,-social-security-and-liability-insurance.-The--department may--establish--different--rates--for--associated--services.--When-the assessment-tool-referred-to-in-sections--39-3308--and--39-3508,--Idaho Code,--becomes--available,-it-shall-be-applied-to-establish-reimbursement-levels.~~

The director shall promulgate and adopt such necessary rules to implement the requirements of this section.

SECTION 128. That Chapter 56, 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 39-5607, Idaho Code, and to read as follows:

39-5607. EFFECT OF PERSONAL ASSISTANCE AGENCY RATES. Applicants for and participants of personal assistance services shall not lose their eligibility for such services as a result of changing from an existing provider to a personal assistance agency, or from any increased cost of their individual service plan required by this act.

SECTION 129. That Section 39-5608, Idaho Code, be, and the same is hereby amended to read as follows:

39-5608. LIABILITY OF ACTIONS UNDER THIS CHAPTER. (1) The ~~recipient~~ participant, his ~~parents or guardians~~ designee or legal representative, if such are responsible, shall be liable for any acts of the ~~recipient~~ participant performed or committed while receiving ~~personal~~ care or services under the provisions of this chapter.

(2) The department shall not be held liable for any actions under this chapter, except pursuant to section 39-5603(1~~1~~4), Idaho Code, when the representative of the department is acting ~~in~~ on behalf of the ~~recipient~~ participant, his ~~parents or guardian~~ designee or legal representative; however, the provisions of section 39-5603(~~9~~12), Idaho Code, shall remain in force.

(3) Nothing in this chapter shall exempt the provider of ~~personal care~~ services from any liability caused by such ~~providers'~~ provider's negligence, abuse, or other improper action of the provider.

SECTION 130. That Chapter 56, 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 39-5609, Idaho Code, and to read as follows:

39-5609. PERSONAL ASSISTANCE OVERSIGHT COMMITTEE. The department shall establish, as part of the medical care advisory committee (MCAC), an oversight subcommittee consisting of providers of personal assistance services and participants of such services and advocacy organizations representing such participants, and other interested parties, for the purpose of planning, monitoring, and recommending changes to the medicaid waiver and personal assistance programs to the MCAC. At least fifty-one percent (51%) of the committee membership shall be participants or their representatives. The director shall determine when and if this role shall be performed by the MCAC.

SECTION 131. That Section 54-1601, Idaho Code, be, and the same is hereby amended to read as follows:

54-1601. DEFINITIONS. (1) As used in this act, unless otherwise stated, the following terms shall have the respective meanings hereinafter set forth or indicated:

(2) "Board" means the board of examiners of nursing home administrators of the state of Idaho.

(3) "Examiner" means a member of the board of examiners of nursing home administrators of the state of Idaho.

(4) "Executive secretary" means the secretary of the board of examiners of nursing home administrators of the state of Idaho.

(5) "Nursing home administrator" means any individual responsible for planning, organizing, directing, and controlling the operation of a nursing home, or who in fact performs such functions, whether or not such functions are shared by one (1) or more other persons.

(6) "Nursing home administrator-in-training" means an individual registered as such under and pursuant to the provisions of this act.

(7) "Practice of nursing home administration" means that planning, organizing, directing, and control of the operation of a nursing home.

(8) "Health care facility" means any institution or facility which supplies all of the functional needs of an individual in need of residence care, and defined as such for licensing purposes under state law or pursuant to the rules for nursing homes, hospitals, residential ~~care--homes~~ or assisted living facilities, whether proprietary or non-profit, and shall include, but not be limited to, health care facilities owned or administered by the state government or any agency or political subdivisions thereof.

SECTION 132. That Section 54-1705, Idaho Code, be, and the same is hereby amended to read as follows:

54-1705. DEFINITIONS. (1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.

(2) "Counseling or counsel" means the effective communication by the pharmacist of information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription medications and devices. Specific areas of counseling shall include, but are not limited to:

(a) Name and strength and description of the medication;

(b) Route of administration, dosage, dosage form, continuity of therapy and refill information;

(c) Special directions and precautions for preparation, administration, storage and use by the patient as deemed necessary by the pharmacist;

(d) Side effects or adverse effects and interactions and therapeutic contraindications that may be encountered, including their avoidance, which may interfere with the proper use of the medication or device as was intended by the prescriber, and the action required if they occur;

(e) Techniques for self-monitoring drug therapy; and

(f) Action to be taken in the event of a missed dose.

(3) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one (1) person to another, whether or not for a consideration.

(4) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, invitro reagent or other similar related article including any component part or accessory which is:

(a) Recognized in the official United States Pharmacopoeia or official National Formulary, other drug compendia or any supplement to them;

(b) Intended for use in the diagnosis of disease or other condi-

tions, or the cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Intended to effect the structure or any function of the body of man or other animal, and which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animal, and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(5) "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(6) "Distribute" means the delivery of a drug other than by administering or dispensing.

(7) "Drug" means:

(a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animal;

(c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and

(d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

(8) "Drug order" means a written order, in a hospital or other health care institution, for an ultimate user of any drug or device issued and signed by a practitioner, or an order transmitted by other means of communication from a practitioner, which is immediately reduced to writing by a pharmacist, registered nurse or other licensed health care practitioner authorized by the hospital or institution. The order shall contain the name and bed number of the patient, the name and strength or size of the drug or device, unless specified by individual institution policy or guideline, the amount to be dispensed, either in quantity or days, adequate directions for the proper use of the drug or device when it is administered to the patient, and the name of the prescriber.

(9) "Drug outlet" means all pharmacies, nursing homes, residential ~~care homes~~ or assisted living facilities, convalescent homes, extended care facilities, drug abuse treatment centers, penal institutions, hospitals, family planning clinics, retail stores, wholesalers, manufacturers and mail order vendors with facilities located in this state which are engaged in dispensing, delivery or distribution of drugs and drug manufacturers and wholesalers with facilities located outside the state, but doing business within this state.

(10) "Prospective drug review" includes, but is not limited to, the following activities:

(a) Evaluation of the prescription or medication order for:

1. Known allergies;
2. Rational therapy contraindications;
3. Reasonable dose and route of administration; and
4. Reasonable directions for use.

(b) Evaluation of the prescription or medication order for duplication of therapy.

(c) Evaluation of the prescription or medication order for interactions:

1. Drug-drug;
2. Drug-food; and
3. Drug-disease.

(d) Evaluation of the prescription or medication order for proper utilization:

1. Over or under utilization; and
2. Abuse/misuse.

(11) "Extern" means a bona fide student enrolled in an approved college of pharmacy who has not received his first professional degree in pharmacy.

(12) "Externship" means a structured practical experience program in pharmacy, approved by the board and administered by a college of pharmacy.

(13) "Intern" means any person who has completed a course of study at an approved college of pharmacy, received the first professional degree in pharmacy and is registered with the board as an intern. Interns must register with the board prior to commencement of an internship program.

(14) "Internship" means a postgraduate practical experience program under the supervision of a licensed pharmacist registered as a preceptor.

(15) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

(16) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation.

(17) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

(a) By a pharmacist or practitioner as an incident to his administering or dispensing of a drug in the course of his professional practice; or

(b) By a practitioner or by his authorization under his supervision for the purpose of or as an incident to research, teaching or chemical analysis and not for sale.

(18) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process, produces or prepares legend drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, or who packages or repackages such drugs, but does not include pharma-

cists or practitioners in the practice of their profession.

(19) "Precursor" means a substance, other than a legend drug which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

(20) "Person" means an individual, corporation, partnership, association or any other legal entity.

(21) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the ~~regulations~~ rules of the board.

(22) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy.

(23) "Pharmacy" means any facility, department or other place where prescriptions are filled or compounded and are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

(24) "Practitioner" shall mean a physician, dentist, veterinarian, scientific investigator or other person (other than a pharmacist) licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

(25) "Preceptor" means a pharmacist licensed in the state and in good standing, who supervises the internship training of a registered intern. The preceptor must be registered as a preceptor and shall be actively engaged on a full-time employment basis in the approved training area.

(26) "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with either one of the following statements:

(a) "Caution: Federal law prohibits dispensing without a prescription~~,~~"; or

(b) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian~~,~~";

or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(27) "Prescription drug order" means a lawful written or verbal order of a practitioner for a drug.

(28) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.

(29) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects which are used in any way in connection with the purchase, sale or handling of any drug or device.

(30) "Sale" means every sale and includes:

(a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;

(b) Exposure, offer, or any other proffer;

(c) Holding, storing or any other possession;

(d) Dispensing, giving, delivering or any other supplying; and

(e) Applying, administering or any other usage.

(31) "Warehouseman" means a person who stores legend drugs for others and who has no control over the disposition of such drugs except for the purpose of such storage.

(32) "Wholesaler" means a person engaged in the business of distributing legend drugs that he himself has not produced or prepared, to persons included in any of the classes named in subsection (2) (a) through (f) of section 54-1734, Idaho Code.

SECTION 133. That Section 54-4201, Idaho Code, be, and the same is hereby amended to read as follows:

54-4201. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Residential ~~Care~~ or Assisted Living Facility Administrators Act."

SECTION 134. That Section 54-4202, Idaho Code, be, and the same is hereby amended to read as follows:

54-4202. DEFINITIONS. As used in this chapter:

(1) "Board" means the board of examiners of residential ~~care~~ or assisted living facility administrators of the state of Idaho.

(2) "Examiner" means a member of the board of examiners of residential ~~care~~ or assisted living facility administrators of the state of Idaho.

