GENERAL LAWS

OF THE

STATE OF IDAHO

PASSED BY
THE FIRST EXTRAORDINARY SESSION OF THE
FIFTY-SIXTH IDAHO LEGISLATURE

Convened December 8, 2000
Adjourned December 8, 2000

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

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE

PETE T. CENARRUSA
Secretary of State
Boise, Idaho

PROCLAMATION

WHEREAS, consumers of electricity in the State of Idaho have enjoyed some of the lowest rates for electricity in the nation and such rates are a factor in Idaho's economic vitality;

WHEREAS, since 1970, the public policy of the State of Idaho has been to promote stability among and between electric suppliers furnishing electricity within the state, to prohibit the 'pirating' of customers of another supplier, to discourage duplication of electric facilities, and to stabilize the territories and customers served with electricity by such suppliers; and

WHEREAS, in order to fulfill these goals, the law of the State of Idaho, as set forth in the Electric Supplier Stabilization Act (ESSA), has restricted competition for existing utility customers by prohibiting would-be suppliers from providing service to current or former customers of another supplier without the written consent of the other supplier; and

WHEREAS, for several years, the Legislature's Committee on Electric Utility Restructuring has studied the proposed impact of electric utility deregulation on the State of Idaho; and

WHEREAS, on October 3, 2000, the United States Court of Appeals for the Ninth Circuit held that notwithstanding the clearly articulated policy of the State of Idaho, that electricity suppliers who withhold consent from would-be suppliers to current or former customers of the supplier, pursuant to state law are subject to federal antitrust liability; and

WHEREAS, the decision of the Ninth Circuit has created uncertainty in state law and could subject some electricity suppliers to federal antitrust liability; and

WHEREAS, the long-standing public policy in Idaho should be maintained in light of such uncertainty and until the State Legislature has the opportunity to more fully deliberate this issue during upcoming regular legislative session; and

WHEREAS, article 4, section 9 of the Constitution of the State of Idaho empowers the Governor, on extraordinary occasions, to convene the Legislature by proclamation; and

WHEREAS, the issue of whether the public policy of Idaho to promote stability among and between electric suppliers furnishing electricity within the State should be maintained on an interim basis constitutes such an extraordinary occasion.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of the State of Idaho, do by this Proclamation convene the 56th Idaho Legislature in Extraordinary Session in the Legislative Chambers at the Capitol in Boise City, Ada County, Idaho, at the hour of 10:00 a.m. on

the 8th day of December, 2000, to:

1. Consider and enact legislation, on an interim basis, to provide for sufficient state supervision over the clearly articulated state policy of prohibiting would-be suppliers from providing service to current or former customers of another supplier without the written consent of the other supplier; and
2. Consider and enact legislation to provide for, on an interim basis, any other appropriate measure which confers active state supervision over the conduct covered by the ESSA; and
3. Consider and enact legislation which shall not be effective after March 1, 2001.

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

I HEREBY DIRECT AND REQUIRE that a copy of this Proclamation be delivered to the Lieutenant Governor, to each of the members of the 56th Idaho Legislature and to the Constitutional Officers of the State Government at the earliest practicable time.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this seventh day of December in the year of our Lord two-thousand and of the Independence of the United States of America the two hundred twenty-fourth and of the Statehood of Idaho the one hundred tenth.

/s/ DIRK KEMPTHORNE
GOVERNOR OF THE STATE OF IDAHO

BY THE GOVERNOR:

/s/ PETE T. CENARRUSA
SECRETARY OF STATE

CHAPTER 1
(H.B. No. 1)

AN ACT

RELATING TO THE ELECTRIC SUPPLIER STABILIZATION ACT; TO PROVIDE A STATEMENT OF INTENT; AMENDING SECTION 61-332, IDAHO CODE, TO CLARIFY THE PURPOSES OF THE ELECTRIC SUPPLIER STABILIZATION ACT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 61-332A, IDAHO CODE, TO REVISE DEFINITIONS, TO DELETE A REFERENCE TO OBSOLETE MATERIAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 61-332B, IDAHO CODE, TO REQUIRE APPROVAL OF THE PUBLIC UTILITIES COMMISSION FOR TRANSFERRING CONSUMERS; AMENDING SECTION 61-332C, IDAHO CODE, TO PROVIDE PROVISIONS FOR SELECTING AN ELECTRIC SUPPLIER FOR NEW ELECTRIC SERVICE ENTRANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-332D, IDAHO CODE, TO SUPERVISE WHEELING SERVICES; AMENDING SECTION 61-333, IDAHO CODE, TO REQUIRE ELECTRIC SERVICE TERRITORY CONTRACTS TO BE FILED WITH AND APPROVED BY THE PUBLIC UTILITIES COMMISSION, TO PROVIDE FOR NOTICE AND HEARING REGARDING CONTRACT APPROVAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 61-334, IDAHO CODE, TO PROVIDE THAT THE PUBLIC UTILITIES COMMISSION HAS CERTAIN AUTHORITY OVER ELECTRIC SUPPLIERS, TO PROVIDE FOR APPLICATION OF PUBLIC UTILITIES LAW AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 61-334A, IDAHO CODE; AMENDING SECTION 61-334B, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE FOR FILING A COMPLAINT WITH THE PUBLIC UTILITIES COMMISSION, TO PROVIDE FOR NOTICE AND HEARINGS, TO PROVIDE REMEDIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-334B, IDAHO CODE, TO PROVIDE COMMISSION SUPERVISION AND AUTHORITY; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-334C, IDAHO CODE, TO PROVIDE ELECTRIC SUPPLIER IMMUNITY; REPEALING SECTIONS 61-332, 61-332A, 61-332B, 61-332C, 61-332D, 61-333, 61-334, 61-334A, 61-334B AND 61-334C, IDAHO CODE; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-332, IDAHO CODE, TO PROVIDE THE PURPOSE OF THE ELECTRIC SUPPLIER STABILIZATION ACT; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-332A, IDAHO CODE, TO PROVIDE DEFINITIONS FOR THE ELECTRIC SUPPLIER STABILIZATION ACT; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-332B, IDAHO CODE, TO PROVIDE THAT AN ELECTRIC SUPPLIER SHALL BE PROHIBITED FROM SERVING CONSUMERS OR FORMER CONSUMERS OF ANOTHER SUPPLIER; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-332C, IDAHO CODE, TO PROVIDE RULES FOR SELECTING ELECTRIC SUPPLIERS FOR NEW ELECTRIC SERVICE ENTRANCES; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-333, IDAHO CODE, TO AUTHORIZE CONTRACTS AMONG ELECTRIC SUPPLIERS TO RESOLVE TERRITORIES, CONSUMERS AND TO TRANSFER FACILITIES; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-334, IDAHO CODE, TO PROVIDE SPECIAL RULES OF INTERPRETATION; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-334A, IDAHO CODE, TO PROVIDE LEGAL RELIEF FOR AGGRIEVED ELECTRIC CONSUMERS; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-334B, IDAHO CODE, TO PROVIDE LEGAL REMEDIES FOR

VIOLATION OF THE ELECTRIC SUPPLIER STABILIZATION ACT; DECLARING AN EMERGENCY FOR VARIOUS SECTIONS, PROVIDING A SUNSET CLAUSE FOR ONE SECTION AND PROVIDING AN EFFECTIVE DATE FOR OTHER SECTIONS OF THIS ACT.

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

SECTION 1. LEGISLATIVE INTENT. The provision of a safe and reliable supply of electricity in a manner that prohibits the "pirating" of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted.

It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has determined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments.

SECTION 2. That Section 61-332, Idaho Code, be, and the same is hereby amended to read as follows:

61-332. PURPOSE OF ELECTRIC SUPPLIER STABILIZATION ACT. ~~A.~~(1) This act includes sections 61-332~~,-61-332A,-61-332B,-61-332C,-61-333,-61-334,-61-334A,-and~~ through 61-334BC, Idaho Code, ~~as--herein--enacted,--section 61-333A,--Idaho--Code,--as--herein--amended,--and--sections--61-333B-and 61-333C,-Idaho-Code,-as-already-enacted,~~ and shall be referred to herein as "this act" and may be cited and referred to as the "~~e~~Electric ~~s~~Supplier ~~s~~Stabilization ~~a~~Act."

~~B.~~(2) This act ~~is~~ and its amendments are designed to promote harmony among and between electric suppliers furnishing electricity within the state of Idaho, prohibit the "pirating" of ~~customers~~ consumers of another electric supplier, discourage duplication of electric facilities, actively supervise certain conduct of electric suppliers as it relates to this act, and stabilize the territories and ~~customers~~ consumers served with electricity by such electric suppliers.

SECTION 3. That Section 61-332A, Idaho Code, be, and the same is hereby amended to read as follows:

61-332A. DEFINITIONS FOR ELECTRIC SUPPLIER STABILIZATION ACT. As used in this act, unless the context requires otherwise:

(1~~.~~) "Public utility" means an electric utility regulated by the Idaho public utilities commission.

(2~~.~~) "Cooperative" means a cooperative corporation furnishing electric service in the state of Idaho to its consumer-members who own and operate the cooperative.

(3~~.~~) "Municipality" means any municipal corporation or quasi-municipal corporation furnishing electric service to ~~its citizens~~ the consumers of the municipality in the state of Idaho.

(4~~.~~) "Electric sSupplier" means any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer.

(5~~.~~) "Electric service" means electricity furnished to an ultimate consumer by an electric supplier.

(6~~.~~) "Consumer" is any person, firm, corporation, or other entity receiving ~~or intending~~ to receive electric service at a specific service entrance.

(7~~.~~) "Service entrance" means the ~~entrance of electric service from facilities of the supplier to the service equipment or utilization equipment of the consumer. In determining "service entrance" reference shall be made to the definition of "entrance of the service to the service equipment or utilization equipment" as defined in the national electrical code of 1965~~ location on the consumer's property where the consumer's main disconnect switch, fuses or other disconnect equipment exists, and which are intended to provide the means of cutoff of the supply.

(8~~.~~) "New service entrance" means a service entrance not previously served with electricity. A change, improvement, replacement, enlargement, or change in location of a service entrance shall not be deemed a "new service entrance" if utilized to serve any service or utilization equipment previously served with electricity from the former service entrance, but for the ~~rules~~ provisions of this act shall be deemed the former "service entrance." A change in consumer shall not be construed to make an existing ~~service~~ entrance a "new service entrance." A change, enlargement, or other modification of service or utilization equipment served from an existing service entrance shall not be construed to make it a "new service entrance."

(9~~.~~) "Transmission line," for the purposes of this act, means any electric line of an electric supplier ~~for~~ carrying a voltage of sixty-nine (69) KV or more.

(10~~.~~) "Service line," for the purposes of this act, means any single or multi-phase electric line of an electric supplier used for carrying less than sixty-nine (69) KV and used or capable of use to provide electric service for a consumer.

(11~~.~~) "Existing service line" means any electric service line in existence at the time of the event in question and constructed to supply a consumer that could be lawfully served by that electric supplier under this act. It shall not mean any service line constructed to obtain an advantage under this act, or to evade its purpose or terms.

(12) "Commission" means the Idaho public utilities commission.

SECTION 4. That Section 61-332B, Idaho Code, be, and the same is hereby amended to read as follows:

61-332B. ELECTRIC SUPPLIER PROHIBITED FROM SERVING CONSUMERS OR FORMER CONSUMERS OF ANOTHER ELECTRIC SUPPLIER. No electric supplier shall ~~construct or extend facilities, nor make any electric connections, nor permit any connections to be made to any of its facilities for the purpose of supplying electric service nor shall it~~ supply or furnish electric service to any electric service entrance that is then or had at

any time previously been lawfully connected for electric service to facilities of another electric supplier~~, without the written consent of such other electric supplier; provided, however, (a) such other electric supplier is then, or was previously the last supplier, lawfully connected to said electric service entrance, and (b) such other electric supplier is willing and able to provide adequate electric service~~ except as provided in this act.

SECTION 5. That Section 61-332C, Idaho Code, be, and the same is hereby amended to read as follows:

61-332C. ~~RULES~~ PROVISIONS FOR SELECTING ELECTRIC SUPPLIER FOR NEW ELECTRIC SERVICE ENTRANCES. (1) In ~~the event more than one electric supplier is willing and able to provide adequate electric service to a consumer at any new electric service entrance, the following rules shall~~ determining which electric supplier will provide electric service for a new service entrance, the following provisions will govern:

~~1.~~(a) If no electric supplier has an existing service line within one thousand three hundred ~~and~~ twenty (1,320) feet ~~(1,320 ft.)~~ of ~~the~~ a new service entrance the consumer shall have the right of choice of electric supplier.

~~2.~~(b) If only one (1) electric supplier has an existing service line within one thousand three hundred ~~and~~ twenty (1,320) feet ~~(1,320 ft.)~~ of the new service entrance that electric supplier shall have the right to serve the consumer at the new service entrance.

~~3.~~(c) If more than one (1) electric supplier has an existing service line within one thousand three hundred ~~and~~ twenty (1,320) feet ~~(1,320 ft.)~~ of the ~~new service~~ entrance the electric supplier whose existing service line is nearest the new service entrance shall have the right to serve the consumer at the new service entrance.

~~4.~~(d) If more than one (1) electric supplier has an existing service line within one thousand three hundred ~~and~~ twenty (1,320) feet ~~(1,320 ft.)~~ of the new ~~service~~ entrance ~~and the existing service lines are equidistant from the service entrance, or~~ and it cannot be determined by proof which service line is nearest the new service entrance, then the consumer ~~shall have the right of choice of supplier~~ or an electric supplier shall petition the commission for an order determining which electric supplier is nearest the new service entrance.

(e) For purposes of this act distances shall mean the exact distance measured using standard land surveying practices as established by the board of professional engineers and land surveyors of the state of Idaho.

(2) No electric supplier shall construct or extend facilities, nor make any electric connections, nor permit any connection to be made from any of its facilities to any new service entrance nor shall it supply electric service to any new service entrance in violation of the ~~rules herein, without the written consent of any electric supplier with a prior right under the rules to serve the consumer at the new service locations~~ provisions of this section, except as ordered by the commission pursuant to this act.

SECTION 6. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known

and designated as Section 61-332D, Idaho Code, and to read as follows:

61-332D. WHEELING SERVICES. (1) An electric supplier shall not be required to provide wheeling service over its system if such service results in retail wheeling and/or a sham wholesale transaction.

(2) An electric supplier declining to furnish wheeling service pursuant to this section shall petition the commission for review of the electric supplier's action in respect to a request for such service. The commission shall, upon notice and opportunity for hearing, review the electric supplier's action for consistency with the purposes and provisions of this act, and issue an order in accordance with its finding, ordering either that the wheeling service shall, or shall not, be required.

SECTION 7. That Section 61-333, Idaho Code, be, and the same is hereby amended to read as follows:

61-333. AUTHORIZING CONTRACTS AMONG ELECTRIC SUPPLIERS TO RESOLVE TERRITORIES, CONSUMERS AND TO TRANSFER FACILITIES. ~~A.~~(1) Any electric supplier may contract in writing with any other electric supplier for the purpose of allocating territories, consumers, and future consumers between the electric suppliers and designating which territories and consumers are to be served by which contracting electric supplier. The territories and consumers so allocated and designated may include all or any portion of the territories and consumers which are being served by any or all of the contracting electric suppliers at the time the contract is entered into, or which could be economically served by the then existing facilities of any ~~contracting~~ electric supplier, or by reasonable and economic extensions thereto. All such contracts shall be filed with the commission. The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between cooperatives, between cooperatives and public utilities and between public utilities. The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between municipalities and cooperatives, as well as between municipalities and public utilities, provided however, the commission shall have jurisdiction only over cooperatives and public utilities in such approvals. The commission shall approve such contracts only upon finding that the allocation of territories or consumers is in conformance with the provisions and purposes of this act.

~~B.~~(2) Any electric supplier may also contract in writing with any other electric supplier for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of any allocation contracted for under subsection ~~A hereof. C. Any~~ (1) of this section and any contract validly entered ~~pursuant to this section~~ into and approved by the commission after notice and opportunity for hearing shall be binding and shall be legally enforceable pursuant to this act, or by any other remedy provided by law.

SECTION 8. That Section 61-334, Idaho Code, be, and the same is hereby amended to read as follows:

61-334. SPECIAL RULES OF INTERPRETATION. Nothing contained in this act shall be construed to:

(1~~.~~) Grant ~~Idaho public utilities~~ the commission jurisdiction over cooperatives or municipalities except as authorized in this act.

(2~~.~~) Apply to controversies between two (2) or more public utilities.

(3~~.~~) Preclude any electric supplier from extending electric service to its own property or facilities or to another electric supplier for resale, provided any line extension made under this clause shall not be considered in determining the right of electric suppliers to serve new service entrances under section 61-332C, Idaho Code.

(4) Abrogate or limit the authority ~~of any~~ municipality under any other statute or law with respect to the municipality providing electricity to the municipality or the consumers of the municipality within the boundaries of the municipality.

SECTION 9. That Section 61-334A, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Section 61-334B, Idaho Code, be, and the same is hereby amended to read as follows:

61-334~~B~~A. ~~LEGAL~~ REMEDIES FOR VIOLATION OF THIS ACT. ~~A.~~(1) Any electric supplier or consumer whose rights under this act shall be violated or threatened with violation~~, shall be entitled to injunctive relief against said violation upon proper~~ may file a complaint ~~and proof in accordance with Idaho rules of civil procedure in district court, against the other~~ with the commission against an electric supplier and any other person responsible for the violation.

~~B.~~(2) ~~In any suit for injunctive relief~~ After notice and opportunity for hearing, the commission shall make findings of fact and conclusions ~~by the court that any rules under~~ of law determining whether this act or any orders issued under this act have been violated or threatened to be violated and shall ~~require findings and conclusions by the court of~~ determine whether there is actual or threatened irreparable injury as to the electric supplier or consumer whose rights are violated or threatened with violation as a basis for ~~equitable relief hereunder~~ granting relief.

~~C.~~(3) The ~~injunctive~~ relief to be granted under this section for violation of this act shall ~~be negative in form, enjoining~~ forbid further acts in violation of such ~~rules~~ orders, shall ~~be affirmative in form in requiring~~ order the removal of any electric ~~connections, facilities~~ or equipment that constitute the violation, ~~and shall be~~ or a combination thereof necessary to enforce compliance with this act.

~~D. Any aggrieved party may also pursue any other remedy provided by law.~~

SECTION 11. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-334B, Idaho Code, and to read as follows:

61-334B. COMMISSION SUPERVISION AND AUTHORITY. (1) Upon a petition by an electric supplier or consumer for an exception to the provisions of section 61-332B or 61-332C(1)(a), (b) or (c), Idaho Code, the commission shall issue an order granting such request only upon finding that granting the request is consistent with the purposes of this act as set

forth in section 61-332, Idaho Code.

(2) The commission shall have power to issue authorizations and orders requested under this act, or to refuse to issue the same, and may attach to any authorization and order as a condition of approval such terms and conditions as it determines are consistent with the purposes and provisions of this act.

(3) In all matters arising under this act, which are submitted to the commission for decision, order or review, the procedure shall be governed by chapters 6 and 7, title 61, Idaho Code, and the commission's rules of procedure. Reconsideration of, appeal from, enforcement of, and stay of orders issued pursuant to this act shall be governed by law as for other orders of the commission in other matters.

SECTION 12. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-334C, Idaho Code, and to read as follows:

61-334C. ELECTRIC SUPPLIER IMMUNITY. No action under the Idaho competition act, chapter 1, title 48, Idaho Code, or any other provision or doctrine of law of the state of Idaho shall lie against an electric supplier for action or inaction that is in compliance with the provisions of this act or any commission order issued pursuant to this act.

SECTION 13. That Sections 61-332, 61-332A, 61-332B, 61-332C, 61-332D, 61-333, 61-334, 61-334A, 61-334B and 61-334C, Idaho Code, be, and the same are hereby repealed.