(3) "Executive secretary" means the secretary of the board of examiners of residential ~~care~~ or assisted living facility administrators of the state of Idaho.

(4) "Practice of residential ~~care~~ or assisted living facility administration" means that planning, organizing, directing, and control of the operation of a residential ~~care~~ or assisted living facility.

(5) "Provisional license" means a temporary license issued to a provisional residential ~~care~~ or assisted living facility administrator under and pursuant to the provisions of this chapter.

(6) "Provisional residential ~~care~~ or assisted living facility administrator" means an individual who has been licensed as such under and pursuant to the provisions of this chapter.

(7) "Residential ~~care~~ or assisted living facility" means a facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals and lodging to three (3) or more elderly, developmentally disabled, physically disabled and/or mentally ill adults not related to the owner.

(8) "Residential ~~care~~ or assisted living facility administrator" means any individual responsible for planning, organizing, directing, and controlling the operation of a residential ~~care~~ or assisted living

facility, or who in fact performs such functions, whether or not such functions are shared by one (1) or more other persons.

SECTION 135. That Section 54-4203, Idaho Code, be, and the same is hereby amended to read as follows:

54-4203. FACILITY SUPERVISION BY LICENSED ADMINISTRATOR REQUIRED -- PRACTICE BY UNLICENSED PERSON PROHIBITED -- PROVISIONAL LICENSE. Effective July 1, 1991, no residential care or assisted living facility in the state shall be operated unless it is under the supervision of an administrator who holds a currently valid residential care or assisted living facility administrator's license and registration, or provisional license, issued pursuant to this chapter. No person shall practice or offer to practice residential care or assisted living facility administration in this state or use any title, sign, card, or device to indicate that he is a residential care or assisted living facility administrator unless such person shall have been duly licensed and registered as a residential care or assisted living facility administrator or licensed as a provisional residential care or assisted living facility administrator as required by this chapter.

SECTION 136. That Section 54-4204, Idaho Code, be, and the same is hereby amended to read as follows:

54-4204. BOARD OF EXAMINERS OF RESIDENTIAL ~~CARE~~ OR ASSISTED LIVING FACILITY ADMINISTRATORS. (1) There is hereby created in the department of self-governing agencies a board of examiners of residential care or assisted living facility administrators, which board shall consist of five (5) members, and composed of two (2) residential care or assisted living facility administrators, duly licensed and registered under this chapter, and three (3) other members as hereinafter described, except that such members of the initial board shall be required only to possess the qualifications and be eligible for licensure as required under this chapter, one (1) member shall be selected from any other profession or agency or institution concerned with the care of persons requiring assistance with the daily activities of living; one (1) licensed nurse from the nursing profession; and one (1) member representative of the public at large; but no more than two (2) of the members of the board shall be officials or full-time employees of state or local governments. All members of the board shall be citizens of the United States or shall have declared their intent to become citizens of the United States and shall be residents of this state.

(2) One (1) member of the initial board shall be appointed for a one (1) year term of office, two (2) members of the initial board shall be appointed for a two (2) year term of office, and two (2) members of the initial board shall be appointed for a three (3) year term of office. Thereafter, the term of office for each member of the board shall be three (3) years.

(3) (a) Appointments to the board shall be made by the governor after consultation with the executive board of any organized and generally recognized group concerned with residential care or assisted living facility administration. Each member of the board

shall hold office until his successor is duly appointed and qualified. Dismissals shall be by the governor, for reasonable cause.

(b) The two (2) residential ~~care~~ or assisted living facility administrators must be appointed from a list of three (3) submitted by any organized and generally recognized group concerned with residential ~~care~~ or assisted living facility administration.

(c) Members of the board shall be compensated as provided in section 59-509(f), Idaho Code.

(4) The board shall elect annually from its membership a chairman and vice chairman. The board shall hold two (2) or more meetings each year. A majority of the board membership shall constitute a quorum.

(5) The board shall exercise its powers and perform its duties and functions specified by this chapter.

(6) The board may appoint an executive secretary. He shall be the executive officer to the board but shall not be a member of the board. He shall have such powers and shall perform such duties as are prescribed by law and the rules ~~and regulations~~ of the board. A clerk and sufficient deputy clerks to adequately assist the board and the executive secretary in the keeping of the records and in the performance of their duties may be appointed by the board. All employees of the board shall be appointed, and serve in accordance with the provisions of law.

(7) The board may, by written agreement, authorize the bureau of occupational licenses, or other appropriate body as provided by law, as agent to act in its interest.

SECTION 137. That Section 54-4205, Idaho Code, be, and the same is hereby amended to read as follows:

54-4205. FUNCTIONS AND DUTIES OF THE BOARD -- FEE FOR LICENSE APPLICANTS -- RULES. ~~AND REGULATIONS.~~ (1) It shall be the functions and duties of such board to:

(a) Develop, impose and enforce standards consistent with this chapter which shall be met by individuals in order to receive and retain a license as a residential ~~care~~ or assisted living facility administrator which standards shall be designed to ensure that residential ~~care~~ or assisted living facility administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as residential ~~care~~ or assisted living facility administrators;

(b) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(c) Issue licenses and registrations to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses and registrations previously issued by the board in any case where the individual holding any such license or registration is determined substantially to have failed to conform to the requirements of such standards;

(d) Establish and carry out procedures designed to ensure that individuals licensed as residential ~~care~~ or assisted living facility administrators will, during any period that they serve as

such, comply with the requirements of such standards;

(e) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the board charging that any individual licensed as a residential care or assisted living facility administrator has failed to comply with the requirements of such standards;

(f) Conduct a continuing study and investigation of administrators of residential care or assisted living facilities within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of residential care or assisted living facilities who have been licensed as such;

(g) The board shall establish by rule a fee schedule not to exceed one hundred dollars ($100) each for applications for licenses, provisional licenses, annual recertification of registration and applications for a reciprocal endorsement of a license issued by the proper authorities in another state.

(2) The board or any committee or member thereof or any hearing officer designated by such board, acting in an official capacity, shall have powers and duties as provided by law. Such board shall not be bound by the strict rules of evidence in the conduct of its proceedings but any determinations made shall be founded upon sufficient legal evidence to sustain them.

(3) The board shall also have the authority to make rules not inconsistent with law as may be necessary for the proper performance of its duties.

SECTION 138. That Section 54-4206, Idaho Code, be, and the same is hereby amended to read as follows:

54-4206. QUALIFICATIONS FOR EXAMINATION FOR LICENSE. (1) The board shall admit to the examination for licensure as a residential care or assisted living facility administrator any candidate who pays a fee as determined by the board, and submits evidence of good moral character and suitability prescribed by the board, is at least twenty-one (21) years old except:

(a) That on and after July 1, 1991, no applicant for a license as a residential care or assisted living facility administrator shall be admitted to such licensing examination nor shall such applicant be entitled to or be granted a license as a residential care or assisted living facility administrator unless such applicant shall submit written evidence, on forms provided for such purpose by the board, that he has successfully completed a course of study and has been graduated from a high school approved and recognized by the educational authorities of the state in which such school is located, or a political division thereof or has submitted a certificate indicating that he has obtained high school or secondary school equivalency, such certificate being duly certified by a state educational authority or a political division thereof, and except that he shall have complied with the provisions of subsection (2) of this section.

(b) On or after July 1, 1991, each applicant who has not com-

pleted a regular course of study or program which course of study or program shall have been approved by the board as being adequate academic preparation for residential care or assisted living facility administration, shall submit evidence satisfactory to the board that he has successfully completed specialized courses or a program of study in the area of residential care or assisted living facility administration as required and approved by the rules of the board.

(2) A candidate who applies for examination under and pursuant to subsection (1) of this section, in lieu of the educational requirements provided for therein, may submit evidence satisfactory to the board that such applicant has obtained two (2) years of satisfactory practical experience in residential care or assisted living facility administration or in a related health administration area for each year of high school education.

SECTION 139. That Section 54-4207, Idaho Code, be, and the same is hereby amended to read as follows:

54-4207. SUBJECT MATTER OF EXAMINATION -- FREQUENCY. (1) The board shall determine the subjects of examination for applicants for licensure as residential care or assisted living facility administrators and the scope, content, and format of such examinations which in any examination shall be the same for all candidates; except that such examination shall include examination of the applicant to demonstrate his proficiency in the practice of, and knowledge of, applicable rules of health and safety within the state.

(2) Examinations shall be held at least semiannually at such times and places as the board shall designate.

SECTION 140. That Section 54-4208, Idaho Code, be, and the same is hereby amended to read as follows:

54-4208. ISSUANCE OF LICENSE -- EXEMPTION -- EDUCATIONAL PROGRAMS. (1) An applicant for a license as a residential care or assisted living facility administrator who has successfully complied with the requirements of section 54-4206, Idaho Code, and the standards provided for therein, has passed the examination provided for in section 54-4207, Idaho Code, and, where applicable, has complied with the requirements of section 54-4211, Idaho Code, shall be issued a license, on a form provided for that purpose by the board, certifying that such applicant has met the requirements of the laws and rules entitling him to serve, act, practice, and otherwise hold himself out as a duly licensed residential care or assisted living facility administrator.

(2) (a) The board shall issue a provisional license to any individual applying therefor who has served as a residential care or assisted living facility administrator for all of the calendar year immediately preceding July 1, 1991, meets the standards of the board and of this chapter relating to good character, suitability, age, and citizenship, and has paid the fee as set by the board. No license shall be issued under the provisions of this section prior to July 1, 1991.