SECTION 14. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-332, Idaho Code, and to read as follows:

61-332. PURPOSE OF ELECTRIC SUPPLIER STABILIZATION ACT. (1) This act includes sections 61-332, 61-332A, 61-332B, 61-332C, 61-333, 61-334, 61-334A and 61-334B, Idaho Code, as herein enacted, and sections 61-333A, 61-333B and 61-333C, Idaho Code, as already enacted, and shall be referred to herein as "this act" and may be cited and referred to as the "Electric Supplier Stabilization Act."

(2) This act is designed to promote harmony among and between electric suppliers furnishing electricity within the state of Idaho, prohibit the "pirating" of customers of another supplier, discourage duplication of electric facilities, and stabilize the territories and customers served with electricity by such suppliers.

SECTION 15. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-332A, Idaho Code, and to read as follows:

61-332A. DEFINITIONS FOR ELECTRIC SUPPLIER STABILIZATION ACT. As used in this act, unless the context requires otherwise:

(1) "Consumer" is any person, firm, corporation, or other entity receiving or intending to receive electric service at a specific service entrance.

(2) "Cooperative" means a cooperative corporation furnishing electric service in the state of Idaho to its consumer-members who own and

operate the cooperative.

(3) "Electric service" means electricity furnished to an ultimate consumer by a supplier.

(4) "Existing service line" means any electric service line in existence at the time of the event in question and constructed to supply a consumer that could be lawfully served by that supplier under this act. It shall not mean any service line constructed to obtain an advantage under this act, or to evade its purpose or terms.

(5) "Municipality" means any municipal corporation or quasi-municipal corporation furnishing electric service to its citizens in the state of Idaho.

(6) "New service entrance" means a service entrance not previously served with electricity. A change, improvement, replacement, enlargement or change in location of a service entrance shall not be deemed a "new service entrance" if utilized to serve any service or utilization equipment previously served with electricity from the former service entrance, but for the rules of this act shall be deemed the former "service entrance." A change in consumer shall not be construed to make an existing service entrance a "new service entrance." A change, enlargement, or other modification of service or utilization equipment served from an existing service entrance shall not be construed to make it a "new service entrance."

(7) "Public utility" means an electric utility regulated by the Idaho public utilities commission.

(8) "Service entrance" means the entrance of electric service from facilities of the supplier to the service equipment or utilization equipment of the consumer. In determining "service entrance" reference shall be made to the definition of "entrance of the service to the service equipment or utilization equipment" as defined in the national electrical code of 1965.

(9) "Service line" means any electric line of a supplier for carrying less than sixty-nine (69) KV and used or capable of use to provide electric service for a consumer.

(10) "Supplier" means any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer.

(11) "Transmission line" means any electric line of a supplier for carrying a voltage of sixty-nine (69) KV or more.

SECTION 16. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-332B, Idaho Code, and to read as follows:

61-332B. ELECTRIC SUPPLIER PROHIBITED FROM SERVING CONSUMERS OR FORMER CONSUMERS OF ANOTHER SUPPLIER. No electric supplier shall construct or extend facilities, nor make any electric connections, nor permit any connections to be made to any of its facilities for the purpose of supplying electric service nor shall it supply or furnish electric service to any electric service entrance that is then or had at any time previously been connected for electric service to facilities of another electric supplier, without the written consent of such other electric supplier; provided however: (1) such other electric supplier is then, or was previously the last supplier, lawfully connected to said electric service entrance; and (2) such other electric supplier is willing and able to provide adequate electric service.

SECTION 17. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-332C, Idaho Code, and to read as follows:

61-332C. RULES FOR SELECTING ELECTRIC SUPPLIER FOR NEW ELECTRIC SERVICE ENTRANCES. In the event more than one (1) electric supplier is willing and able to provide adequate electric service to a consumer at any new electric service entrance, the following rules shall govern:

(1) If no electric supplier has an existing service line within one thousand three hundred twenty (1,320) feet of the new service entrance the consumer shall have the right of choice of supplier.

(2) If only one (1) electric supplier has an existing service line within one thousand three hundred twenty (1,320) feet of the new service entrance that supplier shall have the right to serve the consumer at the new service entrance.

(3) If more than one (1) electric supplier has an existing service line within one thousand three hundred twenty (1,320) feet of the new service entrance the supplier whose existing service line is nearest the new service entrance shall have the right to serve the consumer at the new service entrance.

(4) If more than one (1) electric supplier has an existing service line within one thousand three hundred twenty (1,320) feet of the new service entrance and the existing service lines are equidistant from the service entrance, or it cannot be determined by proof which service line is nearest the new service entrance, then the consumer shall have the right of choice of supplier.

No electric supplier shall construct or extend facilities, nor make any electric connections, nor permit any connection to be made from any of its facilities to any new service entrance nor shall it supply electric service to any new service entrance in violation of the rules herein, without the written consent of any electric supplier with a prior right under the rules to serve the consumer at the new service locations.

SECTION 18. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-333, Idaho Code, and to read as follows:

61-333. AUTHORIZING CONTRACTS AMONG ELECTRIC SUPPLIERS TO RESOLVE TERRITORIES, CONSUMERS AND TO TRANSFER FACILITIES. (1) Any electric supplier may contract in writing with any other electric supplier for the purpose of allocating territories, consumers, and future consumers between the suppliers and designating which territories and consumers are to be served by which contracting supplier. The territories and consumers so allocated and designated may include all or any portion of the territories and consumers which are being served by any or all of the contracting suppliers at the time the contract is entered into, or which could be economically served by the then existing facilities of any contracting supplier, or by reasonable and economic extensions thereto.

(2) Any electric supplier may also contract in writing with any other electric supplier for the sale, exchange, transfer or lease of equipment or facilities located within territory which is the subject of any allocation contracted for under subsection (1) of this section.

(3) Any contract validly entered pursuant to this section shall be binding and shall be legally enforceable pursuant to this act, or by any

other remedy provided by law.

SECTION 19. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-334, Idaho Code, and to read as follows:

61-334. SPECIAL RULES OF INTERPRETATION. Nothing contained in this act shall be construed to:

(1) Grant Idaho public utilities commission jurisdiction over cooperatives or municipalities.

(2) Apply to controversies between two (2) or more public utilities.

(3) Preclude any electric supplier from extending electric service to its own property or facilities or to another electric supplier for resale, provided any line extension made under this clause shall not be considered in determining the right of suppliers to serve new service entrances under section 61-332C, Idaho Code.

SECTION 20. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-334A, Idaho Code, and to read as follows:

61-334A. LEGAL RELIEF FOR AGGRIEVED ELECTRIC CONSUMER. (1) Any consumer of electricity who feels aggrieved with his present electric service may apply to the district court of the county of his residence for an order to show cause why he should not be permitted to change supplier, and if the court finds and concludes that the electric service is inadequate and will not likely be made adequate or that the rates are unreasonable and will not likely be made reasonable, the court may authorize the change to the new supplier.

(2) The present and prospective electric supplier shall both be made a party to any suit under this section.

(3) This section and any order hereunder shall not be construed to grant any franchise or right to a public utility or cooperative to commence electric service within a municipality where it does not already have such franchise or right.

SECTION 21. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-334B, Idaho Code, and to read as follows:

61-334B. LEGAL REMEDIES FOR VIOLATION OF THIS ACT. (1) Any electric supplier whose rights under this act shall be violated or threatened with violation, shall be entitled to injunctive relief against said violation upon proper complaint and proof in accordance with Idaho rules of civil procedure in district court, against the other electric supplier and any other person responsible for the violation.

(2) In any suit for injunctive relief findings and conclusions by the court that any rules under this act have been violated or threatened to be violated shall require findings and conclusions by the court of actual or threatened irreparable injury as to the electric supplier whose rights are violated or threatened with violation as a basis for equitable relief hereunder.

(3) The injunctive relief to be granted under this section for

violation of this act shall be negative in form, enjoining further acts in violation of such rules, shall be affirmative in form in requiring removal of any electric connections, facilities or equipment that constitute the violation and shall be a combination thereof necessary to enforce compliance with this act.

(4) Any aggrieved party may also pursue any other remedy provided by law.

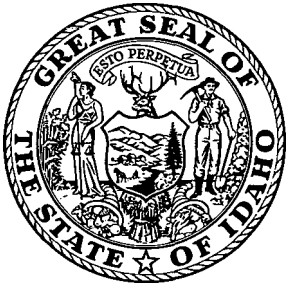
SECTION 22. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 through 12 of this act shall be in full force and effect on and after its passage and approval; Section 1 of this act shall be null, void and of no force and effect on and after March 1, 2001; and Sections 13 through 21 of this act shall be in full force and effect on and after March 1, 2001.

Approved December 8, 2000.

CERTIFICATE OF SECRETARY OF STATE

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

I, PETE T. CENARRUSA, Secretary of the State of Idaho, do hereby certify that the foregoing printed pages contain true, full, and correct and literal copies of the general laws and resolutions passed by the Fifty-sixth Legislature of the State of Idaho, First Extraordinary Session thereof, which convened December 8, 2000, and which adjourned on December 8, 2000, as it appears in the enrolled acts and resolutions on file in this office, all of which are published by authority of the Laws of the State of Idaho.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Idaho. Done at Boise City, the Capital of Idaho, this 14th day of December, 2000.

Pete T. Cenarrusa
Secretary of State

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

GENERAL LAWS

OF THE

STATE OF IDAHO

PASSED BY
THE FIRST REGULAR SESSION OF THE
FIFTY-SIXTH IDAHO LEGISLATURE

Convened January 8, 2001
Adjourned March 30, 2001

Volume 1

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

PUBLISHED BY AUTHORITY OF THE
SECRETARY OF STATE

PETE T. CENARRUSA
Secretary of State
Boise, Idaho

CHAPTER 1
(H.B. No. 66)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE MILITARY DIVISION FOR FISCAL YEAR 2001; DIRECTING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE HAZARDOUS SUBSTANCE EMERGENCY RESPONSE 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 284, Laws of 2000, 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, 2000, through June 30, 2001:

A. BUREAU OF HAZARDOUS MATERIALS:	
FOR:	
Operating Expenditures	$124,700
FROM:	
Hazardous Substance Emergency Response Fund	$124,700
B. MILITARY MANAGEMENT:	
FOR:	
Operating Expenditures	$154,900
FROM:	
General Fund	$154,900
TOTAL	$279,600

SECTION 2. The State Controller shall make a cash transfer of $124,700 from the General Fund to the Hazardous Substance Emergency Response Fund for the period July 1, 2000, through June 30, 2001.

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 7, 2001.

CHAPTER 2
(H.B. No. 126)

AN ACT

RELATING TO THE APPROPRIATION TO THE STATE TAX COMMISSION; AMENDING THE APPROPRIATION MADE IN SECTION 1, CHAPTER 405, LAWS OF 2000; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 405, Laws of 2000, be, and the

same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the State Tax Commission in the Department of Revenue and Taxation the following amounts, to be expended for the designated programs according to the designated 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
I. GENERAL SERVICES:				
FROM:				
General Fund	$ ~~3,557,100~~	$ ~~6,919,500~~	$ 615,100	$~~11,091,700~~
	3,546,800	7,052,300		11,214,200
Administration and Accounting Fund		37,800		37,800
Multistate Tax Compact Fund			13,600	13,600
Administration Services for Transportation Fund	~~350,500~~	~~622,000~~	86,500	~~1,059,000~~
	360,800	635,600		1,082,900
Abandoned Property Trust-Unclaimed Property Fund		23,200	11,900	35,100
Seminars and Publications Fund		30,800		30,800
TOTAL	$ 3,907,600	$ ~~7,633,300~~	$ 727,100	$~~12,268,000~~
		7,779,700		12,414,400
II. AUDIT AND COLLECTIONS:				
FROM:				
General Fund	$ ~~9,051,000~~	$ 1,444,700	$ 13,800	$~~10,509,500~~
	9,003,500			10,462,000
Multistate Tax Compact Fund	568,000	317,100		885,100
Administration and Accounting Fund		9,500		9,500
Administration Services for Transportation Fund	~~1,067,100~~	234,800	3,000	~~1,304,900~~
	1,114,600			1,352,400
Abandoned Property Trust-Unclaimed Property Fund	334,000	98,500	900	433,400
TOTAL	$11,020,100	$ 2,104,600	$ 17,700	$13,142,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
III. REVENUE OPERATIONS:				
FROM:				
General Fund	$ ~~2,571,600~~ 2,512,100	$ 1,305,500	$ 228,800	$ ~~4,105,900~~ 4,046,400
Administration and Accounting Fund		26,300		26,300
Administration Services for Transportation Fund	~~329,800~~ 389,300	169,000	45,000	~~543,800~~ 603,300
Seminars and Publications Fund		18,000		18,000
TOTAL	$ 2,901,400	$ 1,518,800	$ 273,800	$ 4,694,000
IV. COUNTY SUPPORT:				
FROM:				
General Fund	$ 2,141,300	$ 561,100	$ 14,400	$ 2,716,800
Seminars and Publications Fund		94,800	1,600	96,400
TOTAL	$ 2,141,300	$ 655,900	$ 16,000	$ 2,813,200
GRAND TOTAL	$19,970,400	$~~11,912,600~~ 12,059,000	$1,034,600	$~~32,917,600~~ 33,064,000

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 16, 2001.

CHAPTER 3
(H.B. No. 95)

AN ACT

RELATING TO THE APPROPRIATION FOR THE IDAHO STATE POLICE; AMENDING SECTION 1, CHAPTER 388, LAWS OF 2000; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 1, Chapter 388, Laws of 2000, is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Idaho State Police 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. BRAND INSPECTION:					
FROM:					
State Brand Board Fund	$ 1,932,400	$ 267,700	$ 90,000		$ 2,290,100
II. DIVISION OF THE IDAHO STATE POLICE:					
A. DIRECTOR'S OFFICE:					
FROM:					
General Fund	$ 1,674,400	$ ~~498,700~~ 518,500	$ 28,500		$ ~~2,201,600~~ 2,221,400
Indirect Cost Recovery Fund	62,100				62,100
Idaho Law Enforcement Fund	11,100	~~68,000~~			~~79,100~~ 11,100
Peace Officers Fund	700				700
Miscellaneous Revenue Fund		10,300			10,300
Federal Grant Fund	430,300	150,700		$3,585,000	4,166,000
TOTAL	$ 2,178,600	$ ~~727,700~~ 679,500	$ 28,500	$3,585,000	$ ~~6,519,800~~ 6,471,600
B. INVESTIGATIONS:					
FROM:					
General Fund	$ 4,423,000	$ ~~1,518,800~~ 1,078,800	$ 348,000		$ ~~6,289,800~~ 5,849,800
Drug Donation Fund		266,800			266,800
Federal Grant Fund	22,800	499,700			522,500
TOTAL	$ 4,445,800	$ ~~2,285,300~~ 1,845,300	$ 348,000		$ ~~7,079,100~~ 6,639,100
C. PATROL:					
FROM:					
General Fund	$ 1,835,100				$ 1,835,100
Idaho Law Enforcement Fund	11,809,600	~~2,937,000~~ $ 3,005,000	$2,162,000		~~16,908,600~~ 16,976,600
Hazardous Materials/ Waste Enforcement Fund	115,000	42,200		$ 66,800	224,000
Federal Grant Fund	462,500	1,106,700	300,000		1,869,200
TOTAL	$14,222,200	$ ~~4,085,900~~ 4,153,900	$2,462,000	$ 66,800	$ ~~20,836,900~~ 20,904,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
D. LAW ENFORCEMENT PROGRAMS:					
FROM:					
General Fund	$ 739,900	$ 155,200	$ 39,000		$ 934,100
Miscellaneous Revenue Fund	63,300	18,100			81,400
Federal Grant Fund	77,500				77,500
TOTAL	$ 880,700	$ 173,300	$ 39,000		$ 1,093,000
E. SUPPORT SERVICES:					
FROM:					
General Fund	$ 1,345,100	$ ~~594,900~~ 1,079,900	$ 181,700		$ ~~2,121,700~~ 2,606,700
Idaho Law Enforcement Fund	388,000	85,000	8,000		481,000
Idaho Law Enforcement Telecommunications Fund	246,400	269,900	2,100		518,400
Miscellaneous Revenue Fund	268,800	740,500	75,000		1,084,300
Federal Grant Fund	83,400	17,000			100,400
TOTAL	$ 2,331,700	$ ~~1,707,300~~ 2,192,300	$ 266,800		$ ~~4,305,800~~ 4,790,800
F. FORENSIC SERVICES:					
FROM:					
General Fund	$ 1,559,600	$ ~~523,200~~ 478,200	$ 617,200		$ ~~2,700,000~~ 2,655,000
Miscellaneous Revenue Fund	170,900	257,600			428,500
Federal Grant Fund	28,400	17,000			45,400
TOTAL	$ 1,758,900	$ ~~797,800~~ 752,800	$ 617,200		$ ~~3,173,900~~ 3,128,900
III. PEACE OFFICERS STANDARDS AND TRAINING ACADEMY:					
FROM:					
Peace Officers Fund	$ 728,700	$ 923,900	$ 116,500	$ 88,300	$ 1,857,400
Miscellaneous Revenue Fund		5,100			5,100
Federal Grant Fund	74,100	476,800		335,000	885,900
TOTAL	$ 802,800	$ 1,405,800	$ 116,500	$ 423,300	$ 2,748,400
IV. RACING COMMISSION:					
FROM:					
Idaho State Racing Commission Fund	$ 330,000	$ 309,900			$ 639,900

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Pari-mutuel Distributions Fund				$ 100,000	100,000
TOTAL	$ 330,000	$ 309,900		$ 100,000	$ 739,900
GRAND TOTAL	$28,883,100	~~$11,760,700~~ 11,780,500	$3,968,000	$4,175,100	~~$48,786,900~~ 48,806,700

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

Approved February 16, 2001.

CHAPTER 4
(H.B. No. 94)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE ATTORNEY GENERAL FOR FISCAL YEAR 2001; PROVIDING ONE ADDITIONAL FULL-TIME POSITION FOR FISCAL YEAR 2001; 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 448, Laws of 2000, there is hereby appropriated to the Attorney General the following amount to be expended for the named program according to the designated expense classes from the listed fund for the period July 1, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
STATE LEGAL SERVICES:				
Consumer Protection Fund	$34,700	$70,000	$9,200	$113,900

SECTION 2. In addition to the full-time positions authorized in Section 4, Chapter 448, Laws of 2000, the Attorney General is authorized one (1) additional position for a total of no more than one hundred seventy-eight and nine-tenths (178.9) 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 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 February 16, 2001.

CHAPTER 5
(H.B. No. 93)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF JUVENILE CORRECTIONS FOR FISCAL YEAR 2001; 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 454, Laws of 2000, there is hereby appropriated to the Department of Juvenile Corrections the following amount to be expended for the named program according to the designated expense class from the listed fund for the period July 1, 2000, through June 30, 2001:

INSTITUTIONS:	
FOR:	
Trustee and Benefit Payments	$1,456,200
FROM:	
General Fund	$1,456,200

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

Approved February 16, 2001.

CHAPTER 6
(H.B. No. 84)

AN ACT
APPROPRIATING ADDITIONAL MONEYS FOR THE IDAHO COMMISSION ON THE ARTS FOR FISCAL YEAR 2001; 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 455, Laws of 2000, there is hereby appropriated to the Secretary of State for the Idaho Commission on the Arts the following amount to be expended according to the designated expense class from the listed fund for the period July 1, 2000, through June 30, 2001:

FOR:	
Operating Expenditures	$47,500
FROM:	
Miscellaneous Revenue Fund	$47,500

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 16, 2001.

CHAPTER 7
(H.B. No. 83)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 2001; 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 471, Laws of 2000, there is hereby appropriated to the Department of Insurance 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, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. INSURANCE REGULATION:				
FROM:				
Self-Governing Operating Fund		$112,500		$112,500
FROM:				
Miscellaneous Revenue Fund	$2,700	5,900	$1,500	10,100
TOTAL	$2,700	$118,400	$1,500	$122,600

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 16, 2001.

CHAPTER 8
(H.B. No. 82)

AN ACT
APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR FISCAL YEAR 2001; 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 379, Laws of 2000, there is hereby appropriated to the Department of Self-Governing Agencies the following amounts to be expended for

the designated programs according to the designated expense class from the listed fund for the period July 1, 2000, through June 30, 2001:

I. BOARD OF PROFESSIONAL ENGINEERS & SURVEYORS:

FOR:	
Operating Expenditures	$7,000
FROM:	
State Regulatory Fund	$7,000
II. BUREAU OF OCCUPATIONAL LICENSES:	
FOR:	
Operating Expenditures	$5,000
FROM:	
State Regulatory Fund	$5,000

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 16, 2001.

CHAPTER 9
(H.B. No. 81)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE IDAHO TRANSPORTATION DEPARTMENT FOR FISCAL YEAR 2001; AUTHORIZING TWO ADDITIONAL FULL-TIME EQUIVALENT 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 45, Laws of 2000, 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 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. MANAGEMENT AND SUPPORT:					
FROM:					
State Highway Fund (Dedicated)	$68,300	$ 6,000	$ 9,600		$ 83,900
II. MOTOR VEHICLES:					
FROM:					
State Highway Fund (Dedicated)	$29,600	$54,100	$ 4,300		$ 88,000

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
III. AERONAUTICS:					
FROM:					
State Aeronautics Fund (Dedicated)				$300,000	$300,000
GRAND TOTAL	$97,900	$60,100	$13,900	$300,000	$471,900

SECTION 2. In addition to the authorization made in Section 3, Chapter 45, Laws of 2000, the Idaho Transportation Department is hereby authorized two (2) full-time equivalent positions for the period July 1, 2000, through June 30, 2001.

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 16, 2001.

CHAPTER 10
(H.B. No. 69)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF LANDS FOR FISCAL YEAR 2001; AUTHORIZING THE STATE CONTROLLER TO TRANSFER MONEYS TO THE FIRE SUPPRESSION DEFICIENCY FUND; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 1, Chapter 449, Laws of 2000, there is hereby appropriated to the Department of Lands $14,500,000 from the Fire Suppression Deficiency Fund to be expended for the Forest and Range Fire Protection Program for the period July 1, 2000, through June 30, 2001.

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 $9,500,000, for the period July 1, 2000, through June 30, 2001.

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 16, 2001.

CHAPTER 11
(H.B. No. 68)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DEPARTMENT OF AGRICULTURE FOR FISCAL YEAR 2001; AUTHORIZING THE STATE CONTROLLER TO TRANSFER MONEYS 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 387, Laws of 2000, there is hereby appropriated to the Department of Agriculture 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:

PLANT INDUSTRIES:

FOR:	
Personnel Costs	$109,500
Operating Expenditures	53,100
Capital Outlay	1,300
TOTAL	$163,900
FROM:	
Pest Control Deficiency Fund	$163,900

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 $163,900, for the period July 1, 2000, through June 30, 2001.

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 16, 2001.

CHAPTER 12
(H.B. No. 55)

AN ACT

RELATING TO LAND ACTIVELY DEVOTED TO AGRICULTURE FOR TAXATION PURPOSES; AMENDING SECTION 63-604, IDAHO CODE, TO FURTHER DEFINE "LAND ACTIVELY DEVOTED TO AGRICULTURE" TO INCLUDE LAND PRODUCING NURSERY STOCK 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 63-604, Idaho Code, be, and the same is hereby amended to read as follows:

63-604. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED. (1) For property tax purposes, land which is actively devoted to agriculture as part of an agricultural enterprise shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

(a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:

(i) It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or

(ii) It is used to produce nursery stock as defined in section 22-2302(11), Idaho Code; or

(iii) It is used by the owner for the grazing of livestock to be sold as part of a net profit-making enterprise, or is leased by the owner to a bona fide lessee for grazing purposes; or

(~~iii~~iv) It is in a cropland retirement or rotation program.

(b) The area of such land is five (5) acres or less and such land has been actively devoted to agriculture within the meaning of subsection (1)(a) of this section during the last three (3) growing seasons; and

(i) It agriculturally produces for sale or home consumption the equivalent of fifteen percent (15%) or more of the owners' or lessees' annual gross income; or

(ii) It agriculturally produced gross revenues in the immediately preceding year of one thousand dollars ($1,000) or more. When the area of land is five (5) acres or less, such land shall be presumed to be nonagricultural land until it is established that the requirements of this subsection have been met.

(2) Land shall not be classified or valued as agricultural land which is part of a platted subdivision with stated restrictions prohibiting its use for agricultural purposes, whether within or without a city.

(3) Land utilized for the grazing of a horse or other animals kept primarily for personal use or pleasure rather than as part of a bona fide profit-making agricultural enterprise shall not be considered to be land which is actively devoted to agriculture.

(4) Land actively devoted to agriculture, having previously qualified for exemption under this section in the preceding year, or which would have qualified under this section during the current year, shall not lose such qualification due to the owner's or lessee's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the ~~I~~Internal ~~r~~Revenue ~~c~~Code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone, as defined in section 112 of the ~~I~~Internal ~~r~~Revenue ~~c~~Code, and the land would otherwise qualify for exemption under this section, then the board of county commissioners of the county in which the land actively devoted to agriculture is located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.

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, 2001.

Approved February 16, 2001.

CHAPTER 13
(H.B. No. 36)

AN ACT

RELATING TO THE MEAL ALLOWANCE FOR STATE OFFICERS, AGENTS AND EMPLOYEES SET BY THE STATE BOARD OF EXAMINERS; AMENDING SECTION 67-2008, IDAHO CODE, TO PROVIDE FOR AN IN-STATE AND OUTSIDE THE STATE MEAL ALLOWANCE THAT IS NO HIGHER THAN ALLOWED UNDER THE INTERNAL REVENUE CODE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-2008, Idaho Code, be, and the same is hereby amended to read as follows:

67-2008. DETERMINATION OF RATE OF ALLOWANCE. (1) At its first meeting after the effective date of this act, and thereafter as it shall deem appropriate, the board of examiners shall by regulation fix a rate of allowance for per diem subsistence for officers, agents and all other employees of the state who are absent from their post of duty on official business, which shall be effective for the year in which such allowance is fixed, and shall fix a rate of allowance for mileage for official travel executed by privately owned means of conveyance, which rate of allowance shall be effective for the year in which it is fixed; provided, however, that the board shall fix no rate of per diem allowance which is higher than:

(a) Actual lodgings (maximum to be set by board of examiners) and ~~twenty-dollars-($20.00)-per-day~~ meal allowance which is no higher than allowed under the Internal Revenue Code for travel within the state; and

(b) Actual lodgings (maximum to be set by board of examiners) and ~~thirty--dollars--($30.00)~~ meal allowance which is no higher than allowed under the Internal Revenue Code without the state; and

(c) A rate of mileage allowance which is no higher than the standard mileage rate for the business use of an automobile allowed under the ~~I~~Internal ~~r~~Revenue ~~c~~Code for income tax purposes; and

(d) The mileage allowance for private aircraft travel shall be set by the board and shall be no higher than that allowed for automobile travel, calculated as if the travel had been by highway route.

(2) In fixing rates of allowance under this act, the board shall consider the prevailing cost of executing such travel, generally prevailing economic conditions, and the rates of allowance made applicable to similar travel by the federal government and private employers within the state.

(3) For a period where employees are to be absent from their post on official business for less than twenty-four (24) hours the board's regulations shall provide for partial days' subsistence rates.

Approved February 16, 2001.

CHAPTER 14
(H.B. No. 21)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-539, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO CLARIFY THE SOURCE OF MONEY RECEIVED IN THE JUVENILE CORRECTIONS VICTIM RESTITUTION FUND; AND AMENDING CHAPTER 5, TITLE 20, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 20-539A, IDAHO CODE, TO PROVIDE FOR DISTRIBUTION AND REPORTING REQUIREMENTS FOR STATE AND OTHER PUBLIC AND PRIVATE CONTRACT FACILITIES.

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

SECTION 1. That Section 20-539, Idaho Code, be, and the same is hereby amended to read as follows:

20-539. CREATION OF ~~ACCOUNT~~ FUND. There is hereby created in the state treasury an~~--account~~ fund known as the "~~J~~juvenile ~~C~~corrections ~~V~~victim ~~R~~restitution ~~Account~~ fund," which shall be administered by the department. Moneys in the ~~account~~ fund shall consist of wage payments made to juvenile offenders in work programs, appropriations and moneys received by the department from whatever source. Moneys in the ~~account~~ fund shall be utilized to provide full or partial restitution to victims of the juvenile offender's delinquent behavior.

SECTION 2. 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 20-539A, Idaho Code, and to read as follows:

20-539A. DISTRIBUTION AND REPORTING REQUIREMENTS FOR STATE, OTHER PUBLIC AND PRIVATE CONTRACT FACILITIES. Each facility housing juvenile offenders in department custody, whether a state, other public or private contract facility, shall comply with the following requirements for disbursement and reporting:

(1) State facilities, upon receiving any moneys credited to a juvenile in its custody, shall deposit the funds in the juvenile corrections victim restitution fund pursuant to section 20-539, Idaho Code.

(2) Other public or private contract facilities housing juveniles in department custody, upon receiving any moneys credited to or earned by a juvenile at the facility, shall directly distribute the moneys on or before the first day of each calendar quarter to the county court that committed the juvenile to department custody. Upon remitting moneys to a county on behalf of a juvenile offender, the facility shall report the direct distribution to the department for inclusion in the department's records.

Approved February 16, 2001.

CHAPTER 15
(H.B. No. 20)

AN ACT

RELATING TO THE JUVENILE CORRECTIONS ACT; AMENDING SECTION 20-520, IDAHO CODE, TO PROVIDE A NAME FOR THE PETITION FEE ASSESSED AGAINST JUVENILES ADJUDICATED IN JUVENILE COURT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 20-522, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 20-542, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 20-520, Idaho Code, be, and the same is hereby amended to read as follows:

20-520. SENTENCING. (1) Upon the entry of an order finding the juvenile is within the purview of the act, the court shall then hold a sentencing hearing in the manner prescribed by the Idaho juvenile rules to determine the sentence that will promote accountability, competency development and community protection. Prior to the entry of an order disposing of the case, other than an order of discharge or dismissal, the court shall request and shall receive a report containing the results of an inquiry into the home environment, past history, competency development, prevention or out of home placement services provided, and the social, physical and mental condition of the juvenile. The court shall not consider or review the report prior to the entry of an order of adjudication. Upon presentation and consideration of the report by the court, the court may proceed to sentence the juvenile as follows:

(a) Place the juvenile on formal probation for a period not to exceed three (3) years from the date of the order, except the court may place a juvenile on formal probation for a period not to exceed the juvenile's twenty-first birthday if the court finds that the juvenile has committed a crime of a sexual nature;

(b) Sentence the juvenile to detention pursuant to this act for a period not to exceed thirty (30) days for each act, omission or status which is prohibited by the federal, state, local or municipal law or ordinance by reason of minority only. The sentence shall not be executed unless the act, omission or status is in violation of section 922(x) of title 18, United States Code, or the court finds that the juvenile has violated the court's decree imposing the sentence as provided below.

If the court, after notice and hearing, finds that a juvenile has violated the court's decree imposing the sentence under circumstances that bring the violation under the valid court order exception of the federal juvenile justice and delinquency prevention act of 1974, as amended, the court may commit the juvenile to detention for the period of detention previously imposed at sentencing;

(c) Commit the juvenile to a period of detention, pursuant to this act, for a period of time not to exceed ninety (90) days for each unlawful or criminal act the juvenile is found to have committed, if the unlawful or criminal act would be a misdemeanor if committed by

an adult, or where the juvenile has been adjudicated as an habitual status offender;

(d) If the juvenile has committed an unlawful or criminal act which would be a felony if committed by an adult, the court may commit the juvenile to detention for a period not to exceed one hundred eighty (180) days for each unlawful or criminal act;

(e) Whenever a court commits a juvenile to a period of detention it shall notify the school district where the detention facility is located. No juvenile who is found to come within the purview of the act for the commission of a status offense shall be sentenced to detention in a jail facility unless an adjudication has been made that the juvenile is an habitual status offender;

(f) Commit the juvenile to detention and suspend the sentence on specific probationary conditions;

(g) The court may suspend or restrict the juvenile's driving privileges for such periods of time as the court deems necessary, and the court may take possession of the juvenile's driver's license. The juvenile may request restricted driving privileges during a period of suspension, which the court may allow if the juvenile shows by a preponderance of evidence that driving privileges are necessary for his employment or for family health needs;

(h) The court may order that the juvenile be examined or treated by a physician, surgeon, psychiatrist or psychologist, or that he receive other special care, or that he submit to an alcohol or drug evaluation, if needed, and for such purposes may place the juvenile in a hospital or other suitable facility;

(i) In support of an order under the provisions of this section, the court may make an additional order setting forth reasonable conditions to be complied with by the parents, the juvenile, his legal guardian or custodian, or any other person who has been made a party to the proceedings, including, but not limited to, restrictions on visitation by the parents or one (1) parent, restrictions on the juvenile's associates, occupation and other activities, and requirements to be observed by the parents, guardian or custodian;

(j) The court may make any other reasonable order which is in the best interest of the juvenile or is required for the protection of the public, except that no person under the age of eighteen (18) years may be committed to jail, prison or a secure facility which does not meet the standards set forth in section 20-518, Idaho Code, unless jurisdiction over the individual is in the process of being waived or has been waived pursuant to section 20-508 or 20-509, Idaho Code. The court may combine several of the above-listed modes of disposition where they are compatible;

(k) An order under the provisions of this section for probation or placement of a juvenile with an individual or an agency may provide a schedule for review of the case by the court;

(l) Order the proceeding expanded or altered to include consideration of the cause pursuant to chapter 16, title 16, Idaho Code;

(m) Order the case and all documents and records connected therewith transferred to the magistrate division of the district court for the county where the juvenile and/or parents reside if different than the county where the juvenile was charged and found to have committed the unlawful or criminal act, for the entry of a dispositional order;

(n) Order such other terms, conditions, care or treatment as appears to the court will best serve the interests of the juvenile and the community;

(o) The court shall assess a twenty dollar ($20.00) ~~charge~~ detention/probation training academy fee against the juvenile for every petition filed where there has been an adjudication that the juvenile is within ~~the purview of this~~ chapter. All moneys raised pursuant to this subsection shall be transmitted by the court for deposit in the juvenile corrections ~~account~~ fund which is created in section 20-542, Idaho Code;

(p) Additionally, the court shall assess a fee of sixty cents (60¢) per hour of community service against the juvenile for every petition filed where there has been an adjudication that the juvenile is within the purview of this chapter and the court is ordering community service. Such fee is to be remitted by the court to the state insurance fund for purposes of providing worker's compensation insurance for persons performing community service pursuant to this chapter;

(q) Commit the juvenile to the legal custody of the department of juvenile corrections for an indeterminate period of time not to exceed the juvenile's twenty-first birthday, unless extended jurisdiction is necessary to complete the competency development and accountability goals of the department;

(r) Notwithstanding any other provision of this section, a court may not commit a juvenile offender under the age of ten (10) years to a period of detention or to the custody of the department of juvenile corrections for placement in secure confinement.

(2) When an order is entered pursuant to this section, the juvenile shall be transported to the facility or program so designated by the court or the department, as applicable, by the sheriff of the county where the juvenile resides or is committed, or by an appointed agent. When committing a juvenile to the department, or another entity, the court shall at once forward to the department or entity a certified copy of the order of commitment.

(3) Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order the juvenile or his parents or both to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile's conduct in accordance with the standards and requirements of sections 19-5304 and 19-5305, Idaho Code. The amount of restitution which may be ordered by the court shall not be subject to the limitations of section 6-210, Idaho Code. Court-ordered restitution shall be paid prior to any other court-ordered payments unless the court specifically orders otherwise.

(4) Any parent, legal guardian or custodian violating any order of the court entered against the person under the provisions of this chapter shall be subject to contempt proceedings under the provisions of chapter 6, title 7, Idaho Code.

SECTION 2. That Section 20-522, Idaho Code, be, and the same is hereby amended to read as follows:

20-522. JURISDICTION OVER PARENTS. Whenever a juvenile is found to come under the purview of this chapter, the court shall have jurisdiction and authority to have the juvenile and the juvenile's parent(s),

legal guardian or custodian sign a probationary contract with the court containing terms and conditions that the juvenile and the juvenile's parent(s), legal guardian or custodian must adhere to as a condition of the juvenile's probation. The probationary contract may provide that upon a violation or breach of the terms and conditions of the probationary contract, the juvenile's parent(s), legal guardian or custodian shall be liable to the court for a specific monetary sum not in excess of one thousand dollars ($1,000) for the breach of contract. All such moneys shall be payable to the court and shall be in addition to any other fines, penalties or other sanctions provided by law. Any moneys received by the court pursuant to this section shall be paid into the juvenile corrections ~~account~~ fund created in section 20-542, Idaho Code. In lieu of or in addition to a monetary payment, the court may order that the parent(s), legal guardian or custodian attend parenting classes or undergo other treatment or counseling. Any person violating any order of the court entered under the provisions of this section shall be subject to contempt proceedings under the provisions of chapter 6, title 7, Idaho Code.

SECTION 3. That Section 20-542, Idaho Code, be, and the same is hereby amended to read as follows:

20-542. JUVENILE CORRECTIONS ~~ACCOUNT~~ FUND -- CREATION. There is hereby created in the state treasury, the juvenile corrections ~~account~~ fund. Moneys in the ~~account~~ fund shall be utilized by the department for construction and administration of facilities under the jurisdiction of the department of juvenile corrections, for assistance to a county or series of counties in constructing, contracting for or administering detention facilities for juveniles, to coordinate training for juvenile detention officers and/or juvenile probation officers, and for alternative programs designed to help juveniles avoid the traditional juvenile corrections system. All moneys in the ~~account~~ fund may be expended only pursuant to appropriation by the legislature.

Approved February 16, 2001.

CHAPTER 16
(H.B. No. 17)

AN ACT

RELATING TO THE STATE BOARD OF CORRECTION; AMENDING SECTION 20-214, IDAHO CODE, TO DELETE A REFERENCE TO GUARDS, TO PROVIDE THE STATE BOARD OF CORRECTION WITH POWER AND AUTHORITY TO SPECIFY THE TRAINING OF CERTAIN PERSONS AND TO MAKE A REFERENCE TO THE DEPARTMENT OF CORRECTION.

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

SECTION 1. That Section 20-214, Idaho Code, be, and the same is hereby amended to read as follows:

20-214. ASSISTANTS~~,~~ AND OFFICERS. ~~AND GUARDS.~~ The state board of

correction shall have power and authority to employ, to specify the training, and to fix the duties of such assistants, officers~~,--guards~~ and other persons necessary for the proper and efficient administration of the ~~state-penitentiary~~ department of correction and the property used in connection therewith, for the administration of the parole and probation system, and generally for the carrying out of the provisions of this act, subject to the provisions of chapter 53, title 67, Idaho Code.

Approved February 16, 2001.

CHAPTER 17
(S.B. No. 1034)

AN ACT

APPROPRIATING MONEYS TO THE STATE BOARD OF EDUCATION FOR SPECIAL PROGRAMS FOR FISCAL YEAR 2002; AND EXPRESSING LEGISLATIVE INTENT REGARDING THE STUDENTS WHO ARE ELIGIBLE TO RECEIVE THESE FUNDS.

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

SECTION 1. There is hereby appropriated to the State Board of Education for Special Programs 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, 2001, through June 30, 2002:

I. SCHOLARSHIPS AND GRANTS:

FOR:	
Trustee and Benefit Payments	$3,000,000
FROM:	
General Fund	$3,000,000

SECTION 2. It is the intent of the Legislature that this appropriation may only be used for qualifying category B students entering an eligible postsecondary institution for the first time as freshmen for the 2001-2002 academic year or later after completion of high school or its equivalent, pursuant to Sections 33-4303 through 33-4313, Idaho Code (Idaho Promise Scholarship Program).

Approved February 21, 2001.

CHAPTER 18
(S.B. No. 1019)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1350, IDAHO CODE, TO PROVIDE THAT TAXABLE WAGE RATES FOR ALL COVERED EXPERIENCE-RATED EMPLOYERS SHALL BE DETERMINED IN ACCORDANCE WITH SCHEDULE II FOR CALENDAR YEAR 2002 AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 72-1350, Idaho Code, be, and the same is hereby amended to read as follows:

72-1350. TAXABLE WAGE BASE AND TAXABLE WAGE RATES. (1) All remuneration for personal services as defined in section 72-1328, Idaho Code, equal to the average annual wage in covered employment for the penultimate calendar year, rounded to the nearest multiple of one hundred dollars ($100), or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher, shall be the taxable wage base for purposes of this chapter.