(b) Such provisional license shall terminate two (2) years from date of issuance but shall be subject to the payment of the annual fee, and shall be canceled and be of no legal force or effect except that if, prior to the expiration of such provisional license, such provisional residential care or assisted living facility administrator shall have passed a qualifying examination and otherwise complied with the provisions of section 54-4206, Idaho Code, as required by the board, a residential care or assisted living facility administrator license shall be issued to him.

(3) Any license issued by the board under or pursuant to the provisions of this section shall be under the hand and seal of the chairman and executive secretary of the board.

(4) If the board finds that programs of training and instruction conducted within the state are not sufficient in number or content to enable applicants for residential care or assisted living facility administrators' licenses and residential care or assisted living facility administrators to meet requirements established pursuant to this chapter, it shall institute and conduct or arrange with others to conduct one (1) or more such programs, and shall make provision for their accessibility to appropriate residents of this state. The board may approve programs conducted within and without this state as sufficient to meet education and training requirements established pursuant to this chapter.

SECTION 141. That Section 54-4209, Idaho Code, be, and the same is hereby amended to read as follows:

54-4209. CERTIFICATE OF REGISTRATION -- ATTENDANCE AT CONTINUING EDUCATION PROGRAM -- REVOCATION OR SUSPENSION -- RENEWAL OF LAPSED REGISTRATIONS -- REGISTER OF APPLICATIONS. (1) Every individual who holds a valid license as a residential care or assisted living facility administrator issued by the board under section 54-4208(1), Idaho Code, shall immediately upon issuance thereof be deemed registered with the board and be issued a certificate of registration. Thereafter, such individual shall annually be required to apply to the board for a recertification of registration and report any facts requested by the board on forms provided for such purpose.

(2) Upon making an application for a recertification of registration, such individual shall pay an annual registration fee, and at the same time shall submit evidence satisfactory to the board that during the twelve (12) month period immediately preceding such application for recertification of registration he has successfully attended a continuing education program or course of study as may be provided in the rules of the board.

(3) Upon receipt of such application for recertification of registration, the registration fee, and the evidence required with respect to continuing education, the board shall issue a recertification of registration to such residential care or assisted living facility administrator.

(4) The license of a residential care or assisted living facility administrator who fails to comply with the provisions of this section, and who continues to act as a residential care or assisted living

facility administrator, shall be suspended or revoked by the board, in accordance with the provisions of this chapter.

(5) A residential care or assisted living facility administrator who has been duly licensed and registered in this state and whose license shall not have been revoked or suspended, and whose registration has expired for a period of not longer than five (5) years, may reregister within the state upon complying with the provisions of this section for recertification of registration and also filing with the board an affidavit in accordance with the rules of the board, and payment of a twenty-five dollar ($25.00) reinstatement fee together with fees for back years.

(6) A residential care or assisted living facility administrator whose license has been expired for five (5) or more years, must reapply for licensure under the provisions of section 54-4206, Idaho Code.

(7) The board shall maintain a register of all applications for licensing and registration of residential care or assisted living facility administrators, which register shall show: The place of residence, name and address of each applicant, the name and address of employer or business connection of each applicant, the date of application, complete information of educational and experiential qualifications, the action taken by the board, the serial number of the license and of registration certificates issued to the applicant, the date on which the board reviewed and acted upon the application, and such other pertinent information as the board may deem necessary.

SECTION 142. That Section 54-4210, Idaho Code, be, and the same is hereby amended to read as follows:

54-4210. INTERSTATE RECIPROCAL ENDORSEMENT OF LICENSES. The board, in its discretion, and otherwise subject to the provisions of this chapter, and the rules of the board promulgated thereunder prescribing the qualifications for a residential care or assisted living facility administrator license, may endorse a residential care or assisted living facility administrator license issued by the proper authorities of any other state upon payment of a fee and upon submission of evidence satisfactory to the board that such other state maintained a system and standard of qualifications and examinations for a residential care or assisted living facility administrator license which were substantially equivalent to those required in this state at the time such other license was issued by such other state.

SECTION 143. That Section 54-4211, Idaho Code, be, and the same is hereby amended to read as follows:

54-4211. TEMPORARY PERMITS -- EXCEPTIONS. (1) Pending issuance of a license, the board may issue a temporary permit for a period not exceeding six (6) months, without an examination to an applicant who files a written application for a temporary permit and who is otherwise qualified but does not meet the experience requirements or who is applying to fill a vacancy on an emergency basis.

(2) Any individual who holds a valid Idaho nursing home administrator's license and is in good standing according to the provisions of chapter 16, title 54, Idaho Code, shall be deemed to meet

the requirements for issuance of a residential care or assisted living facility administrator's license and shall be issued one, upon application and payment of appropriate fees.

SECTION 144. That Section 54-4212, Idaho Code, be, and the same is hereby amended to read as follows:

54-4212. MISDEMEANORS LISTED -- PENALTIES. (1) It shall be a misdemeanor for any person to:

(a) Sell or fraudulently obtain or furnish any license or aid or abet therein; or

(b) Practice as a residential care or assisted living facility administrator under cover of any license or registration illegally or fraudulently obtained or unlawfully issued; or

(c) Practice as a residential care or assisted living facility administrator or use in connection with his or her name any designation tending to imply that he or she is a residential care or assisted living facility administrator unless duly licensed and registered to so practice under the provisions of this chapter; or

(d) Practice as a residential care or assisted living facility administrator during the time his or her license or registration issued under the provisions of this chapter shall be suspended or revoked; or

(e) Otherwise violate any of the provisions of this chapter.

(2) Such misdemeanor shall be punishable by a fine of not more than five hundred dollars ($500) or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment.

SECTION 145. That Section 54-4213, Idaho Code, be, and the same is hereby amended to read as follows:

54-4213. REVOCATION OR SUSPENSION OF LICENSE OR REGISTRATION, REPRIMAND, CENSURE, OR OTHER DISCIPLINE. (1) The license or registration of any person practicing or offering to practice residential care or assisted living facility administration, or the license of a provisional residential care or assisted living facility administrator, may be revoked or suspended, or such licensee may be reprimanded, censured, or otherwise disciplined in accordance with the provisions of this section upon decision and after due hearing in any of the following cases:

(a) Upon proof that such licensee is reasonably unfit to operate a residential care or assisted living facility;

(b) Upon proof that such licensee has willfully or repeatedly violated any of the provisions of this chapter or the rules enacted in accordance with, or willfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home in which he is the administrator;

(c) Upon proof that such licensee is guilty of fraud or deceit in the practice of residential care or assisted living facility administration or related activities, or in his or her admission to such practice.

(2) The board, or a hearing officer designated by it, shall have

jurisdiction to hear all charges brought under the provisions of this section against persons licensed and registered as residential care or assisted living facility administrators, or licensed as provisional residential care or assisted living facility administrators, and upon such hearings shall determine such charges upon their merits. If the board determines that such person is guilty of the charges, the board may revoke his or her license and registration, suspend him or her from practice or reprimand, censure, or otherwise discipline such licensee.

(3) Proceedings under this section shall be initiated by filing with the board, charges in writing and under oath. The board on its own motion may conduct an investigation and initiate charges. The procedures for notification and the hearing on such charges, unless dismissed by the board as unfounded or trivial, shall be conducted pursuant to the provisions of chapter 52, title 67, Idaho Code.

SECTION 146. That Section 56-101, Idaho Code, be, and the same is hereby amended to read as follows:

56-101. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and shall have the following meanings:

(1) "Appraisal" means the method of determining the value of the property as determined by an appraisal conducted by a member of the appraisal institute (MAI), or successor organization. The appraisal must specifically identify the values of land, building, equipment, and goodwill.

(2) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(3) "Bed-weighted median" is determined by arraying the average per diem cost per bed of all facilities from high to low and identifying the bed at the point in the array at which half of the beds have equal or higher per diem costs and half have equal or lower per diem costs. The identified bed is the median bed. The per diem cost of the median bed is the bed-weighted median.

(4) "Case mix index" is a numeric score assigned to each facility resident, based on the resident's physical and mental condition, which projects the amount of relative resources needed to provide care to the resident.

(5) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(6) "Direct care costs" consists of the following costs directly assigned to the nursing facility or allocated to the nursing facility through medicare cost finding principles:

(a) Direct nursing salaries which include the salaries of registered nurses, licensed professional nurses, certificated nurse's aides, and unit clerks; and

(b) Routine nursing supplies; and

(c) Nursing administration; and

(d) Direct portion of medicaid related ancillary services; and

(e) Social services; and

(f) Raw food; and

(g) Employee benefits associated with the direct salaries.

(7) "Director" means the director of the department of health and welfare or the director's designee.

(8) "Equity" means the new book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(9) "Facility" means an entity which contracts with the director to provide services to recipients in a structure owned, controlled, or otherwise operated by such entity, and which entity is responsible for operational decisions. In conjunction with the use of the term "facility":

(a) "Free-standing intermediate care" means an intermediate care facility, as defined in and licensed under chapter 13, title 39, Idaho Code, which is not owned, managed, or operated by, nor is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code; and

(b) "Free-standing skilled care" means a ~~skilled~~ nursing facility, as defined in and licensed under chapter 13, title 39, Idaho Code, which is not owned, managed, or operated by, nor is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code; and

(c) "Free-standing special care" means a facility that provides either intermediate care, or skilled care, or intermediate care for the mentally retarded, or any combination of either, which is not owned, managed, or operated by, nor is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code; and

(d) "Hospital-based" means a ~~skilled~~ nursing or intermediate care facility, as defined in and licensed under chapter 13, title 39, Idaho Code, which is owned, managed, or operated by, or is otherwise a part of a hospital, as defined in section 39-1301(a), Idaho Code.

(10) "Forced sale" is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner which requires ownership transfer to existing partner or partners, or a sale required by the ruling of a federal agency or by a court order.

(11) "Goodwill" means the amount paid by the purchaser that exceeds the net tangible assets received. The value of goodwill is derived from the economic benefits that a going concern may enjoy, as compared with a new one, from established relations in the related markets, with government departments and other noncommercial bodies and with personal relationships. These intangible assets cannot be separated from the business and sold as can plant and equipment. Under the theory that the excess payment would be made only if expected future earnings justified it, goodwill is often described as the price paid for excess future earnings. The amortization of goodwill is nonallowable, nonreimbursable expense.

(12) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(13) "Indirect care costs" consists of the following costs either

directly coded to the nursing facility or allocated to the nursing facility through the medicare step-down process:

(a) Administrative and general care cost; and

(b) Activities; and

(c) Central services and supplies; and

(d) Laundry and linen; and

(e) Dietary (~~non-"raw~~ "non-raw food" costs); and

(f) Plant operation and maintenance (excluding utilities); and

(g) Medical records; and

(h) Employee benefits associated with the indirect salaries; and

(i) Housekeeping; and

(j) Other costs not included in direct care costs or costs exempt from cost limits.

(14) "Interest rate limitation" means that the interest rate allowed for working capital loans and for loans for major movable equipment for intermediate care facilities for the mentally retarded shall be the prime rate as published in the western edition of the Wall Street Journal or successor publication, plus one percent (1%) at the date the loan is made. All interest expense greater than the amount derived by using the limitation above shall be nonreimbursable; provided, however, that this interest rate limitation shall not be imposed against loans or leases which were made prior to July 1, 1984. Said loans or leases shall be subject to the tests of reasonableness, relationship to patient care and necessity.

(15) "Intermediate care facility for the mentally retarded" means an habilitative facility designed and operated to meet the educational, training, habilitative and intermittent medical needs of the developmentally disabled.

(16) "Major movable equipment" means such items as accounting machines, beds, wheelchairs, desks, furniture, vehicles, etc. The general characteristics of this equipment are:

(a) A relatively fixed location in the building;

(b) Capable of being moved, as distinguished from building equipment;

(c) A unit cost sufficient to justify ledger control;

(d) Sufficient size and identity to make control feasible by means of identification tags; and

(e) A minimum life of approximately three (3) years.

(17) "Medicaid" means the 1965 amendments to the social security act (P.L. 89-97), as amended.

(18) "Minor movable equipment" includes such items as wastebaskets, bedpans, syringes, catheters, silverware, mops, buckets, etc. The general characteristics of this equipment are:

(a) In general, no fixed location and subject to use by various departments of the provider's facility;

(b) Comparatively small in size and unit cost;

(c) Subject to inventory control;

(d) Fairly large quantity in use; and

(e) Generally, a useful life of approximately three (3) years or less.

(19) "Net book value" means the historical cost of an asset, less accumulated depreciation.

(20) "Normalized per diem costs" refers to direct care costs that

have been adjusted based on the facility's case mix index for purposes of making the per diem costs comparable among facilities. Normalized per diem costs are calculated by dividing the facility's direct care per diem costs by its facility-wide case mix index, and multiplying the result by the statewide average case mix index.

(21) "Nursing facility inflation rate" means the most specific skilled nursing facility inflation rate applicable to Idaho established by data resources, inc., or its successor. If a state or regional index has not been implemented, the national index shall be used.

(22) "Patient-day" means a calendar day of care which will include the day of admission and exclude the day of discharge unless discharge occurs after 3:00 p.m. or it is the date of death, except that, when admission and discharge occur on the same day, one (1) day of care shall be deemed to exist.

(23) "Property costs" means the total of allowable interest expense, plus depreciation, property insurance, real estate taxes, amortization, and allowable lease/rental expense. The department may require and utilize an appraisal to establish those components of property costs which are identified as an integral part of an appraisal.

(24) "Raw food" means food used to meet the nutritional needs of the residents of a facility, including liquid dietary supplements, liquid thickeners, and tube feeding solutions.

(25) "Reasonable property insurance" means that the consideration given is an amount that would ordinarily be paid by a cost-conscious buyer for comparable insurance in an arm's length transaction. Property insurance per licensed bed in excess of two (2) standard deviations above the mean of the most recently reported property insurance costs per licensed bed of all facilities in the reimbursement class as of the end of a facility's fiscal year shall not be considered reasonable.

(26) "Recipient" means an individual determined eligible by the director for the services provided in the state plan for medicaid.

(27) "Rural hospital-based nursing facilities" are those hospital-based nursing facilities not located within a metropolitan statistical area (MSA) as defined by the United States bureau of the census.

(28) "Urban hospital-based nursing facilities" are those hospital-based nursing facilities located within a metropolitan statistical area (MSA) as defined by the United States bureau of the census.

(29) "Utilities" means all expenses for heat, electricity, water and sewer.

SECTION 147. That Section 56-120, Idaho Code, be, and the same is hereby amended to read as follows:

56-120. PROPERTY REIMBURSEMENT FOR HOSPITAL-BASED SKILLED NURSING FACILITIES. In addition to the basic payment per patient-day of care, each hospital-based ~~skilled-care~~ nursing facility shall be paid on a prospective basis its actual property and utility costs per patient-day, to be determined by dividing its total projected property and utility costs, as calculated from the cost report selected for rate setting, by the total number of patient-days from the same cost

reporting period.

SECTION 148. That Section 56-201, Idaho Code, be, and the same is hereby amended to read as follows:

56-201. DEFINITIONS. As used in this act:

(a) "State department" means the state department of health and welfare;

(b) "Director" means the director of the department of health and welfare;

(c) "Public welfare" means public assistance and social services;

(d) "Social services" means activities of the department in efforts to bring about economic, social and vocational adjustment of families and persons;

(e) "Public assistance" includes general assistance, old-age assistance, aid to the blind, assistance to families with children, aid to the disabled, and medical assistance;

(f) "General assistance" means direct assistance in cash, direct assistance in kind, and supplementary assistance;

(g) "Direct assistance in cash" means money payments to eligible people not classified as old-age assistance, or aid to the blind, or assistance to families with children, or aid to the disabled, or medical assistance;

(h) "Direct assistance in kind" means payments to others on behalf of a person or family for food, rent, clothing, and other normal subsistence needs;

(i) "Supplementary assistance" means payments to others ~~in~~ on behalf of a person or family for transportation and costs incidental to vocational adjustment or employment;

(j) "Old-age assistance" means money payments to or ~~in~~ on behalf of needy aged people;

(k) "Aid to the blind" means money payments to or ~~in~~ on behalf of blind people who are needy;

(l) "Assistance to families with children" means money payments, direct assistance in kind, supplementary assistance, and social services targeted toward self-sufficiency with respect to or ~~in~~ on behalf of eligible families with children;

(m) "Aged" means any person sixty-five (65) years or older;

(n) "Aid to the disabled" means money payments to or ~~in~~ on behalf of needy individuals who are disabled, and whose disability prevents self-support through employment for a period of at least one (1) year from the date of onset of the disability;

(o) "Medical assistance" means payments for part or all of the cost of such care and services allowable within the scope of title XIX of the federal social security act as amended as may be designated by department rule;

(p) "Provider" means any individual, partnership, association, corporation or organization, public or private, who provides residential ~~care~~ or assisted living services, certified family home services, nursing ~~home~~ facility services, services offered pursuant to the medicaid program, or services offered pursuant to titles IV or XX of the social security act;

(q) "Needy" means the condition where a person or family does not

have income and available resources in accordance with the provisions of section 56-210, Idaho Code.

SECTION 149. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1 of the year in which the claim was filed a claimant must be an owner of a homestead and be:

(a) Not less than sixty-five (65) years old; or

(b) A fatherless or motherless child under the age of eighteen (18) years of age; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States veterans administration; or

(f) A person as specified in 42 USC 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant and used as the primary dwelling place of the claimant and occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. Homestead does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and any person or persons who live in the same dwelling, and share its furnishings, facilities, accommodations or expenses. The term includes any person owing a duty of support to the applicant pursuant to section 32-1002, Idaho Code, unless the person qualifies as a "nonhousehold member" pursuant to subsection (6) of this section. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (9)(b) of this section.

(4) "Household income" means all income received by all persons of a household in a calendar year while members of the household.

(5) "Income" means the sum of federal adjusted gross income as defined in the internal revenue code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted

gross income, alimony, support money, income from inheritances, nontaxable strike benefits, the nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act, state unemployment insurance laws, and veterans disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the internal revenue code), nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities, worker's compensation and the gross amount of loss of earnings insurance. It does not include capital gains, gifts from nongovernmental sources or inheritances. To the extent not reimbursed, cost of medical care as defined in section 213(d) of the internal revenue code, incurred by the household may be deducted from income. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse, provided however, that the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant does not file a federal tax return the claimant's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant filed a federal tax return.