(2) All covered employers, except those eligible and electing the cost reimbursement payment method, shall be assigned taxable wage rates annually by the director in accordance with the following, provided however, and notwithstanding any other provision of the employment security law to the contrary, for calendar year 2002 the taxable wage rates for all covered experience-rated employers shall be determined in accordance with schedule II.

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

(4) The ACM shall be the ratio at the top of taxable wage rate schedule V as provided in subsection (7) of this section, and all other ratios for schedules I through IX are adjusted up or down from schedule V in equal increments of .005.

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

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

(7) Schedules of Taxable Wage Rates

			SCHED. I	SCHED. II	SCHED. III	SCHED. IV	SCHED. V	SCHED. VI	SCHED. VII	SCHED. VIII	SCHED. IX
Cumulative Taxable Payroll Limits			+.020	+.015	+.010	+.005	ACM	-.005	-.010	-.015	
Rate Class	More Than (% of Total Taxable Payroll)	Equal to or Less Than (% of Total Taxable Payroll)	Taxable Wage Rates for Eligible Employers								
1	--	12	0.1%	0.2%	0.4%	0.8%	1.2%	1.6%	2.0%	2.2%	2.4%
2	12	24	0.2	0.4	0.6	1.0	1.4	1.8	2.2	2.4	2.6
3	24	36	0.4	0.6	0.8	1.2	1.6	2.0	2.4	2.6	2.8
4	36	48	0.6	0.8	1.0	1.4	1.8	2.2	2.6	2.8	3.0
5	48	60	0.8	1.0	1.2	1.6	2.0	2.4	2.8	3.0	3.2
6	60	72	1.0	1.2	1.4	1.8	2.2	2.6	3.0	3.2	3.4
7	72	--	1.2	1.4	1.6	2.0	2.4	2.8	3.2	3.4	3.6
Taxable Wage Rates for Standard-Rated Employers:			1.3%	1.5%	1.7%	2.1%	2.5%	2.9%	3.3%	3.5%	3.7%
Cumulative Taxable Payroll Limits											
Rate Class	More Than (% of Total Taxable Payroll)	Equal to or Less Than (% of Total Taxable Payroll)	Taxable Wage Rates for Deficit Employers								
1	--	30	2.4%	2.6%	2.8%	3.2%	3.6%	4.0%	4.4%	4.6%	4.8%
2	30	50	2.8	3.0	3.2	3.6	4.0	4.4	4.8	5.0	5.2
3	50	65	3.2	3.4	3.6	4.0	4.4	4.8	5.2	5.4	5.6
4	65	80	3.6	3.8	4.0	4.4	4.8	5.2	5.6	5.8	6.0
5	80	95	4.0	4.2	4.4	4.8	5.2	5.6	6.0	6.2	6.4
6	95	--	5.4	5.4	5.4	5.4	5.6	6.0	6.4	6.6	6.8

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

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

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

(9) Each employer shall be notified of his taxable wage rate as determined for any calendar year pursuant to this section and section 72-1351, Idaho Code. Such determination shall become conclusive and binding upon the employer, unless within fourteen (14) days after delivery or mailing of the notice thereof to his last known address, the employer files an application for redetermination, setting forth his reasons therefor. Reconsideration shall be limited to transactions occurring subsequent to any previous determination which has become final. The employer shall be promptly notified of the redetermination, which shall become final unless an appeal is filed within fourteen (14) days after delivery or mailing of notice to his last known address. Proceedings on the appeal shall be in accordance with the provisions of section 72-1361, Idaho Code.

Approved February 21, 2001.

CHAPTER 19
(S.B. No. 1018)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1347B, IDAHO CODE, TO EXTEND THE EFFECTIVE DATE OF THE SUNSET CLAUSE ON THE WORKFORCE DEVELOPMENT TRAINING TAX UNTIL JANUARY 1, 2007.

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

SECTION 1. That Section 72-1347B, Idaho Code, be, and the same is hereby amended to read as follows:

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

the training fund shall be deposited in the training fund. Moneys in the training fund shall be disbursed in accordance with the directions of the director.

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

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

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

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

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

(3) Expenditures from the training fund for purposes authorized in paragraphs (a) and (b) of subsection (2) of this section shall be approved by the director and the director of the department of commerce based on procedures, criteria and performance measures established by the council appointed pursuant to section 72-1336, Idaho Code. The activities funded by the training fund will be coordinated with similar activities funded by the state division of professional-technical education. Expenditures from the training fund for purposes authorized in paragraphs (c) and (d) of subsection (2) of this section shall be approved by the director. The director shall pay all approved expenditures as long as the training fund has a positive balance. The council shall report annually to the governor and the joint finance-appropriations committee the commitments and expenditures made from the training fund in the preceding fiscal year and the results of the activities funded by the training fund.

(4) A training tax is hereby imposed on all covered employers required to pay contributions pursuant to section 72-1350, Idaho Code, with the exception of deficit employers who have been assigned a taxable wage rate from rate class six pursuant to section 72-1350, Idaho Code. The training tax rate shall be equal to three percent (3%) of the taxable wage rate then in effect for each eligible, standard-rated and deficit employer. The training tax shall be due and payable at the same time and in the same manner as contributions. This subsection is repealed effective January 1, 2002~~7~~, unless, prior to that date, the Idaho legislature approves the continuation of this subsection by repeal of this sunset clause.

(5) The provisions of this chapter which apply to the payment and collection of contributions also apply to the payment and collection of the training tax, including the same calculations, assessments, method of payment, penalties, interest, costs, liens, injunctive relief, collection procedures and refund procedures. In the administration of the provisions of this section, the director is granted all rights, authority, and prerogatives granted under the provisions of this chapter. Moneys collected from an employer delinquent in paying contributions,

reserve taxes and the training tax shall first be applied to any penalty and interest imposed pursuant to the provisions of this chapter and shall then be applied pro rata to delinquent contributions to the employment security fund, section 72-1346, Idaho Code, delinquent reserve taxes to the reserve fund, section 72-1347A, Idaho Code, and delinquent training taxes to the training fund. Any interest and penalties collected pursuant to this subsection shall be paid into the state employment security administrative and reimbursement fund, section 72-1348, Idaho Code, and any interest or penalties refunded under this subsection shall be paid out of that same fund. Training taxes paid pursuant to this section shall not be credited to the employer's experience rating account and may not be deducted by any employer from the wages of individuals in its employ. All training taxes shall be deposited in the clearing account of the employment security fund, section 72-1346, Idaho Code, for clearance only and shall not become part of such fund. After clearance, the moneys shall be deposited in the training fund established in subsection (1) of this section.

(6) Administrative costs related to the training fund shall be paid from the training fund in accordance with subsection (3) of this section.

Approved February 21, 2001.

CHAPTER 20
(S.B. No. 1005)

AN ACT

RELATING TO DISPARAGEMENT OF AGRICULTURAL FOOD PRODUCTS; AMENDING SECTION 6-2002, IDAHO CODE, TO MAKE A GRAMMATICAL CORRECTION.

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

SECTION 1. That Section 6-2002, Idaho Code, be, and the same is hereby amended to read as follows:

6-2002. DEFINITIONS. As used in this chapter:

(1) "Disparagement" means the publication to a third party of a false factual statement; and

(a) The published statement is of and concerning the plaintiff's specific perishable agricultural food product;

(b) The statement clearly ~~imputes~~ impugns the safety of the product;

(c) The defendant intended the publication to cause harm to the plaintiff's pecuniary interest, or either recognized or reasonably should have recognized that it was likely to do so;

(d) The defendant made the statement with actual malice, that is, he knew that the statement was false or acted in reckless disregard of its truth or falsity; and

(e) The statement does in fact cause the plaintiff pecuniary loss.

(2) "Perishable agricultural food product" means an agricultural product as defined in section 22-2602, Idaho Code, intended for human consumption which is sold or distributed in a form that will perish or decay beyond marketability within a period of time.

Approved February 22, 2001.

CHAPTER 21
(S.B. No. 1006)

AN ACT
RELATING TO THE UNIFORM COMMERCIAL CODE; AMENDING SECTION 28-2-403, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 28-2-403, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-403. POWER TO TRANSFER -- GOOD FAITH PURCHASE OF GOODS -- "ENTRUSTING." (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase, the purchaser has such power even though:

(a) ~~t~~The transferor was deceived as to the identity of the purchaser~~,~~; or

(b) ~~t~~The delivery was in exchange for a check which is later dishonored~~,~~; or

(c) ~~i~~It was agreed that the transaction was to be a "cash sale~~,~~"; or

(d) ~~t~~The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery ~~of~~ or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods ~~have~~ has been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the chapters on ~~S~~secured ~~T~~transactions (chapter 9) and ~~D~~documents of ~~T~~title (chapter 7).

Approved February 22, 2001.

CHAPTER 22
(S.B. No. 1007)

AN ACT

RELATING TO THE SMALL CLAIMS DEPARTMENT OF THE MAGISTRATES DIVISION; AMENDING SECTION 1-2301A, IDAHO CODE, TO CLARIFY THAT CIVIL LIABILITY IMPOSED UNDER THIS SECTION FOR DISHONORED CHECKS APPLIES ONLY TO ACTIONS FILED IN THE SMALL CLAIMS DEPARTMENT OF THE MAGISTRATES DIVISION OF THE DISTRICT COURT.

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

SECTION 1. That Section 1-2301A, Idaho Code, be, and the same is hereby amended to read as follows:

1-2301A. DRAWING CHECK WITHOUT FUNDS OR INSUFFICIENT FUNDS -- CIVIL LIABILITY. In any action filed in the small claims department against a person who makes any check, draft or order for the payment of money which has been dishonored for lack of funds or ~~credit to~~ pay the same, or because the maker has no account with the drawee, the plaintiff, or a collection agency with a permit issued to it pursuant to section 26-2229, Idaho Code, which is attempting to collect the dishonored check under a written agreement with the payee or holder of the check, may recover from the defendant the amount of the check, draft or order and, in addition thereto, the greater of the amount of one hundred dollars ($100) or three (3) times the amount for which the check, draft or order is drawn. Except as provided in section 1-2304, Idaho Code, the plaintiff or collection agency may recover no other costs, fees, charges or damages. However, damages recovered under the provisions of this section shall not exceed by more than five hundred dollars ($500) the value of the check, draft or order and may be awarded only if the plaintiff made written demand of the defendant for payment of the amount of the check, draft or order not less than ten (10) days before commencing the action, and if the defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the amount demanded. The written demand required by this section shall be sent to the maker by certified mail at his last known address and shall fully advise the maker of the check, draft, or order of the consequences of failure to make prompt payment under this section. The plaintiff or collection agency must show proof of service by producing a copy of a signed return receipt or affidavit of personal service.

Approved February 22, 2001.

CHAPTER 23
(S.B. No. 1008)

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-3501, IDAHO CODE, TO PROVIDE THAT AN ACTION MAY BE DISMISSED IF A DEFENDANT, WHO IS CHARGED WITH BOTH A FELONY AND A MISDEMEANOR IN THE SAME ACTION OR

CHARGING DOCUMENT, AND WHOSE TRIAL HAS NOT BEEN POSTPONED UPON HIS APPLICATION, IS NOT BROUGHT TO TRIAL WITHIN SIX MONTHS FROM THE DATE THE INDICTMENT OR INFORMATION IS FILED WITH THE COURT AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 19-3501, Idaho Code, be, and the same is hereby amended to read as follows:

19-3501. WHEN ACTION MAY BE DISMISSED. The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

(1~~.~~) When a person has been held to answer for a public offense, if an indictment or information is not found against him and filed with the court within six (6) months from the date of his arrest.

(2~~.~~) If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the indictment or information is filed with the court.

(3~~.~~) If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

(4) If a defendant, charged with both a felony or multiple felonies and a misdemeanor or multiple misdemeanors together in the same action or charging document, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the indictment or information is filed with the court.

Approved February 22, 2001.

CHAPTER 24
(H.B. No. 12)

AN ACT

RELATING TO THE BOARD OF RESIDENTIAL CARE FACILITY ADMINISTRATORS; AMENDING SECTION 54-4210, IDAHO CODE, TO DELETE REFERENCE TO THE INTERSTATE RECIPROCAL ENDORSEMENT OF RESIDENTIAL CARE FACILITY ADMINISTRATOR LICENSES.

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

SECTION 1. 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 or assisted living facility administrator license, may endorse a residential 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 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.

Approved February 22, 2001.

CHAPTER 25
(H.B. No. 125)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION/STATE DEPARTMENT OF EDUCATION FOR FISCAL YEAR 2001; PROVIDING TWO ADDITIONAL FULL-TIME POSITIONS FOR FISCAL YEAR 2001; 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 98, Laws of 2000, there is hereby appropriated to the Superintendent of Public Instruction/State Department of Education 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, 2000, through June 30, 2001:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
STATE DEPARTMENT OF EDUCATION:				
FROM:				
Miscellaneous Revenue Fund	$105,000	$27,000		$ 132,000
Federal Grant Fund			$20,000,000	20,000,000
TOTAL	$105,000	$27,000	$20,000,000	$20,132,000

SECTION 2. In addition to the authorization granted in Section 2, Chapter 98, Laws of 2000, the Superintendent of Public Instruction/State Department of Education is authorized two (2) additional full-time equivalent positions for the period July 1, 2000, through June 30, 2001.

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, 2001.

CHAPTER 26
(H.B. No. 15, As Amended)

AN ACT

RELATING TO THE BOARD OF PODIATRY; AMENDING SECTION 54-607, IDAHO CODE, TO INCREASE THE MAXIMUM AMOUNT THE BOARD MAY CHARGE FOR PODIATRY LICENSES; AND AMENDING SECTION 54-613, IDAHO CODE, TO PROVIDE THAT APPLICANTS LICENSED IN ANOTHER STATE MAY QUALIFY FOR A LICENSE BY ENDORSEMENT UNDER CERTAIN CONDITIONS AND TO DELETE REFERENCES TO WRITTEN, ORAL AND PRACTICAL EXAMINATIONS.

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

SECTION 1. That Section 54-607, Idaho Code, be, and the same is hereby amended to read as follows:

54-607. LICENSES -- ISSUANCE -- RENEWALS -- DISPLAY. If the applicant shall pass a satisfactory examination, and shall show that he is a person of good moral character and he possesses the qualifications required by this chapter to entitle him to a license as a podiatrist, he shall be entitled to a license authorizing him to practice podiatry within the state of Idaho. Said successful applicant shall be issued his license by the board upon payment of the original license fee which shall be the same fee as required for renewal.

All licenses to practice podiatry shall expire on the 30th day of June of each year; all licensed podiatrists are entitled to and shall renew their licenses on or before the 1st day of July of each year; and shall make application therefor, accompanied by an annual renewal license fee established by board rule not to exceed ~~one~~ four hundred ~~seventy-five~~ dollars (~~$175~~400) for podiatrists. Payment of fees herein provided, and satisfactory evidence of having complied with continued education requirements as established by board rules are a condition precedent for issuance of a license.

Every person to whom a license is granted shall have such license displayed continuously in a conspicuous part of his office wherein his practice of podiatry is conducted.

The board shall keep on file a register of all applicants for license, rejected applicants, and licensees.

The fee for reinstatement of a license shall be as provided in section 67-2614, Idaho Code. All fees shall be paid to the bureau of occupational licenses.

SECTION 2. That Section 54-613, Idaho Code, be, and the same is hereby amended to read as follows:

54-613. LICENSE ~~WITHOUT--WRITTEN--EXAMINATION~~ BY ENDORSEMENT. The board may issue a license to an applicant by endorsement where the applicant has passed an examination for and is currently ~~licensed~~ to practice podiatry in another state~~,-or-who-has-successfully--passed--the written-examination-of-a-recognized-national-certifying-agency-in-podiatry;--provided--that--the--written--examination-upon-which-the-licensure application-is-based-was,-in-the-opinion--of--the--board,--substantially equivalent-to-its-own-written-examination~~. The applicant must satisfy in

all other respects the requirements for licensure in this act~~, including successfully passing an oral and/or practical examination if required by board--rule~~ and any rules adopted by the board. All applications for licensure by endorsement must be accompanied by an application fee and by an examination fee as established by board rule not to exceed four hundred dollars ($400).

Approved February 27, 2001.

CHAPTER 27
(S.B. No. 1009)

AN ACT

RELATING TO THE NATURAL DEATH ACT; AMENDING SECTION 39-4503, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTION 39-4504, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 39-4503, Idaho Code, be, and the same is hereby amended to read as follows:

39-4503. DEFINITIONS. The following definitions shall govern the construction of this chapter:

(1) "Attending physician" means the physician licensed by the state board of medicine, selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(2) "Competent person" means any emancipated minor or any person eighteen (18) or more years of age who is of sound mind.

(3) "Artificial life-sustaining procedure" means any medical procedure or intervention which utilizes mechanical means to sustain or supplant a vital function which when applied to a qualified patient, would serve only to artificially prolong ~~the moment of death~~ life and where, in the judgment of the attending physician, death is imminent whether or not such procedures are utilized, or the patient is ~~diagnosed~~ as being in a persistent vegetative state. Artificial life-sustaining procedures shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(4) "Durable power of attorney for health care" means a durable power of attorney to the extent that it authorizes an attorney in fact to make health care decisions for the principal.

SECTION 2. That Section 39-4504, Idaho Code, be, and the same is hereby amended to read as follows:

39-4504. LIVING WILL. Any competent person may execute a document known as a "living will." Such document shall be in the following form or in another form that contains the elements set forth in this section.

A LIVING WILL

A Directive to Withhold or to Provide Treatment

To my family, my relatives, my friends, my physicians, my employers, and all others whom it may concern:

Directive made this ---- .... day of ---------- ..... 19-- .... I, ---------- ..... (name), being of sound mind, willfully, and voluntarily make known my desire that my life shall not be prolonged artificially under the circumstances set forth below, do hereby declare:

1. If at any time I should have an incurable injury, disease, illness or condition certified to be terminal by two (2) medical doctors who have examined me, and where the application of life-sustaining procedures of any kind would serve only to prolong artificially the moment of my death life, and where a medical doctor determines that my death is imminent, whether or not life-sustaining procedures are utilized, or I have been diagnosed as being in a persistent vegetative state, I direct that the following marked expression of my intent be followed and that I be permitted to die naturally, and that I receive any medical treatment or care that may be required to keep me free of pain or distress.

"Check One Box"

☐ If at any time I should become unable to communicate my instructions, then I direct that all medical treatment, care, and nutrition and hydration necessary to restore my health, sustain my life, and to abolish or alleviate pain or distress be provided to me. Nutrition and hydration shall not be withheld or withdrawn from me if I would die from malnutrition or dehydration rather than from my injury, disease, illness or condition.

☐ If at any time I should become unable to communicate my instructions and where the application of artificial life-sustaining procedures shall serve only to prolong artificially the--moment--of my death life, I direct such procedures be withheld or withdrawn except for the administration of nutrition and hydration.

☐ If at any time I should become unable to communicate my instructions and where the application of artificial life-sustaining procedures shall serve only to prolong artificially the moment of death my life, I direct such procedures be withheld or withdrawn including withdrawal of the administration of nutrition and hydration.

2. In the absence of my ability to give directions regarding the use of life-sustaining procedures, I hereby appoint ---------- ..... (name) currently residing at ---------- ....., as my attorney-in-fact/proxy for the making of decisions relating to my health care in my place; and it is my intention that this appointment shall be honored by him/her, by my family, relatives, friends, physicians and lawyer as the final expression of my legal right to refuse medical or surgical treatment; and I accept the consequences of such a decision. I have duly executed a Durable Power of Attorney for health care decisions on this date.

3. In the absence of my ability to give further directions regarding my treatment, including life-sustaining procedures, it is my intention that this directive shall be honored by my family and physicians as the final expression of my legal right to refuse or accept medical and

surgical treatment, and I accept the consequences of such refusal.

4. If I have been diagnosed as pregnant and that diagnosis is known to any interested person, this directive shall have no force during the course of my pregnancy.

5. I understand the full importance of this directive and am emotionally and mentally competent to make this directive. No participant in the making of this directive or in its being carried into effect, whether it be a medical doctor, my spouse, a relative, friend or any other person shall be held responsible in any way, legally, professionally or socially, for complying with my directions.

Signed ----------

City, county and state of residence ----------

The declarant has been known to me personally and I believe him/her to be of sound mind.

Witness ---------- Witness ----------

Address ---------- Address ----------

Approved February 27, 2001.

CHAPTER 28
(S.B. No. 1010)

AN ACT

RELATING TO JURY SELECTION AND SERVICE; AMENDING SECTION 2-204, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS AND TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 2-204, Idaho Code, be, and the same is hereby amended to read as follows:

2-204. DEFINITIONS. As used in this act:

(1) "Court" means district ~~and magistrate~~ courts of this state, including the magistrates division, and includes, when the context requires, any judge of the court;

(2) "Clerk" and "clerk of the court" mean the duly elected and acting ~~county auditors~~ clerk of the district court and ex officio ~~clerks of the district court~~ auditor and recorder and ~~their~~ duly appointed deputies;

(3) "Master list" means the voter registration lists for the county which shall be supplemented with names from other sources prescribed pursuant to this act (section 2-206, Idaho Code) in order to foster the policy and protect the rights secured by this act (sections 2-202~~,~~ and

2-203, Idaho Code);

(4) "Voter registration lists" means the most current official records, maintained by the county clerk, of persons registered to vote in any national, state, county, or municipal election;

(5) "Jury wheel" means any physical device or electronic system for the storage of the names or identifying numbers of prospective jurors;

(6) "Master jury wheel" means the jury wheel in which are placed names or identifying numbers of prospective jurors taken from the master list (section 2-207, Idaho Code);

(7) "Qualified jury wheel" means the jury wheel in which are placed the names or identifying numbers of prospective jurors whose names are drawn at random from the master jury wheel (section 2-208, Idaho Code) and who are not disqualified (section 2-209, Idaho Code).

Approved February 27, 2001.

CHAPTER 29
(H.B. No. 142)

AN ACT

RELATING TO THE ELECTRIC SUPPLIER STABILIZATION ACT; REPEALING CHAPTER 1, LAWS OF THE FIRST EXTRAORDINARY SESSION OF 2000; TO PROVIDE A STATEMENT OF INTENT; AMENDING SECTION 61-332, IDAHO CODE, TO CLARIFY THE PURPOSES OF THE ELECTRIC SUPPLIER STABILIZATION ACT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 61-332A, IDAHO CODE, TO REVISE DEFINITIONS, TO DELETE A REFERENCE TO OBSOLETE MATERIAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 61-332B, IDAHO CODE, TO REQUIRE APPROVAL OF THE PUBLIC UTILITIES COMMISSION FOR TRANSFERRING CONSUMERS; AMENDING SECTION 61-332C, IDAHO CODE, TO PROVIDE PROVISIONS FOR SELECTING AN ELECTRIC SUPPLIER FOR NEW ELECTRIC SERVICE ENTRANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-332D, IDAHO CODE, TO SUPERVISE WHEELING SERVICES; AMENDING SECTION 61-333, IDAHO CODE, TO REQUIRE ELECTRIC SERVICE TERRITORY CONTRACTS TO BE FILED WITH AND APPROVED BY THE PUBLIC UTILITIES COMMISSION, TO PROVIDE FOR NOTICE AND HEARING REGARDING CONTRACT APPROVAL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 61-334, IDAHO CODE, TO PROVIDE THAT THE PUBLIC UTILITIES COMMISSION HAS CERTAIN AUTHORITY OVER ELECTRIC SUPPLIERS, TO PROVIDE FOR APPLICATION OF PUBLIC UTILITIES LAW AND TO MAKE TECHNICAL CORRECTIONS; REPEALING SECTION 61-334A, IDAHO CODE; AMENDING SECTION 61-334B, IDAHO CODE, TO REDESIGNATE THE SECTION, TO PROVIDE FOR FILING A COMPLAINT WITH THE PUBLIC UTILITIES COMMISSION, TO PROVIDE FOR NOTICE AND HEARINGS, TO PROVIDE REMEDIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-334B, IDAHO CODE, TO PROVIDE COMMISSION SUPERVISION AND AUTHORITY; AMENDING CHAPTER 3, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-334C, IDAHO CODE, TO PROVIDE ELECTRIC SUPPLIER IMMUNITY; AMENDING SECTION 30-3-14, IDAHO CODE, TO PROVIDE THAT ANY MEMBER OF A COOPERATIVE ASSOCIATION THAT PROVIDES ELECTRIC SERVICE MAY APPLY TO THE DISTRICT COURT OF THE COUNTY WHERE THE MEMBER'S SERVICE ENTRANCE IS LOCATED FOR A DETERMINATION THAT THE COOPERATIVE

ASSOCIATION'S CHARGES FOR ELECTRIC SERVICE TO THAT MEMBER ARE FAIR, JUST AND REASONABLE AND ARE NOT DISCRIMINATORY OR PREFERENTIAL AND TO PROVIDE CIRCUMSTANCES WHEN THE COURT WILL REMAND THE MATTER TO THE COOPERATIVE ASSOCIATION; AMENDING SECTION 50-325, IDAHO CODE, TO PROVIDE THAT ANY CONSUMER OF A MUNICIPAL ELECTRIC SYSTEM MAY APPLY TO THE DISTRICT COURT OF THE COUNTY WHERE THE CONSUMER'S SERVICE ENTRANCE IS LOCATED FOR A DETERMINATION THAT THE MUNICIPALITY'S CHARGES FOR ELECTRIC SERVICE TO THAT CONSUMER ARE FAIR, JUST AND REASONABLE AND NOT DISCRIMINATORY OR PREFERENTIAL, TO PROVIDE CIRCUMSTANCES WHEN THE COURT WILL REMAND THE MATTER TO THE MUNICIPALITY AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 1, Laws of the First Extraordinary Session of 2000, be, and the same is hereby repealed.

SECTION 2. LEGISLATIVE INTENT. The provision of a safe and reliable supply of electricity in a manner that prohibits the "pirating" of consumers and discourages duplication of facilities is essential to the well-being of Idaho's citizens and its economy. It was for these and other reasons that the legislature passed the Electric Supplier Stabilization Act in 1970. The legislature has been advised of federal antitrust litigation alleging that conformance with the provisions of this act does not confer federal antitrust immunity upon parties in compliance with the act. The legislature finds that a negative judicial ruling would have the effect of repealing applicable provisions of the act, undercutting the purposes for which this act was enacted.

It is and has been the intention of the legislature to confer antitrust immunity upon parties acting in compliance with the act under what is known as the state action doctrine. While the legislature believes that compliance with the existing provisions of this act confers such immunity, it has determined to amend the act to more fully address this issue. The legislature therefore finds that it is in the public interest to enact the following amendments.

It is the intent of the legislature in enacting Sections 14 and 15 of this act that relevant court precedent in existence on the effective date of this act be applicable in the interpretation of Sections 30-3-14 and 50-325, Idaho Code. Such court precedent shall include, but not be limited to, Kiefer v. City of Idaho Falls, 49 Idaho 458 (1930).

SECTION 3. That Section 61-332, Idaho Code, be, and the same is hereby amended to read as follows:

61-332. PURPOSE OF ELECTRIC SUPPLIER STABILIZATION ACT. ~~A.~~(1) This act includes sections 61-332~~, 61-332A, 61-332B, 61-332C, 61-333, 61-334, 61-334A, and~~ through 61-334BC, Idaho Code, ~~as herein enacted, section 61-333A, Idaho Code, as herein amended, and sections 61-333B and 61-333C, Idaho Code, as already enacted,~~ and shall be referred to herein as "this act" and may be cited and referred to as the "~~e~~Electric ~~s~~Supplier ~~s~~Stabilization ~~a~~Act."

~~B.~~(2) This act ~~is~~ and its amendments are designed to promote harmony among and between electric suppliers furnishing electricity within the state of Idaho, prohibit the "pirating" of ~~customers~~ consumers of

another electric supplier, discourage duplication of electric facilities, actively supervise certain conduct of electric suppliers as it relates to this act, and stabilize the territories and ~~customers~~ consumers served with electricity by such electric suppliers.

SECTION 4. That Section 61-332A, Idaho Code, be, and the same is hereby amended to read as follows:

61-332A. DEFINITIONS FOR ELECTRIC SUPPLIER STABILIZATION ACT. As used in this act, unless the context requires otherwise:

(1~~.~~) "Public utility" means an electric utility regulated by the Idaho public utilities commission.

(2~~.~~) "Cooperative" means a cooperative corporation furnishing electric service in the state of Idaho to its consumer-members who own and operate the cooperative.

(3~~.~~) "Municipality" means any municipal corporation or quasi-municipal corporation furnishing electric service to ~~its citizens~~ the consumers of the municipality in the state of Idaho.

(4~~.~~) "Electric s~~S~~upplier" means any public utility, cooperative, or municipality supplying or intending to supply electric service to a consumer.

(5~~.~~) "Electric service" means electricity furnished to an ultimate consumer by an electric supplier.

(6~~.~~) "Consumer" is any person, firm, corporation, or other entity receiving or intending to receive electric service at a specific service entrance.

(7~~.~~) "Service entrance" means the ~~entrance of electric service from facilities of the supplier to the service equipment or utilization equipment of the consumer. In determining "service entrance" reference shall be made to the definition of "entrance of the service to the service equipment or utilization equipment" as defined in the national electrical code of 1965~~ location on the consumer's property where the consumer's main disconnect switch, fuses or other disconnect equipment exists, and which are intended to provide the means of cutoff of the supply.

(8~~.~~) "New service entrance" means a service entrance not previously served with electricity. A change, improvement, replacement, enlargement, or change in location of a service entrance shall not be deemed a "new service entrance" if utilized to serve any service or utilization equipment previously served with electricity from the former service entrance, but for the ~~rules~~ provisions of this act shall be deemed the former "service entrance." A change in consumer shall not be construed to make an existing service entrance a "new service entrance." A change, enlargement, or other modification of service or utilization equipment served from an existing service entrance shall not be construed to make it a "new service entrance."

(9~~.~~) "Transmission line," for the purposes of this act, means any electric line of an electric supplier ~~for~~ carrying a voltage of sixty-nine (69) KV or more.

(10~~.~~) "Service line," for the purposes of this act, means any single or multi-phase electric line of an electric supplier used for carrying less than sixty-nine (69) KV and used or capable of use to provide electric service for a consumer.

(11~~.~~) "Existing service line" means any electric service line in

existence at the time of the event in question and constructed to supply a consumer that could be lawfully served by that electric supplier under this act. It shall not mean any service line constructed to obtain an advantage under this act, or to evade its purpose or terms.

(12) "Commission" means the Idaho public utilities commission.

SECTION 5. That Section 61-332B, Idaho Code, be, and the same is hereby amended to read as follows:

61-332B. ELECTRIC SUPPLIER PROHIBITED FROM SERVING CONSUMERS OR FORMER CONSUMERS OF ANOTHER ELECTRIC SUPPLIER. No electric supplier shall ~~construct or extend facilities, nor make any electric connections, nor permit any connections to be made to any of its facilities for the purpose of supplying electric service nor shall it~~ supply or furnish electric service to any electric service entrance that is then or had at any time previously been lawfully connected for electric service to facilities of another electric supplier~~, without the written consent of such other electric supplier; provided, however, (a) such other electric supplier is then, or was previously the last supplier, lawfully connected to said electric service entrance, and (b) such other electric supplier is willing and able to provide adequate electric service~~ except as provided in this act.

SECTION 6. That Section 61-332C, Idaho Code, be, and the same is hereby amended to read as follows:

61-332C. ~~RULES~~ PROVISIONS FOR SELECTING ELECTRIC SUPPLIER FOR NEW ELECTRIC SERVICE ENTRANCES. (1) In ~~the event more than one electric supplier is willing and able to provide adequate electric service to a consumer at any new electric service entrance, the following rules shall~~ determining which electric supplier will provide electric service for a new service entrance, the following provisions will govern:

~~1.~~(a) If no electric supplier has an existing service line within one thousand three hundred ~~and~~ twenty (1,320) feet ~~(1,320 ft.)~~ of ~~the~~ a new service entrance the consumer shall have the right of choice of electric supplier.

~~2.~~(b) If only one (1) electric supplier has an existing service line within one thousand three hundred ~~and~~ twenty (1,320) feet ~~(1,320 ft.)~~ of the new service entrance that electric supplier shall have the right to serve the consumer at the new service entrance.

~~3.~~(c) If more than one (1) electric supplier has an existing service line within one thousand three hundred ~~and~~ twenty (1,320) feet ~~(1,320 ft.)~~ of the new service entrance the electric supplier whose existing service line is nearest the new service entrance shall have the right to serve the consumer at the new service entrance.

~~4.~~(d) If more than one (1) electric supplier has an existing service line within one thousand three hundred ~~and~~ twenty (1,320) feet ~~(1,320 ft.)~~ of the new service entrance ~~and the existing service lines are equidistant from the service entrance, or~~ and it cannot be determined by proof which service line is nearest the new service entrance, then the consumer ~~shall have the right of choice of supplier~~ or an electric supplier shall petition the commission for an order determining which electric supplier is nearest the new service entrance.

(e) For purposes of this act distances shall mean the exact distance measured using standard land surveying practices as established by the board of professional engineers and land surveyors of the state of Idaho.

(2) No electric supplier shall construct or extend facilities, nor make any electric connections, nor permit any connection to be made from any of its facilities to any new service entrance nor shall it supply electric service to any new service entrance in violation of the rules herein, without the written consent of any electric supplier with a prior right under the rules to serve the consumer at the new service locations provisions of this section, except as ordered by the commission pursuant to this act.

SECTION 7. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-332D, Idaho Code, and to read as follows:

61-332D. WHEELING SERVICES. (1) An electric supplier shall not be required to provide wheeling service over its system if such service results in retail wheeling and/or a sham wholesale transaction.

(2) An electric supplier declining to furnish wheeling service pursuant to this section shall petition the commission for review of the electric supplier's action in respect to a request for such service. The commission shall, upon notice and opportunity for hearing, review the electric supplier's action for consistency with the purposes and provisions of this act, and issue an order in accordance with its finding, ordering either that the wheeling service shall, or shall not, be required.

SECTION 8. That Section 61-333, Idaho Code, be, and the same is hereby amended to read as follows:

61-333. AUTHORIZING CONTRACTS AMONG ELECTRIC SUPPLIERS TO RESOLVE TERRITORIES, CONSUMERS AND TO TRANSFER FACILITIES. A. (1) Any electric supplier may contract in writing with any other electric supplier for the purpose of allocating territories, consumers, and future consumers between the electric suppliers and designating which territories and consumers are to be served by which contracting electric supplier. The territories and consumers so allocated and designated may include all or any portion of the territories and consumers which are being served by any or all of the contracting electric suppliers at the time the contract is entered into, or which could be economically served by the then existing facilities of any contracting electric supplier, or by reasonable and economic extensions thereto. All such contracts shall be filed with the commission. The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between cooperatives, between cooperatives and public utilities and between public utilities. The commission shall, after notice and opportunity for hearing, review and approve or reject contracts between municipalities and cooperatives, as well as between municipalities and public utilities, provided however, the commission shall have jurisdiction only over cooperatives and public utilities in such approvals. The commission shall approve such contracts only upon finding that the allocation of territories or consumers is in conformance with the provisions and purposes of

this act.

~~B.~~(2) Any electric supplier may also contract in writing with any other electric supplier for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of any allocation contracted for under subsection ~~A hereof. C. Any~~ (1) of this section and any contract validly entered ~~pursuant to this section~~ into and approved by the commission after notice and opportunity for hearing shall be binding and shall be legally enforceable pursuant to this act, or by any other remedy provided by law.

SECTION 9. That Section 61-334, Idaho Code, be, and the same is hereby amended to read as follows:

61-334. SPECIAL RULES OF INTERPRETATION. Nothing contained in this act shall be construed to:

(1~~.~~) Grant ~~Idaho public utilities~~ the commission jurisdiction over cooperatives or municipalities except as authorized in this act.

(2~~.~~) Apply to controversies between two (2) or more public utilities.

(3~~.~~) Preclude any electric supplier from extending electric service to its own property or facilities or to another electric supplier for resale, provided any line extension made under this clause shall not be considered in determining the right of electric suppliers to serve new service entrances under section 61-332C, Idaho Code.

(4) Abrogate or limit the authority of any municipality under any other statute or law with respect to the municipality providing electricity to the municipality or the consumers of the municipality within the boundaries of the municipality.

SECTION 10. That Section 61-334A, Idaho Code, be, and the same is hereby repealed.

SECTION 11. That Section 61-334B, Idaho Code, be, and the same is hereby amended to read as follows:

61-334~~B~~A. ~~LEGAL~~ REMEDIES FOR VIOLATION OF THIS ACT. ~~A.~~(1) Any electric supplier or consumer whose rights under this act shall be violated or threatened with violation~~, shall be entitled to injunctive relief against said violation upon proper~~ may file a complaint ~~and proof in accordance with Idaho rules of civil procedure in district court, against the other~~ with the commission against an electric supplier and any other person responsible for the violation.

~~B.~~(2) ~~In any suit for injunctive relief~~ After notice and opportunity for hearing, the commission shall make findings of fact and conclusions ~~by the court that any rules under~~ of law determining whether ~~this~~ act or any orders issued under this act have been violated or threatened to be violated and shall ~~require findings and conclusions by the court of~~ determine whether there is actual or threatened irreparable injury as to the electric supplier or consumer whose rights are violated or threatened with violation as a basis for ~~equitable relief hereunder~~ granting relief.

~~C.~~(3) The ~~injunctive~~ relief to be granted under this section for violation of this act shall ~~be negative in form, enjoining~~ forbid further acts in violation of such ~~rules~~ orders, shall ~~be affirmative in~~

~~form in requiring~~ order the removal of any electric connections, facilities or equipment that constitute the violation, ~~and shall be~~ or a combination thereof necessary to enforce compliance with this act.

~~D. Any aggrieved party may also pursue any other remedy provided by law.~~

SECTION 12. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-334B, Idaho Code, and to read as follows:

61-334B. COMMISSION SUPERVISION AND AUTHORITY. (1) Upon a petition by an electric supplier or consumer for an exception to the provisions of section 61-332B or 61-332C(1)(a), (b) or (c), Idaho Code, the commission shall issue an order granting such request only upon finding that granting the request is consistent with the purposes of this act as set forth in section 61-332, Idaho Code.

(2) The commission shall have power to issue authorizations and orders requested under this act, or to refuse to issue the same, and may attach to any authorization and order as a condition of approval such terms and conditions as it determines are consistent with the purposes and provisions of this act.

(3) In all matters arising under this act, which are submitted to the commission for decision, order or review, the procedure shall be governed by chapters 6 and 7, title 61, Idaho Code, and the commission's rules of procedure. Reconsideration of, appeal from, enforcement of, and stay of orders issued pursuant to this act shall be governed by law as for other orders of the commission in other matters.

SECTION 13. That Chapter 3, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-334C, Idaho Code, and to read as follows:

61-334C. ELECTRIC SUPPLIER IMMUNITY. No action under the Idaho competition act, chapter 1, title 48, Idaho Code, or any other provision or doctrine of law of the state of Idaho shall lie against an electric supplier for action or inaction that is in compliance with the provisions of this act or any commission order issued pursuant to this act.

SECTION 14. That Section 30-3-14, Idaho Code, be, and the same is hereby amended to read as follows:

30-3-14. JUDICIAL RELIEF. (1) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws or this act, then upon petition of a director, officer, delegate, or member, the district court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and this act, whether or not the method

results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirements relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws or this act.

(4) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws and this act.

(6) Any member of a cooperative association that provides electric service may apply to the district court of the county where the member's service entrance is located for a determination that the cooperative association's charges for electric service to that member are fair, just and reasonable and are not discriminatory or preferential. In the event that the court determines that the rate is not fair, just and reasonable or is discriminatory or preferential, the court shall remand the matter to the cooperative association to alter or amend the rate in conformance with the standards set forth herein.