(6) "Nonhousehold member" means any nonspouse who lives in the claimant's dwelling for the purpose of providing protective oversight, caregiving, or personal ~~care~~ assistance services to the claimant, or who is receiving disability benefits pursuant to subsection (1)(d) or (e) of this section, or who is over age sixty-five (65) and lives in the claimant's dwelling and receives protective oversight, caregiving or personal ~~care~~ assistance services provided by the claimant.

(7) "Occupied" means actual use and possession.

(8) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who as grantor created a revocable or irrevocable trust and named himself as beneficiary of that trust, or who is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation which holds title in fee simple or holds a certificate of motor vehicle title and who has retained or been granted a life estate. "Owner" shall not include any person that otherwise occupies property as beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered ownership for determining qualification for property tax reduction benefits, however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property

interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property is held by a person who has died without timely filing a claim for property tax reduction, the estate shall be the "owner."

(9) (a) "Primary dwelling place" means the claimant's dwelling place on January 1 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and:

(i) At least six (6) months during the prior year; or

(ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or

(iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, ~~skilled~~ nursing facility~~,--intermediate--care--facility~~ or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(16), Idaho Code, or a dwelling other than the one ~~(i)~~ upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security.

SECTION 150. That Section 63-3022K, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022K. MEDICAL SAVINGS ACCOUNT. (1) For taxable years commencing on and after January 1, 1995, annual contributions to a medical savings account not exceeding two thousand dollars ($2,000) for the account holder and interest earned on a medical savings account shall be deducted from taxable income by the account holder, if such amount has not been previously deducted or excluded in arriving at taxable income. For married individuals the maximum deduction shall be computed separately for each individual. Contributions to the account shall not exceed the amount deductible under this section.

(2) For the purpose of this section, the following terms have the following meanings unless the context clearly denotes otherwise:

(a) "Account holder" means an individual, in the case of married

individuals each spouse, including a self-employed person, on whose behalf the medical savings account is established.

(b) "Dependent" means a person for whom a deduction is permitted under section 151(b) or (c) of the Internal Revenue Code if a deduction for the person is claimed for that person on the account holder's Idaho income tax return.

(c) "Dependent child" means a child or grandchild of the account holder who is not a dependent if the account holder actually pays the eligible medical expenses of the child or grandchild and the child or grandchild is any of the following:

(i) Under nineteen (19) years of age, or enrolled as a full-time student at an accredited college or university.

(ii) Legally entitled to the provision of proper or necessary subsistence, education, medical care or other care necessary for his or her health, guidance or well-being and not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States.

(iii) Mentally or physically incapacitated to the extent that he or she is not self-sufficient.

(d) "Depository" means a state or national bank, savings and loan association, credit union or trust company authorized to act as a fiduciary or an insurance administrator or insurance company authorized to do business in this state, a broker or investment advisor regulated by the department of finance, a broker or insurance agent regulated by the department of insurance or a health maintenance organization, fraternal benefit society, hospital and professional service corporation as defined in section 41-3403, Idaho Code, or nonprofit mutual insurer regulated under title 41, Idaho Code.

(e) "Eligible medical expense" means an expense paid by the taxpayer for medical care described in section 213(d) of the Internal Revenue Code, medical insurance premiums, dental and long-term care expenses of the account holder and the spouse, dependents and dependent children of the account holder.

(f) "Long-term care expenses" means expenses incurred in providing custodial care in a ~~skilled~~ nursing facility ~~or--intermediate care-facility~~ as ~~those-terms-are~~ defined in section 39-1301, Idaho Code, and for insurance premiums relating to long-term care insurance under chapter 46, title 41, Idaho Code.

(g) "Medical savings account" means an account established with a depository to pay the eligible medical expenses of the account holder and the dependents and dependent children of the account holder. Medical savings accounts shall carry the name of the account holder, a designated beneficiary or beneficiaries of the account holder and shall be designated by the depository as a "medical savings account."

(3) Upon agreement between an employer and employee, an employer may establish and contribute to the employee's medical savings account or contribute to an employee's existing medical savings account. The total combined annual contributions by an employer and the account holder shall not exceed two thousand dollars ($2,000) for the account holder. Employer contributions to an employee's medical savings account shall be owned by the employee.

(4) Funds held in a medical savings account may be withdrawn by the account holder at any time. Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the tax imposed in this chapter. The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the depository or the employer of the account holder. Other withdrawals shall be subject to the following restrictions and penalties:

(a) There shall be a distribution penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible medical expenses. The penalty shall be ten percent (10%) of the amount of withdrawal from the account and, in addition, the amount withdrawn shall be subject to the tax imposed in this chapter. The direct transfer of funds from a medical savings account to a medical savings account at a different depository shall not be considered a withdrawal for purposes of this section. Charges relating to the administration and maintenance of the account by the depository are not withdrawals for purposes of this section.

(b) After an account holder reaches fifty-nine and one-half (59 1/2) years of age, withdrawals may be made for eligible medical expenses or for any other reason without penalty, but subject to the tax imposed by this section.

(c) Upon the death of an account holder, the account principal, as well as any interest accumulated thereon, shall be distributed without penalty to the designated beneficiary or beneficiaries.

(d) Funds withdrawn which are later reimbursed shall be taxable unless redeposited into the account within sixty (60) days of the reimbursement. Deposits of reimbursed eligible medical expenses shall not be included in calculating the amount deductible.

(e) Funds deposited in a medical savings account which are deposited in error or unintentionally and which are withdrawn within thirty (30) days of being deposited shall be treated as if the amounts had not been deposited in the medical savings account. Funds withdrawn from a medical savings account which are withdrawn in error or unintentionally and which are redeposited within thirty (30) days of being withdrawn shall be treated as if the amounts had not been withdrawn from the medical savings account.

(f) Funds withdrawn which are, not later than the sixtieth day after the day of the withdrawal, deposited into another medical savings account for the benefit of the same account holder are not a withdrawal for purposes of this section and shall not be included in calculating the amount deductible.

(5) Reporting. -- Depositories shall provide to the state tax commission the following information regarding medical savings accounts: the name of the account holder, the address of the account holder, the taxpayer identification number of the account holder, deposits made during the tax year by the account holder, withdrawals made during the tax year by the account holder, interest earned on the proceeds of a medical savings account or other information deemed necessary by the commission. Reports shall be filed annually on or before the last day of February following the year to which the information in the report relates.

(6) Any medical care savings account established pursuant to

chapter 53, title 41, Idaho Code, as enacted by chapter 186, laws of 1994, may be continued pursuant to the provisions of this section and all duties, privileges and liabilities imposed in this section upon medical care savings accounts and the beneficiaries of those accounts shall apply to medical care savings accounts and their beneficiaries established pursuant to chapter 53, title 41, Idaho Code, as enacted by chapter 186, laws of 1994, as if the medical care savings account were a medical savings account established pursuant to this section.

(7) (a) If the account holder's surviving spouse acquires the account holder's interest in a medical savings account by reason of being the designated beneficiary of such account at the death of the account holder, the medical savings account shall be treated as if the spouse were the account holder.

(b) If, by reason of the death of the account holder, any person acquires the account holder's interest in a medical savings account in a case to which subparagraph (7)(a) of this section does not apply:

(i) Such account shall cease to be a medical savings account as of the date of death; and

(ii) An amount equal to the fair market value of the assets in such account on such date shall be includable, if such person is not the estate of such holder, in such person's Idaho taxable income for the taxable year which includes such date, or if such person is the estate of such holder, in such holder's Idaho taxable income for the last taxable year of such holder.

(c) The amount includable in Idaho taxable income under subparagraph (b) of this subsection (7) by any person, other than the estate, shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within one (1) year after such date.

SECTION 151. That Section 66-402, Idaho Code, be, and the same is hereby amended to read as follows:

66-402. DEFINITIONS. As used in this chapter:

(1) "Adult" means an individual eighteen (18) years of age or older.

(2) "Artificial life-sustaining procedures" means any medical procedure or intervention which utilizes mechanical means to sustain or supplant a vital function. Artificial life-sustaining procedures shall not include the administration of medication, and it shall not include the performance of any medical procedure deemed necessary to alleviate pain, or any procedure which could be expected to result in the recovery or long-term survival of the patient and his restoration to consciousness.

(3) "Department" means the Idaho department of health and welfare.

(4) "Director" means the director of the department of health and welfare.

(5) "Developmental disability" means a chronic disability of a person which appears before the age of twenty-two (22) years of age

and:

(a) Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and

(b) Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and

(c) Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated.

(6) "Emancipated minor" means 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.

(7) "Evaluation committee" means an interdisciplinary team of at least three (3) individuals designated by the director or his designee to evaluate an individual as required by the provisions of this chapter. Each committee must include a physician licensed to practice medicine in the state of Idaho, a licensed social worker, with field training or experience in working with partially disabled or disabled persons, and a clinical psychologist.

(8) "Facility" means the Idaho state school and hospital, a ~~skilled~~ nursing facility, an intermediate care facility, an intermediate care facility for the mentally retarded, a licensed residential ~~care-home~~ or assisted living facility, a group foster home, other organizations licensed to provide twenty-four (24) hour care, treatment and training to the developmentally disabled, a mental health center, or an adult and child development center.

(9) "Lacks capacity to make informed decisions" means the inability, by reason of developmental disability, to achieve a rudimentary understanding of the purpose, nature, and possible risks and benefits of a decision, after conscientious efforts at explanation, but shall not be evidenced by improvident decisions within the discretion allowed nondevelopmentally disabled individuals.