SECTION 15. That Section 50-325, Idaho Code, be, and the same is hereby amended to read as follows:

50-325. POWER PLANTS -- POWER DISTRIBUTION. (1) Cities shall have authority: to acquire, own, maintain and operate electric power plants, purchase electric power, and provide for distribution to the residents of the city, and to sell excess power subject to the provisions of section 50-327, Idaho Code.

(2) Any consumer of a municipal electric system may apply to the district court of the county where the consumer's service entrance is located for a determination that the municipality's charges for electric service to that consumer are fair, just and reasonable and are not discriminatory or preferential. In the event that the court determines that the rate is not fair, just and reasonable or is discriminatory or preferential, the court shall remand the matter to the municipality to alter or amend such rate in conformance with the determination of the court.

SECTION 16. 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 28, 2001.

CHAPTER 30
(S.B. No. 1015)

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; AMENDING SECTION 23-908, IDAHO CODE, TO PROVIDE FOR EXPIRATION AND RENEWAL OF LIQUOR BY THE DRINK LICENSES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 23-1010, IDAHO CODE, TO PROVIDE FOR EXPIRATION AND RENEWAL OF LICENSES TO SELL BEER AT RETAIL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 23-1316, IDAHO CODE, TO PROVIDE FOR EXPIRATION AND RENEWAL OF LICENSES TO MANUFACTURE, IMPORT, BOTTLE, BROKER OR POSSESS FOR RESALE, DISTRIBUTE OR SELL WINE AND TO MAKE A TECHNICAL CORRECTION; PROVIDING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

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

SECTION 1. That Section 23-908, Idaho Code, be, and the same is hereby amended to read as follows:

23-908. FORM OF LICENSE -- AUTHORITY -- EXPIRATION -- LIMITATIONS. (1) Every license issued under the provisions of this chapter shall set forth the name of the person to whom issued, the location by street and number, or other definite designation, of the premises, and such other information as the director shall deem necessary. If issued to a partnership, the names of the persons constituting such partnership shall be set forth in the application. If issued to a corporation or association, the names of the principal officers and the governing board shall be set forth in the application. Such license shall be signed by the licensee and prominently displayed in the place of business at all times. Every license issued under the provisions of this chapter is separate and distinct and no person except the licensee therein named except as herein otherwise provided, shall exercise any of the privileges granted thereunder. All licenses shall expire at 1:00 o'clock ~~A~~a.M~~m~~. on ~~January 1st~~ the first day of the ~~following year and~~ renewal month which shall be determined by the director by administrative rule and shall be subject to annual renewal upon proper application. The director will determine the ~~renewal month~~ by county based on the number of current licenses within each county, distributing renewals throughout the licensing year. The director may adjust the renewal month to accommodate population increases. Each licensee will be issued a temporary license to operate until their renewal month has been determined. Thereafter, renewals will occur annually on their renewal month. Renewal applications for liquor by the drink licenses accompanied by the required fee must be filed with the director on or before ~~January 1st~~ the first day of the ~~following year, provided, however,~~ designated renewal month. ~~A~~any licensee holding a valid license who fails to file an application for renewal of his current license on or before ~~January 1st~~ the first day of the ~~following year~~ designated renewal month shall have a grace period of an additional thirty-one (31) days in which to file an application for renewal of ~~his~~ the license. ~~and during which time he~~ The licensee shall not be permitted to sell and dispense liquor by the drink at retail during the thirty-one (31) day extended time period ~~unless~~ and until the license is renewed. In any city of less than sixteen thousand (16,000) population,

as established in the last preceding census or any subsequent special census conducted by the United States bureau of the census, no person shall be granted more than one (1) license in any city for any one (1) year; and no partnership, association or corporation in such city of less than sixteen thousand (16,000) population holding a license under the provisions of this chapter shall have as a member, officer or stockholder any person who has any financial interest of any kind in, or is a member of, another partnership or association or an officer of another corporation holding a license in the same city for the same year; provided that this section shall not prevent any person, firm or corporation, owning two (2) or more buildings on connected property in a city from making application for and receiving licenses permitting the sale of liquor by the drink in such building.

(2) An application to transfer any license issued pursuant to chapter 9, title 23, Idaho Code, shall be made to the director. Upon receipt of such an application, the director shall make the same investigation and determinations with respect to the transferee as are required by section 23-907, Idaho Code, and if the director shall determine that all of the conditions required of a licensee under chapter 9, title 23, Idaho Code, have been met by the proposed transferee, then the license shall be indorsed over to the proposed transferee by said licensee for the remainder of the period for which such license has been issued and the director shall issue a license to the transferee.

(3) The director, in his discretion, may deny the transfer of a license during the pendancy of any proceedings for suspension or revocation which were instituted pursuant to the terms of this chapter.

(4) Each new license issued on or after July 1, 1980, shall be placed into actual use by the original licensee at the time of issuance and remain in use for at least six (6) consecutive months or be forfeited to the state and be eligible for issue to another person by the director after compliance with the provisions of section 23-907, Idaho Code. Such license shall not be transferable for a period of two (2) years from the date of original issuance, except as provided by subsection (5)(a), (b), (c), (d) or (e) of this section.

(5) The fee for transferring a liquor license shall be ten ~~per cent~~ percent (10%) of the purchase price of the liquor license or the cost of good will, whichever is greater; except no fee shall be collected in the following events:

(a) The transfer of a license between husband and wife in the event of a property division; or

(b) The transfer of a license to a receiver, trustee in bankruptcy or similar person or officer; or

(c) The transfer of a license to the heirs or personal representative of the estate in the event of the death of the licensee; or

(d) The transfer of a license arising out of the dissolution of a partnership where the license is transferred to one (1) or more of the partners; or

(e) The transfer of a license within a family whether an individual, partnership or corporation.

(6) The fee for transferring a liquor license for other than a sale shall be fifty ~~per cent~~ percent (50%) of the per annum license fee set forth in section 23-904, Idaho Code; except no fee shall be collected for transfers as outlined in subsection (5)(a), (b), (c), (d)~~,~~ or (e) of this section.

SECTION 2. That Section 23-1010, Idaho Code, be, and the same is hereby amended to read as follows:

23-1010. LICENSE TO SELL BEER AT RETAIL -- APPLICATION PROCEDURE AND FORM -- SHOWING OF ELIGIBILITY FOR LICENSE AND DISQUALIFICATIONS. (1) Every person who shall apply for a state license to sell beer at retail shall tender the license fee to, and file written application for license with, the director. The application shall be on a form prescribed by the director which shall require such information concerning the applicant, the premises for which license is sought and the business to be conducted thereon by the applicant as the director may deem necessary or advisable, and which shall enable the director to determine that the applicant is eligible and has none of the disqualifications for license, as provided for in this section. Such information shall include the following:

(a) The name and place of residence of the applicant and length of his residence within the state of Idaho, and if the applicant is a partnership, the names, places of residence and lengths of residence within the state of Idaho of each partner, and, if the applicant is a corporation or association, the date and place of incorporation or organization, the location of its principal place of business in Idaho and the names and places of residence of its officers, directors or members of its governing board, and of the person who manages or will manage the business of selling beer at retail;

(b) The particular place for which the license is desired, designating the same by a street and number, if practicable, or by such other apt description as definitely locates such place, and the name of the owner of the premises for which license is sought;

(2) The application shall affirmatively show:

(a) That the applicant is the bona fide owner of the business which will be engaged in the sale of beer at retail and with respect to which license is sought;

(b) That the condition of the place or building wherein it is proposed to sell beer at retail conforms to all laws and ~~regulations~~ rules of the state of Idaho and to the ordinances of the county and municipality applicable thereto relating to public health and safety and to the zoning ordinances of the municipality applicable thereto;

(c) That there is no stamp or permit outstanding and in force which has been issued to any person by the United States government for the premises for which license to sell beer at retail is sought which stamp or permit denotes payment of any special tax imposed by the United States government on a retail dealer in liquor or wines, unless said premises are premises for which a retail license for sale of liquor ~~by the drink~~ by the drink, issued under the provisions of chapter 9, title 23, Idaho Code, is in force and effect;

(d) That the individual applicant, or each partner of a partnership applicant, or a corporation applicant or an association applicant is qualified to do business within the state of Idaho;

(e) That the applicant, if an individual, is not less than nineteen (19) years of age;

(f) That within three (3) years immediately preceding the date of filing the application the applicant has not been convicted of the violation of any law of the state of Idaho, any other state, or of the United States, regulating, governing or prohibiting the sale,

manufacture, transportation or possession of alcoholic beverages or intoxicating liquors, or, within said time, suffered the forfeiture of a bond for failure to appear in answer to charges of any such violation;

(g) That within five (5) years immediately preceding the date of filing the application the applicant has not been convicted of any felony or paid any fine or completed any sentence of confinement therefor within said time;

(h) That within three (3) years next preceding the date of filing said application the applicant has not had any license provided for herein, or any license or permit issued to the applicant pursuant to the law of this state, or any other state, or of the United States, to sell, manufacture, transport or possess alcoholic beverages or intoxicating liquors, revoked.

(3) The affirmative showing required with respect to an applicant under paragraphs (e), (f), (g)~~,~~ and (h) of subsection (2) of this section shall also be required to be made with respect to each partner of a partn~~ership a~~pplicant and to each incumbent officer, director or member of the governing board of a corporation or association applicant.

(4) The application must be subscribed and sworn to by the individual applicant, or by a partner of a partnership applicant, or by an officer or manager of a corporation or association applicant, before a notary public or other person authorized by law to administer oaths.

(5) If an applicant shall be unable to make any affirmative showing required in this section or if an application shall contain a false material statement, knowingly made, the same shall constitute a disqualification for license and license shall be refused. If license is received on any application containing a false material statement, knowingly made, such license shall be revoked. If at any time during the period for which license is issued a licensee becomes unable to make the affirmative showings required by this section, license shall be revoked, or, if disqualification can be removed, the license shall be suspended until the same shall be removed. The procedure to be followed upon refusal, revocation or suspension of license as herein provided for shall be in accordance with the procedure set forth in this act.

(6) All licenses ~~issued hereunder~~ shall expire at 1:00 o'clock ~~A~~a.~~M~~m. on ~~January 1~~ the first day of the ~~following year~~ renewal month which shall be determined by the director by administrative rule and shall be subject to annual renewal upon proper application. The director will determine th~~e renewal month~~ by county based on the number of current licenses within each county, distributing renewals throughout the licensing year. The director may adjust the renewal month to accommodate population increases. Each licensee will be issued a temporary license to operate until their renewal month has been determined. Thereafter, renewals will occur annually on their renewal month. Renewal applications for licenses accompanied by the required fee must be filed with the director on or before the first day of the designated renewal month. Any licensee holding a valid license who fails to file an application for renewal of the current license on or before the first day of the designated renewal month shall have a grace period of an additional thirty-one (31) days in which to file an application for renewal of the license. The licensee shall not be permitted to sell beer at retail during the thirty-one (31) day extended time period unless and until the license is renewed.

SECTION 3. That Section 23-1316, Idaho Code, be, and the same is hereby amended to read as follows:

23-1316. EXPIRATION AND RENEWAL OF LICENSES. All licenses issued pursuant to the provisions of this ~~act~~ chapter shall expire at ~~one~~ 1:00 o'clock ~~A~~a.M~~m~~. on ~~January 1st~~ the first day of the ~~year following the date of issuance of the license~~ renewal month which shall be determined by the director by administrative rule and shall be subject to annual renewal upon proper application. The director will determine the renewal month by county based on the number of current licenses within each county, distributing renewals throughout the licensing year. The director may adjust the renewal month to accommodate population increases. Each licensee will be issued a temporary license to operate until their renewal month has been determined. Thereafter, renewals will occur annually on their renewal month. Renewal applications for licenses accompanied by the required fee must be filed with the director on or before the first day of the designated renewal month. Any licensee holding a valid license who fails to file an application for renewal of the current license on or before the first day of the designated renewal month shall have a grace period of an additional thirty-one (31) days in which to file an application for renewal of the license. The licensee, however, shall not be permitted to engage in any activity authorized by the license during the thirty-one (31) day extended time period unless and until the license is renewed. Renewal of such licenses shall be on forms prescribed and furnished by the issuing authority. The renewal ~~form~~ shall be submitted, together with the required license fees, and an affidavit verifying that the information contained in the original application is unchanged, or if there are material changes, indicating such changes.

SECTION 4. This act shall be in full force and effect on and after January 1, 2002, and shall apply to all applications for licenses filed on and after the effective date of this act.

Approved March 1, 2001.

CHAPTER 31
(H.B. No. 114)

AN ACT

RELATING TO WATER RIGHTS DECISIONS; PROVIDING A STATEMENT OF LEGISLATIVE INTENT; AMENDING CHAPTER 14, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1401D, IDAHO CODE, TO PROVIDE THAT COURT REVIEW OF AN ACTION BY THE DEPARTMENT OF WATER RESOURCES SUBJECT TO JUDICIAL REVIEW OR DECLARATORY JUDGMENT UNDER THE PROVISIONS OF CHAPTER 52, TITLE 67, IDAHO CODE, SHALL NOT BE HEARD IN ANY WATER RIGHTS ADJUDICATION PROCEEDING COMMENCED UNDER THE PROVISIONS OF CHAPTER 14, TITLE 42, IDAHO CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. LEGISLATIVE INTENT. A principal goal of the Legislature

is the timely completion of the pending Snake River Basin Adjudication resulting in a judicial determination of all water rights within the Snake River basin in accordance with the provisions of Chapter 14, Title 42, Idaho Code. A recent judicial decision holding that the Snake River Basin Adjudication district court has exclusive jurisdiction to provide judicial review of administrative actions by the Department of Water Resources affecting rights to the use of water in the Snake River basin potentially frustrates this legislative goal.

It is and has been the intention of the Legislature that the district court presiding over a water rights adjudication proceeding under the provisions of Chapter 14, Title 42, Idaho Code, exercises unique jurisdiction over the "judicial determination" of the elements of the water rights subject to the court's jurisdiction. Further, it is and has been the intention of the Legislature that judicial review of an agency action by the Department of Water Resources under the provisions of Chapter 52, Title 67, Idaho Code, does not provide a judicial determination of the elements of a water right. Rather, a judicial review proceeding potentially results only in confirmation of an administrative determination of one (1) or more elements of a water right, which then shall constitute prima facie evidence of those elements consistent with the provisions of Section 42-220, Idaho Code. In order not to burden and delay the adjudication proceeding with actions for judicial review, the Legislature finds it necessary to enact the following statutory amendment, which is intended to apply to all actions for judicial review pending on the date of enactment as well as future actions.

SECTION 2. That Chapter 14, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1401D, Idaho Code, and to read as follows:

42-1401D. JURISDICTIONAL LIMITATION. Review of an agency action of the department of water resources, which is subject to judicial review or declaratory judgment under the provisions of chapter 52, title 67, Idaho Code, shall not be heard in any water rights adjudication proceeding commenced under this chapter. Venue and jurisdiction over any such action pending on the effective date of this section, or initiated subsequent thereto, shall be in the district court as authorized under the provisions of section 67-5272, Idaho Code, without regard to any other provision of law.

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 2, 2001.

CHAPTER 32
(S.B. No. 1021)

AN ACT

RELATING TO EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1346, IDAHO CODE, TO PROVIDE THAT THE CONDITIONS AND RESTRICTIONS APPLICABLE TO

REED ACT DISTRIBUTIONS IN FEDERAL FISCAL YEARS 2000 AND 2001 ALSO APPLY TO REED ACT DISTRIBUTIONS IN FEDERAL FISCAL YEAR 2002 AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 72-1346A, IDAHO CODE, TO ELIMINATE THE REQUIREMENT THAT INTEREST CHARGES ON A FEDERAL ADVANCE TO THE EMPLOYMENT SECURITY FUND MUST BE PAID FROM REVENUES DERIVED FROM A TAX ON EXPERIENCE-RATED EMPLOYERS.

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

SECTION 1. That Section 72-1346, Idaho Code, be, and the same is hereby amended to read as follows:

72-1346. EMPLOYMENT SECURITY FUND. (1) Establishment and Control. There is established in the state treasury, separate and apart from all other funds of this state, an "Employment Security Fund," which shall be perpetually appropriated to the director to be administered pursuant to the provisions of this chapter and the social security act. This fund shall consist of all contributions collected pursuant to this chapter, payments in lieu of contributions, interest earned upon any moneys in the fund, any property or securities acquired through the use of moneys belonging to the fund, all earnings of such property or securities, moneys temporarily deposited in the clearing account, and all other moneys received for the fund from any other source.

(2) Accounts and Deposits. The state controller shall maintain within the fund three (3) separate accounts: (i) a clearing account, (ii) an unemployment trust fund account, and (iii) a benefit account. Upon receipt by the director, all moneys payable to the fund shall be promptly forwarded to the state treasurer for immediate deposit in the clearing account. After clearance, all moneys in the clearing account shall, except as otherwise provided, be deposited promptly with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund established and maintained pursuant to section 904 of the social security act (42 U.S.C. 1104), any provisions of law in this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the unemployment trust fund in the treasury of the United States. Moneys in the clearing and benefit accounts may be deposited by the state treasurer under the direction of the director in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds and shall be maintained in separate accounts on the books of the depository bank. Such moneys shall be secured by the depository bank in the same manner as required by the general public depository law of this state and collateral pledged for this purpose shall be kept separate and distinct from collateral pledged to secure other funds of the state. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment security fund.

(3) Withdrawals. Moneys requisitioned by the director through the treasurer from this state's account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to section 72-1357, Idaho Code, except that Reed act moneys credited to this state's account pursuant to section 903 of the social security act

(42 U.S.C. 1103), shall be used exclusively as provided in subsection (4) of this section. The director through the treasurer shall requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of benefits and refunds for a reasonable period. Upon receipt, such moneys shall be deposited in the benefit account. Expenditures of moneys in the benefit and clearing accounts shall not require the approval of the board of examiners or be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. The residual daily balance in the benefit account may be invested in accordance with the cash management improvement act of 1990, and earnings on those investments may be used to pay the related banking costs of maintaining the benefit account. Any earnings in excess of the related banking costs shall be returned to the state's account in the federal unemployment trust fund annually. All warrants issued for the payment of benefits and refunds shall bear the signature of the director. Upon agreement between the director and state controller, amounts in the benefit account may be transferred to a revolving account established and maintained in a depository bank from which the director may issue checks for the payment of benefits and refunds. Moneys so transferred shall be deposited subject to the same requirements as provided with respect to moneys in the clearing and benefit accounts in subsection (2) of this section. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account or revolving account after the expiration of the period for which such sums were requisitioned, may be utilized for the payment of benefits and refunds during succeeding periods, or, in the discretion of the director, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund.

(4) Reed Act Moneys. Reed act moneys credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the social security act (42 U.S.C. 1103), may be requisitioned and used for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Moneys may only be requisitioned and used for the payment of expenses incurred for the administration of this chapter if the expenses are incurred and the money is requisitioned after the enactment of a specific appropriation by the legislature which specifies the purposes for which such money is appropriated, the amounts appropriated therefor, and provides that:

(a) Such money may not be obligated after the close of the two (2) year period which began on the date of the enactment of the appropriation law; and

(b) The amount which may be obligated at any time may not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the social security act (42 U.S.C. 1103), exceeds the aggregate of the amounts used by this state and charged against the amounts transferred to the account of this state. For the purposes of this subsection, amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into.

(c) Reed act moneys requisitioned for the payment of benefits shall

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

(~~d~~5) Special Reed Act Distributions. Notwithstanding ~~paragraphs (a), (b) and (c) of this~~ subsection (4) of this section, Reed act moneys credited with respect to federal fiscal years ~~1999,~~ 2000, 2001 and 200~~1~~2 shall be used solely for the admin~~istra~~tion of the unemployment insurance program and are not subject to appropriation by the legislature.

SECTION 2. That Section 72-1346A, Idaho Code, be, and the same is hereby amended to read as follows:

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

(2) The governor is authorized to make application to the secretary of labor of the United States to obtain advances pursuant to title XII of the social security act (42 U.S.C. 1321 et seq.). Funds so advanced shall be for the payment of unemployment insurance benefits.