(10) "Likely to injure himself or others" means:

(a) A substantial risk that physical harm will be inflicted by the respondent upon his own person as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or

(b) A substantial risk that physical harm will be inflicted by the respondent 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; or

(c) That the respondent is unable to meet essential requirements for physical health or safety.

(11) "Manage financial resources" means the actions necessary to obtain, administer and dispose of real, personal, intangible or business property, benefits and/or income.

(12) "Meet essential requirements for physical health or safety"

means the actions necessary to provide health care, food, clothing, shelter, personal hygiene and/or other care without which serious physical injury or illness would occur.

(13) "Minor" means an individual seventeen (17) years of age or less.

(14) "Protection and advocacy system" means the agency designated by the governor of the state of Idaho to provide advocacy services for people with disabilities pursuant to 42 USC section 6042.

(15) "Respondent" means the individual subject to judicial proceedings authorized by the provisions of this chapter.

SECTION 152. That Section 67-2601, Idaho Code, be, and the same is hereby amended to read as follows:

67-2601. DEPARTMENT CREATED -- ORGANIZATION -- DIRECTOR -- BUREAU OF OCCUPATIONAL LICENSES CREATED. (1) There is hereby created the department of self-governing agencies. The department 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.

(2) The department shall consist of the following:

(a) ~~a~~Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; Idaho prune commission, as provided by chapter 30, title 22, Idaho Code; and the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; and~~;~~

(b) ~~p~~Professional and occupational licensing boards: Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; office of the state athletic director, as provided by chapter 4, title 54, Idaho Code; board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title 54, Idaho Code; Idaho counselor licensing board, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of denturitry, as provided by chapter 33, title 54, Idaho Code; state board of engineering examiners, as provided by chapter 12, title 54, Idaho Code; board of environmental health specialists examiners, as provided by chapter 24, title 54, Idaho Code; state board for registration of professional geologists, as provided by chapter 28, title 54, Idaho Code; board of hearing aid dealers and fitters, as provided by chapter 29, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho

Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code, and its associated physical therapist advisory board, as provided by chapter 22, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of nurses, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; public works contractors licensing board, as provided by chapter 19, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; and the board of examiners of residential ~~care~~ or assisted living facility administrators, as provided by chapter 42, title 54, Idaho Code.

(c) ~~t~~The board of examiners, pursuant to section 67-2001, Idaho Code.

(d) ~~t~~The division of building safety, to be headed by a division administrator and comprised of four (4) bureaus: plumbing, electrical, buildings, and logging and industrial safety. The division administrator and bureau chiefs shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 40, title 39, Idaho Code, relating to manufactured homes and recreational vehicles; chapter 41, title 39, Idaho Code, relating to modular buildings; chapter 21, title 44, Idaho Code, relating to manufactured home dealer and broker licensing; chapter 10, title 54, Idaho Code, relating to electrical contractors and journeymen; chapter 26, title 54, Idaho Code, relating to plumbing and plumbers; and shall perform such additional duties as are imposed upon him by law. The division administrator shall cooperate with the industrial commission and aid and assist the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, and at the request of the commission shall make inspection of appliances, tools, equipment, machinery, practices or conditions, and make a written report to the commission. The administrator shall make recommendations to the commission to aid the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, provided however, that nothing herein shall be construed as transferring to the administrator any of the authority or powers now vested in the industrial commission.

(3) The bureau of occupational licenses is hereby created within the department of self-governing agencies.

SECTION 153. That Section 67-2602, Idaho Code, be, and the same is hereby amended to read as follows:

67-2602. BUREAU OF OCCUPATIONAL LICENSES. (1) The bureau of occupational licenses created in the department of self-governing agencies by section 67-2601, Idaho Code, shall be empowered, by written agreement between the bureau and each agency for which it provides administrative or other services as provided by law, to provide such services for the board of architectural examiners, board of barber examiners, board of chiropractic physicians, board of cosmetology, counselor licensing board, board of environmental health specialist examiners, state board of denturitry, board of hearing aid dealers and fitters, board of landscape architects, board of morticians, board of examiners of nursing home administrators, board of optometry, board of podiatrists, board of psychologist examiners, real estate appraiser board, board of examiners of residential ~~care~~ or assisted living facility administrators, board of social work examiners, and such other professional and occupational licensing boards or commodity commissions as may request such services. The bureau may charge a reasonable fee for such services provided any agency not otherwise provided for by law and shall maintain proper accounting methods for all funds under its jurisdiction.

(2) Notwithstanding the statutes governing specific boards, for any board that contracts with the bureau of occupational licenses, each board member shall hold office until a successor has been duly appointed and qualified.

SECTION 154. That Section 67-6532, Idaho Code, be, and the same is hereby amended to read as follows:

67-6532. LICENSURE, STANDARDS AND RESTRICTIONS. (a) The department of health and welfare may require such residences to be licensed and set minimum standards for providing services or operation. Such licensure may be under the residential ~~care--home-regulations~~ or assisted living facility rules, or under the intermediate care facilities for mentally retarded or related conditions ~~regulations~~ rules, or under ~~regulations~~ rules specifically written for such residences.

(b) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in section 67-6531, Idaho Code, which is not required of a single family dwelling in the same zone.

(c) No local ordinances or local restrictions shall be applied to or required for a residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in section 67-6531, Idaho Code, which is not applied to or required for a single family dwelling in the same zone.

Approved April 14, 2000.

CHAPTER 275
(S.B. No. 1505, As Amended)

AN ACT

RELATING TO URBAN RENEWAL AGENCIES; AMENDING SECTION 50-2903, IDAHO CODE, TO REDEFINE "AUTHORIZED MUNICIPALITY" TO INCLUDE A COUNTY, TO REDEFINE "COMPETITIVELY DISADVANTAGED BORDER COMMUNITY AREA" TO INCLUDE LAND SOLELY WITHIN A COUNTY, TO REDEFINE "CLERK" TO INCLUDE A COUNTY CLERK, TO REDEFINE "LOCAL GOVERNING BODY" TO INCLUDE A BOARD OF COUNTY COMMISSIONERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 50-2904, IDAHO CODE, TO PROVIDE THAT NO REVENUE ALLOCATION PROVISION OF AN ORDINANCE ESTABLISHING AN URBAN RENEWAL PLAN OR COMPETITIVELY DISADVANTAGED BORDER COMMUNITY AREA SHALL HAVE A DURATION EXCEEDING TWENTY-FOUR YEARS FROM THE DATE THE ORDINANCE IS APPROVED BY THE MUNICIPALITY AND TO PROVIDE FOR EXTENSION OF THE DURATION IN CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 50-2906, IDAHO CODE, TO PROVIDE THAT SUCH NOTICE SHALL INCLUDE A PROPOSAL TO CREATE A COMPETITIVELY DISADVANTAGED COMMUNITY AREA.

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

SECTION 1. That Section 50-2903, Idaho Code, be, and the same is hereby amended to read as follows:

50-2903. DEFINITIONS. The following terms used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Act" or "this act" means this revenue allocation act.

(2) "Agency" or "urban renewal agency" means a public body created pursuant to section 50-2006, Idaho Code.

(3) "Authorized municipality" or "municipality" means any <u>county or</u> incorporated city which has established an urban renewal agency, or by ordinance has identified and created a competitively disadvantaged border community.

(4) "Base assessment roll" means the equalized assessment rolls, for all classes of taxable property, on January 1 of the year in which the local governing body of an authorized municipality passes an ordinance adopting or modifying an urban renewal plan containing a revenue allocation financing provision, except that the base assessment roll shall be adjusted as follows: the equalized assessment valuation of the taxable property in a revenue allocation area as shown upon the base assessment roll shall be reduced by the amount by which the equalized assessed valuation as shown on the base assessment roll exceeds the current equalized assessed valuation of any taxable property located in the revenue allocation area, and by the equalized assessed valuation of taxable property in such revenue allocation area that becomes exempt from taxation subsequent to the date of the base assessment roll. The equalized assessed valuation of the taxable property in a revenue allocation area as shown on the base assessment roll shall be increased by the equalized assessed valuation, as of the date of the base assessment roll, of taxable property in such revenue allo-

cation area that becomes taxable after the date of the base assessment roll.

(5) "Clerk" means the ~~city~~ clerk of the municipality.

(6) "Competitively disadvantaged border community area" means a parcel of land consisting of at least forty (40) acres which is situated within the ~~boundaries~~ jurisdiction of a county or an incorporated city and within twenty-five (25) miles of a state or international border, which the governing body of such county or incorporated city has determined by ordinance is disadvantaged in its ability to attract business, private investment, or commercial development, as a result of a competitive advantage in the adjacent state or nation resulting from inequities or disparities in comparative sales taxes, income taxes, property taxes, population or unique geographic features.

(7) "Deteriorated area" means:

(a) Any area, including slum area, in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(b) Any area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, results in economic underdevelopment of the area, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

(c) Any area which is predominately open and which because of obsolete platting, diversity of ownership, deterioration of structures or improvements, or otherwise, results in economic underdevelopment of the area or substantially impairs or arrests the sound growth of a municipality. The provisions of section 50-2008(d), Idaho Code, shall apply to open areas.

(d) Any area which the local governing body certifies is in need of redevelopment or rehabilitation as a result of a flood, storm, earthquake, or other natural disaster or catastrophe respecting which the governor of the state has certified the need for disaster assistance under any federal law.

(e) Any area which by reason of its proximity to the border of an adjacent state is competitively disadvantaged in its ability to attract private investment, business or commercial development

which would promote the purposes of this chapter.