(3) Any amount transferred to the employment security fund by the secretary of the treasury of the United States in accordance with this section shall be repaid from the employment security fund as provided in section 1202 of the social security act (42 U.S.C. 1322).

(4) There is established in the state treasury the "Federal Advance Interest Repayment Fund." This fund shall consist of all moneys collected pursuant to subsection (5) of this section and interest earned upon any moneys in the fund. All moneys in the fund are perpetually appropriated to the director for the payment of interest on any advance made to this state pursuant to title XII of the social security act, except that if, at the end of any calendar year, all advances and interest have been repaid, any remaining balance in the fund shall be transferred to the employment security fund. Interest charges due and payable pursuant to section 1202 of the social security act, ~~shall~~ may be paid by the director from the federal advance interest repayment fund. Such expenditures shall not be subject to any law requiring specific appropriations or other formal release by state officers of money in their custody, nor shall such expenditures require the approval of the board of examiners.

(5) A federal advance interest repayment tax ~~shall~~ may be levied in accordance with the following provisions when required under paragraph

(b) of this subsection:

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

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

(ii) Estimate the amount of federal advance interest repayment tax receipts expected to be collected during the quarter for any preceding calendar quarter in which such tax was assessed;

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

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

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

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

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

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

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

Approved March 2, 2001.

CHAPTER 33
(H.B. No. 61)

AN ACT

RELATING TO CRIMES BY PERSONS IN CUSTODY; AMENDING CHAPTER 9, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-915B, IDAHO CODE, TO PROVIDE PENALTIES FOR PROPELLING BODILY FLUID OR WASTE AT CERTAIN PERSONS.

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

SECTION 1. That Chapter 9, 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 18-915B, Idaho Code, and to read as follows:

18-915B. PROPELLING BODILY FLUID OR WASTE AT CERTAIN PERSONS. Any person who is housed in a state, private or county correctional facility, work release center or labor camp, or who is being transported or supervised by a correctional officer or detention officer, irrespective of whether the person is a sentenced prisoner or a pretrial detainee, and who knowingly propels any bodily fluid or bodily waste at any detention officer, correctional officer, staff member, private contractor or employee of a county or state correctional facility, or authorized visitor to a county or state correctional facility, work release center or labor camp, or who knowingly introduces any bodily fluid or bodily waste into the food or drink of such officer, staff member, private contractor, employee or authorized visitor, shall be guilty of a felony punishable by imprisonment in a correctional facility for not more than five (5) years, and such sentence shall be served consecutively to any sentence currently served.

Approved March 5, 2001.

CHAPTER 34
(S.B. No. 1024)

AN ACT

RELATING TO THE IDAHO STATE BUILDING AUTHORITY ACT; AMENDING SECTION 67-6405, IDAHO CODE, TO REVISE THE COMPENSATION FOR COMMISSIONERS OF THE BOARD AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-6421, IDAHO CODE, TO PROVIDE FOR THE LEASING OF STATE PROPERTY TO THE IDAHO STATE BUILDING AUTHORITY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-6405, Idaho Code, be, and the same is hereby amended to read as follows:

67-6405. APPOINTMENT AND REMOVAL OF COMMISSIONERS. (a) The powers of the authority shall be vested in a board of seven (7) commissioners appointed by the governor for terms of five (5) years with advice and

consent of a majority of the members of the senate. No commissioner appointed after January 1, 1978, shall also serve as a member of the permanent building council created in section 67-5710, Idaho Code. Of the commissioners first appointed, two (2) commissioners shall serve for terms ending one (1) year from January first next succeeding the date of their appointment, two (2) commissioners shall serve for terms ending two (2) years from January first next succeeding their appointment and one (1) of the remaining three (3) commissioners shall serve for a term of three (3), four (4) and five (5) years, respectively. Any vacancies in the membership of the authority shall be filled in like manner but only for the remainder of an unexpired term. Each commissioner shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any commissioner shall be eligible for reappointment.

(b) The commissioners shall elect from among their number a chairman and a ~~vice-chairman~~ vice chairman annually and such other officers as it may determine. Meetings shall be held at the call of the chairman or whenever two (2) commissioners so request. Four (4) commissioners of the authority shall constitute a quorum and the affirmative vote of four (4) commissioners shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(c) Commissioners shall be compensated as provided by section 59-509(~~f~~o), Idaho Code.

(d) For incompetency or neglect of duty or malfeasance in office, a commissioner of the authority may be removed from office by the governor in the manner provided by law.

SECTION 2. That Section 67-6421, Idaho Code, be, and the same is hereby amended to read as follows:

67-6421. STATE GRANTS AND LEASES TO AUTHORITY. The state may make grants of money or property and may lease property to the authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers, including, but not limited to, deposits to the reserve funds of the authority. Notwithstanding any other provision of law to the contrary, the state may lease, with or without consideration, real or personal property to the authority for a term not to exceed fifty (50) years. This section shall not be construed to limit any other power the state may have to make such grants or to lease property to the authority, or to enter into other transactions with the authority.

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 5, 2001.

CHAPTER 35
(S.B. No. 1085)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE DIVISION OF BUILDING SAFETY FOR FISCAL YEAR 2001; AND DECLARING AN EMERGENCY.

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

SECTION 1. In addition to the appropriation made in Section 2, Chapter 447, Laws of 2000, there is hereby appropriated to the Division of Building Safety in the Department of Self-Governing Agencies 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, 2000, through June 30, 2001:

	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. BUILDING SAFETY:			
FROM:			
Electrical Fund	$32,400	$152,000	$184,400
Building Fund	15,800	63,600	79,400
Plumbing Fund	25,200	116,000	141,200
Manufactured Housing Fund	300	1,300	1,600
Public Works Contractors Licensing Fund	6,700	26,800	33,500
Federal Grant Fund	1,500	6,000	7,500
Miscellaneous Revenue/ Industrial Safety Fund	15,900	28,000	43,900
Miscellaneous Revenue/ Logging Fund	1,200	5,000	6,200
Building Bureau NCSBCS Fund	300	1,300	1,600
TOTAL	$99,300	$400,000	$499,300

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 5, 2001.

CHAPTER 36
(S.B. No. 1025)

AN ACT

RELATING TO THE DIVISION OF PURCHASING; AMENDING SECTION 67-5716, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5717, IDAHO CODE, TO REVISE POWERS AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF PURCHASING AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5718, IDAHO CODE, TO REVISE PROCEDURES FOR REQUISITIONS FOR PROPERTY; AMENDING SECTION 67-5718A, IDAHO CODE, TO DELETE REFERENCE TO AND DEFINITIONS RELATED TO INFOR-

MATION TECHNOLOGY, TO PROVIDE THAT THE ADMINISTRATOR MAY AWARD MULTIPLE CONTRACTS UNDER SPECIFIED CRITERIA AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5720, IDAHO CODE, TO PROVIDE PROCEDURES FOR ACQUISITION OF PROPERTY IN THE OPEN MARKET, TO PROVIDE FOR EMERGENCY PURCHASES AND TO REVISE NOTICE REQUIREMENTS; AMENDING SECTION 67-5722, IDAHO CODE, TO DELETE REFERENCE TO REGISTERED VENDORS; AMENDING SECTION 67-5726, IDAHO CODE, TO DELETE REFERENCE TO REGISTERED VENDORS AND TO MAKE A GRAMMATICAL CORRECTION; AMENDING SECTION 67-5727A, IDAHO CODE, TO DELETE REFERENCE TO REGISTERED VENDORS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5729, IDAHO CODE, TO DELETE REFERENCE TO REGISTERED VENDORS AND TO PROVIDE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5730, IDAHO CODE, TO REVISE PROCEDURES PROVIDING FOR A QUALIFIED VENDOR, TO PROVIDE CRITERIA FOR HOW A VENDOR MAY BE DISQUALIFIED, TO DELETE THE REQUIREMENT OF AND REFERENCE TO A REGISTERED VENDOR AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5732, IDAHO CODE, TO PROVIDE FOR RULES ADDRESSING SPECIFICATIONS DEVELOPMENT, PERFORMANCE TESTING AND SUBMISSION AND EVALUATION OF BIDS; AND AMENDING SECTION 67-5733, IDAHO CODE, TO REVISE THE APPEALS PROCESS.

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

SECTION 1. That Section 67-5716, Idaho Code, be, and the same is hereby amended to read as follows:

67-5716. DEFINITIONS OF TERMS. (1) Acquisition. The process of procuring or purchasing property by the state of Idaho.

(2) Procurement. Obtaining property for state use by lease, rent, or any manner other than by purchase or gift.

(3) Property. Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property.

(4) Goods. Items of personal property, not qualifying as equipment, parts or supplies.

(5) Services. Personal services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding is not prohibited or made impractical by statute, rules or generally accepted ethical practices.

(6) Parts. Items of personal property acquired for repair or replacement of unserviceable existing items.

(7) Supplies. Items of personal property having an expendable quality or during ~~its~~ their normal use ~~is~~ are consumed and which require~~s~~ or suggest~~s~~ acquisition in bulk.

(8) Equipment. Items of personal property which have a normal useful life expectancy of two (2) or more years.

(9) Component. An item of property normally assembled with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities.

(10) Vendor. A person or entity capable of supplying property to the state.

(11) Bidder. A ~~registered~~ vendor who has submitted a bid on a specific item or items of property to be acquired by the state.

(12) Lowest responsible bidder. The responsible bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price.

(13) Contractor. A bidder who has been awarded an acquisition contract.

(14) ~~Registered vendor. A qualified vendor registered with the administrator of the division of purchasing.~~

~~(15)~~ Agency. All officers, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction.

(16~~5~~) Bid. A written offer to perform a contract to purchase or supply property or services in response to an invitation for bid or request for proposal.

(17~~6~~) Recyclable. Materials that still have useful physical, chemical or biological properties after serving their original purposes and can, therefore, be reasonably reused or recycled for the same or other purposes.

(18~~7~~) Recycled-content product. A product containing postconsumer waste and/or secondary waste as defined in this section.

(19~~8~~) Postconsumer waste. A finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item.

(20~~19~~) Secondary waste. Fragments of products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value and may include a postconsumer waste.

SECTION 2. That Section 67-5717, Idaho Code, be, and the same is hereby amended to read as follows:

67-5717. POWERS AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF PURCHASING. The administrator of the division of purchasing:

(1) Shall acquire, according to the provisions of this chapter, all property for state agencies;

(2) Shall acquire all property, unless excepted, by competitive bid, and shall specifically require competitive bids for property to be rented, leased or purchased through a deferred payment plan;

(3) Shall determine, based upon the requirements contained in the specification and matter relating to responsibility, the lowest responsible bidder in all competitively bid acquisition contracts;

(4) Shall enter into all contracts and agreements, and any modifications thereto, for the acquisition of any and all property ~~in~~ on behalf of and in the name of the state;

(5) Shall, when economically feasible and practical, consolidate requisitions and acquire property in amounts as large as can be efficiently managed and controlled;

(6) May, in the evaluation of paper product bids, give those items that meet the recycled content standards as specified by the administrator a five percent (5%) purchasing preference. As such, those qualifying

paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder;

(7) May appoint a deputy, who shall have power to act for him and in his place while absent, which deputy shall be bonded to the state of Idaho as prescribed by chapter 8, title 59, Idaho Code;

(8) May require from any contractor the submission of a performance bond for such sum as will, in the opinion of the administrator, guarantee the faithful performance of such contract, and the amount and requirement therefor shall be set out in the specifications;

(9) May enter into open contracts for the acquisition of property commonly used by the various agencies, based upon actual or estimated requirements;

Unless an acquiring agency can show a substantial difference between the required capabilities and the capabilities provided by such property available on open contract, all agencies must utilize such property available on such contracts and failure to comply with this provision will subject the officers responsible for the acquisition to the penalties set forth in this chapter;

(10) May enter into contracts, including leases and rentals, for periods of time exceeding one (1) year provided that such contracts contain no penalty to or restriction upon the state in the event cancellation is necessitated by a lack of financing for any such contract or contracts;

(11) Is authorized and empowered to formulate rules in the conduct of the office of the division of purchasing, subject to the approval of the director of the department of administration;

(12) In accordance with established rules of the division, may ~~accept competitive sealed proposals and~~ enter into negotiations for acquisitions; ~~for which competitive sealed bidding is not practicable or advantageous to the state;~~

(13) May inspect property delivered by a contractor to determine whether it meets minimum bid specifications;

(14) May classify, after review with the various agencies, the requirements of the state for all property which may be acquired and adopt standards of quality for property, and establish standard specifications for acquisition. Each standard specification shall, until revised or rescinded, apply alike in terms and effect to each future acquisition of the classified property.

SECTION 3. That Section 67-5718, Idaho Code, be, and the same is hereby amended to read as follows:

67-5718. REQUISITIONS FOR PROPERTY -- NOTICE -- FORM ~~--~~ GUARANTEE ~~--~~ PROCEDURE FOR BIDDING. (1) The administrator of the division of purchasing shall not make or cause to be made any acquisition until a requisition for the property to be acquired has been ~~filed in~~ submitted to his office~~, and such requisition must bear the certificate of the head of the agency making the requisition~~ by the requisitioning agency, certifying to the satisfaction of the administrator that there are proper funds or sufficient balance in appropriations out of which the amount of the requisition may lawfully be paid, except as provided to the contrary under provisions of this chapter allowing emergency purchases.

~~If the property to be acquired may reasonably be expected to cost in excess of twenty five thousand dollars ($25,000) if purchased, or one~~

~~thousand--dollars-($1,000)-per-month-if-procured,-there-must-be-accompanying-the-requisition-a-copy-of-the-specifications-proposed-for--use--in the--acquisition.--Upon--receipt-of-the-requisition,-notice-must-be-commenced-within-a-reasonable-period-of-time-and-must-allow-not--less--than ten-(10)-days-from-notice-to-bid-opening-date.~~

~~Provided,--however,-that-in-cases-where-the-total-value-of-the-property-to-be-acquired-is-not-in-excess--of--twenty-five--thousand--dollars ($25,000)--if--purchased,--or-one-thousand-dollars-($1,000)-per-month-if procured,-the-administrator-shall-notify-registered-vendors-in-such-manner-as-he-deems-appropriate.-To-enhance-small-business-bidding--opportunities,--the--administrator--shall-seek-a-minimum-of-three-(3)-bids-from registered-vendors-having--a--significant--Idaho--economic--presence--as defined--in-the-Idaho-Code.-If-he-finds-that-it-is-impractical-or-impossible-to-obtain-three-(3)-bids-for--the--proposed--transaction,--he--may acquire--the--property--in-any-manner-he-deems-best.-For-any-acquisition not-otherwise-requiring-specifications,-the-same-may-be-required-by-rule drawn-by-the-administrator.~~

~~Provided-further,-however,-that-in-connection-with-the-award-of--any contract--for--the--placement--of-any-order-for-state-printing,-binding, engraving-or-stationery-work,-the--provisions--of--sections--60-101--and 60-103,--Idaho--Code,--shall--apply--to--the-extent-that-the-same-may-be inconsistent-with-any-requirements-contained-in-this-section.~~

(2) Notice shall be ~~sent-to-each-registered-vendor-of-the--property to--be--acquired,-except-that-if-there-are-more-than-ten-(10)-registered vendors-for-the-property-to-be-acquired,-the-administrator-of-the--division-of-purchasing-may,-in-his-discretion,-limit-the-notices-sent-to-ten (10).--Nothing--shall-prevent-all-registered-vendors-from-bidding-on-the property-to-be-acquired~~ posted of all acquisitions of property, unless otherwise excepted by rules of the division. The notice may be posted electronically. The administrator shall also cause all invitations to bid and requests for proposals ~~to be posted~~ manually in a conspicuous place in ~~his~~ the office. The notice shall describe the property to be acquired in sufficient detail to apprise a ~~bidder of the~~ exact nature or functionality of the property required; and shall ~~give-the-time-when, and-the-place-where,-bids-will-be-opened.-The-bid-opening-date-shall--be set--forth--in--the-specifications.-Each-bid-shall-be-in-writing,-sealed and-marked,-"sealed-bid-for-.....,-to-be-opened-.....,-19.."-and-shall--be mailed--or--delivered-to-the-office-of-the-administrator-of-the-division of-purchasing-at-Boise,-Idaho~~ set forth the bid opening date, time and location.

(3) To enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from vendors having a significant Idaho economic presence as defined in section 67-2349, Idaho Code.

(4) All sealed bids received shall be opened at the time and place specified, ~~in-the-invitation-for-bids,~~ and in the public view, and a record of each bid shall then and there be made. Contracts shall be awarded to and orders placed with the lowest responsible bidder.~~-If--the competitive--sealed--proposal-method-is-used,-award-shall-be-made-to-the lowest-responsible-bidder~~ on the basis of initial proposals received or, if applicable, following receipt and evaluation of best and final offers or negotiations. The administrator shall have the right to reject any and all bids pursuant to rules established for the division.

(5) Where both the bids and quality of property offered are the

same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in the Idaho Code. In connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections 60-101 and 60-103, Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

(6) As used in this section, the word "sealed" does not preclude acceptance of electronically sealed and submitted bids in addition to bids manually sealed and submitted.

SECTION 4. That Section 67-5718A, Idaho Code, be, and the same is hereby amended to read as follows:

67-5718A. ACQUISITION OF ~~INFORMATION--TECHNOLOGY~~ PROPERTY BY CONTRACT -- AWARD TO MORE THAN ONE BIDDER -- STANDARDS FOR MULTIPLE AWARDS -- APPROVAL BY ADMINISTRATOR. (1) Notwithstanding any provision of this chapter to the contrary, the administrator of the division of purchasing may make an award of a contract to two (2) or more bidders to furnish the same or similar ~~information-technology~~ property where more than one (1) contractor is necessary:

(a) To furnish the types of property and quantities required by state agencies;

(b) To provide expeditious and cost-efficient acquisition of property for state agencies; or

(c) To enable state agencies to acquire property which is compatible with property previously acquired.

(2) ~~As-used-in-this-section:~~

~~(a)--"Information--technology-property"-includes,-but-is-not-limited to,-all-present-and-future--forms--of--computer--hardware,--computer software,--or--services-used-or-required-for-automated-data-processing,-computer-related-office-automation-or-telecommunications.~~

~~(b)--"Telecommunications"-includes,-but-is-not-limited-to,-all-present-and-future-forms-of--hardware,--software--or--services--used--or required--for--transmitting-voice,-data,-video-or-images-over-a-distance.~~

~~(3)~~ No award of a contract to multiple bidders shall be made under this section unless the administrator of the division of purchasing makes a written determination showing that multiple awards ~~satisfies~~ satisfy one (1) or more of the criteria set forth in this section.

~~(4)~~ Where a contract for ~~information-technology~~ property has been awarded to two (2) or more bidders in accordance with this section, a state agency shall make purchases from the contractor whose terms and conditions regarding price, availability, support services and delivery are most advantageous to the agency.

~~(5)~~ A multiple award of a contract for ~~information-technology~~ property under this section shall not be made when a single bidder can reasonably serve the acquisition needs of state agencies. A multiple award of a contract shall only be made to the number of bidders necessary to serve the acquisition needs of state agencies.

SECTION 5. That Section 67-5720, Idaho Code, be, and the same is hereby amended to read as follows:

67-5720. ACQUISITION ~~OF MINOR ITEMS~~ IN OPEN MARKET -- EMERGENCY PURCHASES. (1) The administrator may allow~~, under rules prescribed,~~:

(a) T~~t~~he purchase of ~~minor items of~~ property in the open market, provided such items are not available from the maintenance of stocks authorized by section 67-5727, Idaho Code,~~.~~ ~~When~~ where the administrator finds that a particular savings to the state may be had through the use of educational discounts, acquisition of federal surplus or excess property, reverse public auctions, where there is only one (1) vendor for the property to be acquired or under other circumstances approved by the director of the department of administration.