(8) "Facilities" means land, rights in land, buildings, structures, machinery, landscaping, extension of utility services, approaches, roadways and parking, handling and storage areas, and similar auxiliary and related facilities.

(9) "Local governing body" means the city council or board of county commissioners of a municipality.

(10) "Plan" or "urban renewal plan" means a plan, as it exists or may from time to time be amended, prepared and approved pursuant to section 50-2008, Idaho Code, and any method or methods of financing such plan, which methods may include revenue allocation financing provisions.

(11) "Project" or "urban renewal project" or "competitively disadvantaged border areas" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

(a) Acquisition of a deteriorated area or a deteriorating area or portion thereof;

(b) Demolition and removal of buildings and improvement;

(c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, open space, off-street parking facilities, public facilities, public recreation and entertainment facilities or buildings and other improvements necessary for carrying out, in the urban renewal area or competitively disadvantaged border community area, the urban renewal objectives of this act in accordance with the urban renewal plan or the competitively disadvantaged border community area ordinance.

(d) Disposition of any property acquired in the urban renewal area or the competitively disadvantaged border community area (including sale, initial leasing or retention by the agency itself) or the municipality creating the competitively disadvantaged border community area at its fair value for uses in accordance with the urban renewal plan except for disposition of property to another public body;

(e) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(f) Acquisition of real property in the urban renewal area or the competitively disadvantaged border community area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property;

(g) Acquisition of any other real property in the urban renewal area or competitively disadvantaged border community area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or to prevent the spread of blight or deterioration, or to provide land for

needed public facilities or where necessary to accomplish the purposes for which a competitively disadvantaged border community area was created by ordinance;

(h) Lending or investing federal funds; and

(i) Construction of foundations, platforms and other like structural forms.

(12) "Project costs" includes, but is not limited to:

(a) Capital costs, including the actual costs of the construction of public works or improvements, facilities, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; and the clearing and grading of land;

(b) Financing costs, including interest during construction and capitalized debt service or repair and replacement or other appropriate reserves;

(c) Real property assembly costs, meaning any deficit incurred from the sale or lease by a municipality of real or personal property within a revenue allocation district;

(d) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(e) Direct administrative costs, including reasonable charges for the time spent by municipal employees in connection with the implementation of a project plan;

(f) Relocation costs;

(g) Other costs incidental to any of the foregoing costs.

(13) "Revenue allocation area" means that portion of an urban renewal area or competitively disadvantaged border community area the equalized assessed valuation (as shown by the taxable property assessment rolls) of which the local governing body has determined, on and as a part of an urban renewal plan, is likely to increase as a result of the initiation of an urban renewal project or competitively disadvantaged border community area. The base assessment roll or rolls of revenue allocation area or areas shall not exceed at any time ten percent (10%) of the current assessed valuation of all taxable property within the municipality.

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

(15) "Tax" or "taxes" means all ~~ad-valorem~~ property tax levies upon taxable property.

(16) "Taxable property" means taxable real property, personal property, operating property, or any other tangible or intangible property included on the equalized assessment rolls.

(17) "Taxing district" means a taxing district as defined in section 63-201, Idaho Code, as that section now exists or may hereafter be amended.

SECTION 2. That Section 50-2904, Idaho Code, be, and the same is hereby amended to read as follows:

50-2904. AUTHORITY TO CREATE REVENUE ALLOCATION AREA. An authorized municipality is hereby authorized and empowered to adopt, at any time, a revenue allocation financing provision, as described in this

chapter, as part of an urban renewal plan or competitively disadvantaged border community area ordinance. A revenue allocation financing provision may be adopted either at the time of the original adoption of an urban renewal plan or the creation by ordinance of a competitively disadvantaged border community area or thereafter as a modification of an urban renewal plan or the ordinance creating the competitively disadvantaged border community area. Urban renewal plans existing prior to the effective date of this section may be modified to include a revenue allocation financing provision. Except as provided below, no revenue allocation provision of an urban renewal plan or competitively disadvantaged border community area ordinance, including all amendments thereto, shall have a duration exceeding twenty-four (24) years from the date the ordinance is approved by the municipality. The duration of the revenue allocation financing provision may be extended if:

(1) The maturity date of any bonds issued to provide funds for a specific project in the revenue allocation area and payable from the revenue allocation financing provision exceeds the duration of the revenue allocation financing provision, provided such bond maturity is not greater than thirty (30) years; or

(2) The urban renewal agency determines that it is necessary to refinance outstanding bonds payable from the revenue allocation financing provision to a maturity exceeding the twenty-four (24) year duration of the revenue allocation financing provision in order to avoid a default on the bonds; and

(3) During the extensions set forth in subsections (1) and (2) of this section, any revenue allocation revenues exceeding the amount necessary to repay the bonds during the period exceeding the twenty-four (24) year maturity of the revenue allocation financing provision shall be returned to the taxing districts in the revenue allocation area on a pro rata basis.

SECTION 3. That Section 50-2906, Idaho Code, be, and the same is hereby amended to read as follows:

50-2906. PUBLIC HEARING AND ORDINANCE REQUIRED. (1) To adopt a new urban renewal plan or create a competitively disadvantaged border community area containing a revenue allocation financing provision, the local governing body of an authorized municipality must enact an ordinance in accordance with chapter 9, title 50, Idaho Code, and section 50-2008, Idaho Code. To modify an existing urban renewal plan, to add or change a revenue allocation, an authorized municipality must enact an ordinance in accordance with chapter 9, title 50, Idaho Code, and conduct a public hearing as provided in section 50-2008(c), Idaho Code. No urban renewal project, plan, competitively disadvantaged border community area or modification thereto shall be held ineffective for failure to comply with the requirements of this section if compliance with the section is substantial and in good faith.

(2) A revenue allocation financing provision adopted in accordance with this chapter shall be effective retroactively to January 1 of the year in which the local governing body of the authorized municipality enacts such ordinance.

(3) The local governing body of an authorized municipality shall

prepare a notice stating (a) that an urban renewal plan or modification thereto or a competitively disadvantaged border community area has been proposed and is being considered for adoption, and that such plan or modification thereto or proposal to create a competitively disadvantaged border community area contains a revenue allocation financing provision that will cause property taxes resulting from any increases in equalized assessed valuation in excess of the equalized assessed valuation as shown on the base assessment roll to be allocated to the agency for urban renewal and competitively disadvantaged border community area purposes; and (b) that a public hearing on such plan or modification will be held by the local governing body pursuant to section 50-2008(c), Idaho Code. The notice shall also state the time, date, and place of the hearing. At least thirty (30) days but not more than sixty (60) days prior to the date set for final reading of the ordinance, the local governing body shall publish the notice in a newspaper of general circulation and transmit the notice, together with a copy of the plan and recommendation of the urban renewal agency or the municipality which by ordinance created the competitively disadvantaged border community area, to the governing body of each taxing district which levies taxes upon any taxable property in the revenue allocation area and which would be affected by the revenue allocation financing provision of the urban renewal plan proposed to be approved by the local governing body.

Approved April 14, 2000.

CHAPTER 276
(S.B. No. 1511)

AN ACT

RELATING TO CONTROLLED SUBSTANCES AND OTHER PRESCRIPTION DRUGS; AMENDING SECTION 37-2722, IDAHO CODE, TO ALLOW LEGITIMATE PRESCRIPTIONS OF PRACTITIONERS FROM JURISDICTIONS OTHER THAN IDAHO TO BE LAWFULLY FILLED IN IDAHO AND TO DEFINE A TERM; AMENDING SECTION 54-1733, IDAHO CODE, TO ALLOW LEGITIMATE PRESCRIPTIONS OR DRUG ORDERS OF PRACTITIONERS FROM JURISDICTIONS OTHER THAN IDAHO TO BE LAWFULLY FILLED IN IDAHO; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 37-2722, Idaho Code, be, and the same is hereby amended to read as follows:

37-2722. PRESCRIPTIONS. (a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner on an official blank furnished by the board.

(b) In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Pre-

scriptions shall be retained in conformity with the requirements of section 37-2720, Idaho Code. No prescription for a schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this act or regulation of the bureau or the board, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(d) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) Solely for the purpose of allowing the dispensing of controlled substances pursuant to the prescription of an individual licensed in a jurisdiction other than the state of Idaho, and for no other purpose under this act, with respect to the written or oral prescription of a "practitioner" as required under subsections (a), (b) and (c) of this section, the term "practitioner" shall also include a physician, dentist, veterinarian, scientific investigator or other individual, other than a pharmacy licensed in a jurisdiction other than the state of Idaho, and permitted by such license to dispense, conduct research with respect to or administer the prescribed controlled substance in the course of his professional practice or research in such jurisdiction, so long as the individual is acting within the jurisdiction, scope and authority of his license when issuing the written or oral prescription.

SECTION 2. That Section 54-1733, Idaho Code, be, and the same is hereby amended to read as follows:

54-1733. VALIDITY OF PRESCRIPTION DRUG ORDERS. (1) A prescription or drug order for a legend drug is not valid unless it is issued for a legitimate medical purpose by a practitioner acting in the usual course of his profession, or by a physician, dentist, veterinarian, scientific investigator or other person, other than a pharmacist, who is licensed in a jurisdiction other than the state of Idaho and is permitted by such license to dispense, conduct research with respect to or administer the prescribed legend drugs in the course of his professional practice or research in such jurisdiction, so long as the individual is acting within the jurisdiction, scope and authority of his license when issuing the prescription or drug order.

(2) It is unlawful for a practitioner to knowingly issue an invalid prescription or drug order for a legend drug.

(3) It is unlawful for a pharmacist or veterinarian to knowingly fill an invalid prescription or drug order for a legend drug.

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 April 14, 2000.

CHAPTER 277
(S.B. No. 1518, As Amended)

AN ACT

RELATING TO HOMICIDE; REPEALING SECTION 18-4008, IDAHO CODE; AMENDING SECTION 19-401, IDAHO CODE, TO PROVIDE THAT THERE IS NO TIME LIMITATION WITHIN WHICH A PROSECUTION FOR VOLUNTARY MANSLAUGHTER MUST BE COMMENCED; AND AMENDING SECTION 19-402, IDAHO CODE, TO PROVIDE THAT PROSECUTIONS FOR VOLUNTARY MANSLAUGHTER ARE NOT SUBJECT TO CERTAIN TIME LIMITATIONS.

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

SECTION 1. That Section 18-4008, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section 19-401, Idaho Code, be, and the same is hereby amended to read as follows:

19-401. PROSECUTIONS FOR MURDER OR VOLUNTARY MANSLAUGHTER. There is no limitation of time within which a prosecution for murder or voluntary manslaughter must be commenced. ~~It~~ They may be commenced at any time after the death of the person killed.

SECTION 3. That Section 19-402, Idaho Code, be, and the same is hereby amended to read as follows:

19-402. COMMENCEMENT OF PROSECUTIONS FOR CRIMES AGAINST CHILDREN AND OTHER FELONIES. (1) A prosecution for any felony other than murder, voluntary manslaughter or any felony committed upon or against a minor child must be commenced by the filing of the complaint or the finding of an indictment within five (5) years after its commission. Except as provided in subsection (2) of this section, a prosecution for any felony committed upon or against a minor child must be commenced within five (5) years after the commission of the offense by the filing of the complaint or a finding of an indictment.

(2) A prosecution under section 18-1506 or 18-1508, Idaho Code, must be commenced within five (5) years after the date the child reaches eighteen (18) years of age.

(3) A prosecution under section 18-1506A, Idaho Code, must be commenced within three (3) years after the date of initial disclosure by the victim.

Approved April 14, 2000.

CHAPTER 278
(H.B. No. 522)

AN ACT

RELATING TO CHARTER SCHOOLS; AMENDING SECTION 33-5210, IDAHO CODE, TO REQUIRE THAT CHARTER SCHOOLS COMPLY WITH THE REQUIREMENT THAT ALL SCHOOL EMPLOYEES UNDERGO A CRIMINAL HISTORY CHECK; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 33-5210, Idaho Code, be, and the same is hereby amended to read as follows:

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:

(a) Waiver of teacher certification as necessitated by the provisions of section 33-5205(3)(g), Idaho Code;

(b) Accreditation of the school as necessitated by the provisions of section 33-5205(3)(e), Idaho Code; ~~and~~

(c) Qualifications of a student for attendance at an alternative school as necessitated by the provisions of section 33-5208(3), Idaho Code; and

(d) The requirement that all employees of the school undergo a criminal history check as required by section 33-130, Idaho Code.

SECTION 2. This act shall be in full force and effect on and after July 1, 2000.

Approved April 13, 2000.

CHAPTER 279
(H.B. No. 566, As Amended in the Senate)

AN ACT

RELATING TO DESIGNATION OF THE STATE FRUIT; AMENDING THE HEADING FOR CHAPTER 45, TITLE 67, IDAHO CODE; AMENDING CHAPTER 45, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4510, IDAHO CODE, TO DESIGNATE THE HUCKLEBERRY AS THE STATE FRUIT.

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

SECTION 1. That the Heading for Chapter 45, Title 67, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 45
STATE BIRD, STATE FLOWER, STATE GEM, STATE HORSE, STATE SONG, STATE TREE, STATE FOSSIL, STATE INSECT, STATE FRUIT AND STATE FISH

SECTION 2. That Chapter 45, 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 67-4510, Idaho Code, and to read as follows:

67-4510. STATE FRUIT DESIGNATED. The huckleberry is hereby designated and declared to be the state fruit of the state of Idaho.

Approved April 13, 2000.

CHAPTER 280
(H.B. No. 569)

AN ACT
RELATING TO THE BUDGET STABILIZATION FUND; AMENDING SECTION 57-814, IDAHO CODE, TO REVISE METHOD OF DETERMINING THE AMOUNT TO BE TRANSFERRED INTO THE BUDGET STABILIZATION FUND; AND AMENDING SECTION 57-814A, IDAHO CODE, TO CHANGE A REFERENCE FROM THE BUDGET RESERVE ACCOUNT TO THE BUDGET STABILIZATION FUND.

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

SECTION 1. That Section 57-814, Idaho Code, be, and the same is hereby amended to read as follows:

57-814. BUDGET STABILIZATION FUND. (1) There is hereby created in the state treasury the budget stabilization fund for the purpose of meeting general fund revenue shortfalls and to meet expenses incurred as the result of a major disaster declared by the governor. All moneys in the budget reserve account at the date of approval of this act shall be transferred to the budget stabilization fund. Interest earnings from the investment of moneys in this fund by the state treasurer shall be credited to the permanent building account subject to the provisions of section 67-1210, Idaho Code.

(2) Subject to the requirements of section 63-3203, Idaho Code, the state controller shall annually transfer moneys from the general fund to the budget stabilization fund subject to the following criteria:

(a) ~~An amount equal to one percent (1%) of the total original general fund appropriations made for the fiscal year just ending, shall be transferred to the budget stabilization fund in any year in which the state controller certifies that the receipts to the~~

~~general-fund-for-the-just-concluded-fiscal-year-have-exceeded--the receipts--of--the--previous--fiscal-year-by-more-than-four-percent (4%)~~ If the state controller certifies that the receipts to the general fund for the fiscal year just ending have exceeded the receipts of the previous fiscal year by more than four percent (4%), then the state controller shall transfer all general fund collections in excess of said four percent (4%) increase to the budget stabilization fund, up to a maximum of one percent (1%) of the actual general fund collections of the fiscal year just ending. The state controller shall make the transfers in four (4) equal amounts during September, December, March and June of the next fiscal year.

(b) The amount of moneys in the budget stabilization fund shall not exceed five percent (5%) of the total general fund ~~appropriations~~ receipts for the fiscal year ~~beginning-July-1,-following-the legislative-session~~ just ending.

(c) The state controller shall transfer moneys in the budget stabilization fund in excess of the limit imposed in subsection (2)(b) of this section to the general fund.

(3) If a majority of the membership of each house of the legislature adopt a concurrent resolution requesting the amount of the transfer specified in subsection (2) of this section be reduced, the state controller shall reduce the amount of the transfer.

(4) Appropriations of moneys from the budget stabilization fund in any year shall be limited to fifty percent (50%) after the fund balance has reached five percent (5%).

SECTION 2. That Section 57-814A, Idaho Code, be, and the same is hereby amended to read as follows:

57-814A. TRANSFER FROM BUDGET ~~RESERVE-ACCOUNT~~ STABILIZATION FUND TO GENERAL FUND. At the end of the fiscal year, if the state board of examiners determines that insufficient general fund moneys are available to meet the level of general fund appropriations authorized by the legislature for that same fiscal year, the board is hereby authorized to transfer certain unencumbered moneys from the budget ~~reserve account~~ stabilization fund to the general fund. Such transfers will be the final accounting adjustment to close the fiscal year and shall be limited to the amount of the insufficiency or one-half of one percent (.5%) of the original general fund appropriations made for the fiscal year just ending, whichever is less. Any transfer made pursuant to this section from the budget ~~reserve-account~~ stabilization fund to the general fund shall be specifically addressed in the governor's executive budget recommendation for the following year which is then subject to review or action by the legislature.

Approved April 13, 2000.

CHAPTER 281
(H.B. No. 657)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO; AMENDING CHAPTER 13, TITLE 59, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 59-1362, IDAHO CODE, TO PROVIDE FOR THE PURCHASE OF MEMBERSHIP SERVICE FOR CERTAIN ACTIVE DUTY SERVICE IN THE ARMED FORCES, TO PROVIDE REQUIREMENTS AND LIMITATIONS AND TO PROVIDE A DEFINITION.

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

SECTION 1. 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 59-1362, Idaho Code, and to read as follows:

59-1362. PURCHASE OF ACTIVE DUTY SERVICE IN THE ARMED FORCES. (1) Notwithstanding any other provision of this chapter, an active member who is vested may purchase membership service for active duty service in the armed forces of the United States that does not qualify for "military service" as defined in section 59-1302(23), Idaho Code. Provided, the combined amount of membership service acquired under section 59-1302(23), Idaho Code, and purchased under this section shall not exceed forty-eight (48) months.

(2) Purchases under this section are limited to active members who provide, as required by the board, evidence of such active duty service and who do not have a vested right to retirement benefits in any other retirement system based in whole or in part upon the same active duty service.

(3) The cost of purchases under this section shall be the full actuarial costs of the service as determined by the board. The board may provide for payment options, including periodic payments, but no service shall be credited until payment has been made in full. The member shall be solely responsible for the costs of such purchased service, except that an employer may participate in the costs at its option.

(4) For purposes of this section, "active duty service in the armed forces of the United States" means active duty, other than primarily for training purposes, in the army, navy, air force, marine corps or coast guard, concluding with other than a dishonorable discharge.

Approved April 13, 2000.