(b) The purchase of property by open purchase when immediate delivery of property is required by the public exigencies and the administrator of the division of purchasing has declared that an emergency exists, ~~the property required may be acquired by open purchase,~~ but at all times such purchases shall be made under the direction of the administrator. ~~The administrator may, in his discretion, declare an emergency when he finds that particular savings to the state may be had through the use of educational discounts, acquisition of federal surplus or excess property, when there is only one (1) vendor for the property to be acquired, or under other circumstances approved by the director of the department of administration.~~

(2) When there is only one (1) vendor for the property to be acquired, unless the property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property, notice of a sole source procurement shall be published. ~~in a public, statewide publication at least ten (10) working days prior to the award of the contract~~ The notice may be electronic. Payment vouchers for emergency acquisitions must contain upon their faces the justification for such purchases.

SECTION 6. 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~~ vendors 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 7. That Section 67-5726, Idaho Code, be, and the same is hereby amended to read as follows:

67-5726. PROHIBITIONS. (1) No contract or order or any interest therein shall be transferred by the contractor or vendor to whom such contract or order is given to any other party, without the approval in writing of the administrator. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the state. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state. No member of the legislature or any officer or employee of any branch of the state government shall directly, himself, or by any other person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Idaho, if made by, through, or on behalf of the department in which he is an officer or employee; or if made by, through or on behalf of any other department unless the same ~~are~~ is made after competitive bids.

(2) Except as provided by section 67-5718, Idaho Code, no officer or employee shall influence or attempt to influence the award of a contract to a particular ~~registered~~ vendor, or to deprive or attempt to deprive any ~~registered~~ vendor of an acquisition contract.

(3) No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a ~~registered~~ vendor of an acquisition award.

(4) No officer or employee shall fail to utilize an open contract without justifiable cause for such action. No officer or employee shall accept property which he knows does not meet specifications or substantially meet the original performance test results.

(5) Deprivation, influence or attempts thereat shall not include written reports, based upon substantial evidence, sent to the administrator of the division of purchasing concerning matters relating to the responsibility of ~~registered~~ vendors.

(6) No vendor or related party, or subsidiary, or affiliate of a vendor may submit a bid to obtain a contract to provide property to the state, if the vendor or related party, or affiliate or subsidiary was paid for services utilized in preparing the bid specifications or if the services influenced the procurement process.

SECTION 8. That Section 67-5727A, Idaho Code, be, and the same is hereby amended to read as follows:

67-5727A. PARTICIPATION IN GROUP DISCOUNT PURCHASING. (1) In addition to other means of procuring stocks of commonly used items, the division administrator may authorize an agency to become a participating member of a group discount purchasing organization, if the administrator finds that:

(a) The items to be acquired are at ~~lease~~ least equal in quality to similar items or the same items that the agency uses;

(b) The items to be acquired are less costly to the state than if acquired by other means authorized in this chapter;

(c) The state's participation in the organization is formalized by

a written contract that extends for no longer than one (1) year at a time; and

(d) The state's entrance fee, or participation fee, in the organization is based on criteria applied to all other members of the organization, provides no ownership rights~~;--and~~

~~(e)--The-supplier-is-a-registered-vendor.~~

(2) Any contract entered into under the provisions of this section shall be maintained on file with the division, as well as with the agency entering into the contract.

(3) Items acquired shall be used solely by state departments and agencies and may not be transferred from state ownership until useful life is extinguished and may not be provided to individuals except those in the custody of the state or to those receiving direct personal services from the state.

SECTION 9. That Section 67-5729, Idaho Code, be, and the same is hereby amended to read as follows:

67-5729. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. All rules of the division of purchasing shall be adopted in accordance with the provisions of chapter 52, title 67, Idaho Code. Only ~~purchase~~ appeals conducted as contested cases pursuant to section 67-5733(1)(c)(iii), Idaho Code, shall be subject to the judicial review provisions of chapter 52, title 67, Idaho Code. This section shall not impair any contract right or contract remedy which may exist between the state and a properly licensed ~~or-registered~~ contractor or vendor.

The determinations officer provided in ~~section-67-5733,-Idaho--Code,~~ this chapter may subpoena witnesses and evidence and administer oaths.

In the event that a determinations officer is appointed pursuant to the provisions of section 67-5733, Idaho Code, any ~~registered~~ vendor who has submitted a bid in the process under review shall, notwithstanding any other disability, have standing to intervene in the proceeding as a party and such intervenor may participate in the purchase appeal or appeal from any final order entered in a contested case conducted under section 67-5733(1)(c)(iii), Idaho Code.

SECTION 10. That Section 67-5730, Idaho Code, be, and the same is hereby amended to read as follows:

67-5730. ~~REGISTRATION~~ QUALIFICATION OF VENDORS -- ~~RULES-AND-PROCEDURE----FAILURE-TO-BID---~~ DISQUALIFICATION OF VENDORS -- NOTICE -- APPEALS. (1) No vendor shall be allowed to submit a bid unless such vendor is qualified. ~~and-has-registered-prior-to-the--time--of--the--bid opening.~~ All vendors are qualified unless disqualified. ~~Qualified-vendors-shall-be-registered-at-any-time--upon--request--and--submission--of information--required--by--rule--of-the-administrator-of-the-division-of purchasing-which-shall-include,-but-not-be-limited--to,--the--following: name-of-the-vendor,-an-official-address-and-telephone-number-at-which-to receive-notices-from-the-administrator-of-the-division-of-purchasing-and a--list--of--the--property--which-the-vendor-would-sell-or-supply-to-the state,-and-this-list-may-be-stated-in-terms-of-a-general-class-of--property--in-place-of-a-specific-itemization.-A-ten-dollar-($10.00)-biennial registration-fee-shall-accompany-the--request,--which--moneys--shall--be deposited-in-the-general-account-of-the-state-treasury.~~

~~Notice--of-renewal-shall-be-mailed-to-the-registered-vendor-at-least sixty-(60)-days-prior-to-the-expiration-date-of-the--vendor's--registration.--Failure--to-renew-the-registration-and-pay-the-biennial-registration-fee-shall-result-in-removal-of-the-vendor-from-the-list--of--qualified-vendors.~~

~~Registered--vendors--may-be-removed-from-the-list-of-registered-vendors-for-failure-to-participate-by-submitting-a-bid-in-five-(5)-consecutive-acquisitions-of-property-which-such-vendor-is-registered-to--supply to--the--state,--and--for-which-the-vendor-has-been-notified-of-intended acquisition;-provided,-however,-that-submission--of--a--no-bid--response shall--not-be-deemed-failure-on-the-part-of-the-vendor-to-participate.-A vendor-so-removed-shall-be-given-notice-of-removal-and-shall-be-eligible for-re-registration-at-any-time-unless-otherwise-disqualified.~~

(2) Vendors may be disqualified for any of the following reasons:

(a) Failure to perform according to the terms of any agreement;

(b) Attempts by whatever means to cause acquisition specifications to be drawn so as to favor a specific vendor;

(c) Use of the provisions of this chapter to obstruct or unreasonably delay acquisitions by the state. Obstruction is hereby defined as a lack of success in more than fifty ~~per-cent~~ percent (50%) of the specification challenges made in each of three ~~(3)~~ different acquisitions during any twenty-four (24) month period;

(d) Perjury in a vendor disqualification hearing;

(e) To knowingly violate the provisions of this chapter; or

(f) Debarment, suspension or ineligibility from federal contracting of the vendor, its principals or affiliates.

(3) A vendor shall be notified by registered mail within ten (10) days of disqualification and ~~may,~~ within thirty (30) days of the receipt of such notice, request of the director of the department of administration a hearing before a determinations officer. Any hearings shall be held in accordance with chapter 52, title 67, Idaho Code.

(4) In lieu of disqualification, the determinations officer may recommend to the director of the department of administration specific conditions to the vendor's continued participation in acquisitions by the state.

(5) Disqualification or conditions may be imposed for a period of not less than six (6) months or not more than five (5) years.

SECTION 11. That Section 67-5732, Idaho Code, be, and the same is hereby amended to read as follows:

67-5732. RULES. In addition to any other rules promulgated by the administrator, he shall adopt rules which shall serve to enhance the intent of this chapter. Among the subjects addressed shall be rules addressing specifications development, performance testing and the submission and evaluation of bids.~~:~~

~~(1)--Rules-requiring-specifications-to-be-in-writing,-to-contain-all requirements-including-alternatives,-to-set-forth-all-methods-and-procedures--to--be--used--in--the-submission-and-evaluation-of-bids,-and-such other-matters-as-are-necessary-to-facilitate-the-bidding-process;~~

~~(2)--A-rule-providing-a-means-for-interested-vendors-to-cause-alteration-of-any-specification-issued-if-such-alteration--will--improve--the competitiveness-of-bidding;~~

~~(3)--Rules--establishing-the-procedures-for-performance-tests,-where~~

~~practical-and-advisable;-and-requiring-equipment-tested-during-the--bidding--procedure-to-substantially-meet-or-exceed-those-test-results-prior to-acceptance-by-the-state;~~

~~(4)--Rules-controlling-acquisition-of-components-which-shall-prevent substantial-changes-in-the-performance--of--equipment--through--multiple successive-acquisitions;~~

~~(5)--Rules-requiring,-when-practical,-specifications-to-describe-the function--sought,--the-end-results-desired-and-the-effect-to-be-achieved by-the-property-to-be-acquired;~~

~~(6)--Special-rules-for-specific-categories-of-property,-that-because of-the-nature-of-the-property--and--its--distinguishability--from--other types-of-property,-require-specialized-treatment-to-insure-a-more-effective-bidding-process.~~

SECTION 12. That Section 67-5733, Idaho Code, be, and the same is hereby amended to read as follows:

67-5733. DIVISION OF PURCHASING -- APPEALS.

(1) (a) There shall be, beginning with the day of receipt of notice, a period of not more than ten (10) working days in which any vendor, ~~registered as~~ qualified and able to sell or supply the items to be acquired, may notify in writing the administrator of the division of purchasing of his intention to challenge the specifications and shall specifically state the exact nature of his challenge. The specific challenge shall describe the location of the challenged portion or clause in the specification document, unless the challenge concerns an omission, explain why any provision should be struck, added or altered, and contain suggested corrections.

Upon receipt of the challenge, the administrator of the division of purchasing shall either deny the challenge, and such denial shall be considered the final agency decision, or he shall present the matter to the director of the department of administration for appointment of a determinations officer. If the director of the department of administration appoints a determinations officer, then all ~~registered~~ vendors, who are invited to bid on the property sought to be acquired, shall be ~~sent a copy of both the notice to challenge~~ notified of the appeal and the appointment of determinations officer and may indicate in writing their agreement or disagreement with the challenge within five (5) days. The notice to the vendors may be electronic. Any ~~registered~~ vendor may note his agreement or disagreement with the challenge. The determinations officer may, on his own motion, refer the challenge portion and any related portions of the challenge to the author of the specification to be rewritten with the advice and comments of the ~~registered~~ vendors capable of supplying the property; rewrite the specification himself and/or reject all or any part of any challenge. If specifications are to be rewritten, the matter shall be continued until the determinations officer makes a final determination of the acceptability of the revised specifications.

The administrator shall reset the bid opening no later than fifteen (15) days after final determination of challenges or the amendment of the specifications. If the administrator denies the challenge, then the bid opening date shall not be reset.

The final decision of the determinations officer or administra-

tor on the challenge to specifications shall not be considered a contested case within the meaning of the administrative procedure act; provided that a vendor disagreeing with specifications may include such disagreement as a reason for asking for appointment of a determinations officer pursuant to section 67-5733(1)(c), Idaho Code.

(b) There shall be, beginning with the day following receipt of notice of rejection, a period of five (5) working days in which a bidder whose bid was found nonresponsive may appeal such decision to the director of the department of administration. A nonresponsive bid, within the meaning of this chapter, is a bid which does not comply with the bid invitation and specifications and shall not apply to a vendor whose bid is considered but who is determined not to be the lowest responsible bidder as defined in this chapter. The director shall:

(i) Deny the application; or

(ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's decision of bid nonresponsiveness.

The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's nonresponsive bid decision. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of chapter 52, title 67, Idaho Code.

(c) A vendor whose bid is considered may, within five (5) working days following receipt of notice that he is not the lowest responsible bidder, apply to the director of the department of administration for appointment of a determinations officer. The application shall set forth in specific terms the reasons why the administrator's decision is thought to be erroneous. Upon receipt of the application, the director shall within three (3) working days:

(i) Deny the application, and such denial shall be considered the final agency decision; or

(ii) Appoint a determinations officer to review the record to determine whether the administrator's selection of the lowest responsible bidder is correct; or

(iii) Appoint a determinations officer with authority to conduct a contested case hearing in accordance with the provisions of chapter 52, title 67, Idaho Code.

A determinations officer appointed pursuant to section 67-5733(1)(c)(ii), Idaho Code, shall inform the director by written recommendation whether, in his opinion, the administrator's selection of the lowest responsible bidder is correct. The determinations officer in making this recommendation may rely on the documents of record, statements of employees of the state of Idaho participating in any phase of the selection process, and statements of any vendor submitting a bid. A contested case hearing shall not be allowed and the determinations officer shall not be required to solicit statements from any person. Upon receipt of the recommendation from the determinations officer, the director shall sustain, modify or reverse the decision of the administrator on the selection of the lowest responsible bidder or the director may appoint a determinations officer pursuant to section 67-5733(1)(c)(iii), Idaho Code.

A determinations officer appointed pursuant to section 67-5733(1)(c)(iii), Idaho Code, shall conduct a contested case hearing and upon conclusion of the hearing shall prepare findings of fact, conclusions of law and a recommended order for the director of the department of administration. Upon receipt of the findings of fact, conclusions of law and recommended order, the director shall enter a final order sustaining, modifying or reversing the decision of the administrator on the selection of the lowest responsible bidder.

(d) In the case of a sole source procurement, there shall be a period of not more than five (5) working days from the last date of public notice in which any vendor, able to sell or supply the item(s) to be acquired, may notify the administrator of the division of purchasing, in writing, of his intention to challenge the sole source procurement and briefly explain the nature of the challenge.

Upon receipt of the challenge, the director shall ~~appoint a determinations officer to hear the challenge and, upon receipt of the written recommendation of the determinations officer, sustain, modify or reverse the approval for the sole source procurement. If unregistered, the vendor issuing the challenge shall be required to register as a vendor to the state~~ either:

(i) Deny the application; or

(ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's sole source determination.

The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's sole source determination. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of chapter 52, title 67, Idaho Code.

(e) The administrator of the division of purchasing may, on his own initiative, file a complaint with the director for a hearing before a determinations officer. The director shall appoint a determinations officer who shall make written recommendations to the director and the director shall render whatever decision is necessary to resolve the complaint.

(2) The director of the department of administration is hereby authorized and directed to appoint a determinations officer whenever one is required by this chapter. The officer shall meet and render whatever determination is called for. When a complaint is filed pursuant to section 67-5733(1)(b), Idaho Code, no bid may be awarded until the final decision is rendered by the director of the department of administration; provided that in all other cases where a determinations officer is appointed by the director, the director shall have the power to allow the acquisition contract to be awarded to the successful bidder prior to or after the decision of the determinations officer if he determines such award to be in the best interest of the state. Any determinations officer appointed pursuant to this ~~chapter~~ section shall exist only for the duration of unresolved complaints on an acquisition and shall be dismissed upon resolution of all such complaints. The determinations officer shall be guided in his determination by the best economic interests of the state for both the near future and more extended periods of time. In addition to the powers conferred on the determinations officer,

the director of the department of administration may: impose the penalty prescribed by section 67-5734(3), Idaho Code; enjoin any activity which violates this chapter; direct that bids be rejected, or sustained; direct that specifications be rejected, sustained or modified; and direct further legal action.

(3) Challenges or appeals ~~filed~~ conducted pursuant to section 67-5733(1)(a), (1)(b), (1)(c)(i) or (1)(c)~~(ii),~~ Idaho Code, shall not be considered to be a contested case as that term is defined in the administrative procedure act. An appeal ~~filed~~ conducted pursuant to section 67-5733(1)(c)(iii), Idaho Code, shall be conducted as a contested case according to the provisions of chapter 52, title 67, Idaho Code.

Approved March 6, 2001.

CHAPTER 37
(S.B. No. 1020)

AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW; AMENDING SECTION 72-1368, IDAHO CODE, TO DELETE THE PENALTY FOR EMPLOYERS WHO FAIL TO PROVIDE SEPARATION INFORMATION WITHIN TEN DAYS OF A DEPARTMENT REQUEST; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 72-1368, Idaho Code, be, and the same is hereby amended to read as follows:

72-1368. CLAIMS FOR BENEFITS AND APPELLATE PROCEDURE. (1) Claims for benefits shall be made in accordance with such rules as the director may prescribe.

(2) ~~(a)~~ Each employer shall post and maintain in places readily accessible to individuals performing services for him printed statements concerning benefit rights under this chapter which shall be provided by the department without cost to the employer.

~~(b) On and after July 1, 1999, an employer who receives a department request for separation information after a claim has been filed shall provide the information to the department within ten (10) days from the date the request was mailed. The time limit provided in this subsection may be extended by the department at its discretion, upon the request of an employer. Notwithstanding any other provision of this chapter, an employer who fails, without good cause, to provide the requested information within the time provided in this subsection or as extended by the department shall be precluded from contesting any determinations on the claim, including chargeability determinations, or participating in any hearing on the claim as an interested party. If an employer asserts that there was good cause for such failure or that the requested information was provided by the due date, the employer must so notify the department in writing within fourteen (14) days after notice, as provided in subsection (5) of this section, of the initial determination on the claim. After affording the employer a reasonable opportunity for a hearing

~~on--the-issue;-an-appeals-examiner-shall-decide-whether-the-employer has-shown-that-the-requested-information-was--provided--by--the--due date--or--that--good--cause--existed--for-the-failure-to-provide-the requested-information-by-the-due-date.-The-decision-of--the--appeals examiner--shall--be-final-and-shall-not-be-subject-to-appeal.-If-the appeals-examiner-decides-that-the-requested--separation--information was--provided--to--the-department-by-the-due-date-or-that-good-cause existed-for-the-employer's-failure-to-timely--provide--the--informa-tion,-the-employer-shall-have-fourteen-(14)-days-after-notice-of-the decision--to-contest-any-determinations-that-have-been-issued-on-the claim.~~

(3) A representative of the department hereinafter referred to as a claims examiner shall examine a claim filed pursuant to subsection (1) of this section and, on the basis of the facts found by him, shall determine whether the claimant is eligible for benefits and, if eligible, the date his benefit year begins, the weekly benefit amount, the total benefit amount, the base period wages, and the base period covered employers. In the event of a denial of benefits, the determination shall include the reasons for the ineligibility. Before the determination becomes final or an appeal is filed, the claims examiner, on his own motion, may issue a revised determination. The determination or revised determination shall become final unless, within fourteen (14) days after notice, as provided in subsection (5) of this section, an appeal is filed by an interested party with the department.

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

(5) All interested parties shall be entitled to prompt service of notice of determinations and decisions. A notice shall be deemed served if delivered to the person being served or if mailed to his last known address; service by mail shall be deemed complete on the date of mailing.

(6) To hear and decide appeals from determinations and redeterminations, the director shall appoint appeals examiners. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination or redetermination involved, after affording the interested parties reasonable opportunity for a fair hearing, or may refer a matter back to the claims examiner for further

action. The appeals examiner shall notify the interested parties of his decision by serving notice in the same manner as provided in subsection (5) of this section. The decision shall set forth findings of fact and conclusions of law. The appeals examiner may, either upon application for rehearing by an interested party or on his own motion, rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted or on the basis of additional evidence; provided, that such application or motion be made within ten (10) days after the date of service of the decision. A complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at any hearing shall be recorded. If a claim for review of the appeals examiner's decision is filed with the commission, the testimony shall be transcribed if ordered by the commission. Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed by the director. If any interested party to a hearing formally requests the appeals examiner to issue a subpoena for a witness whose evidence is deemed necessary, the appeals examiner shall promptly issue the subpoena, unless such request is determined to be unreasonable. Unless an interested party shall within fourteen (14) days after service of the decision of the appeals examiner file with the commission a claim for review or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final.

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

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

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

(10) (a) Benefits shall be paid promptly in accordance with any decision allowing benefits, regardless of:

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

(ii) The pendency of an appeal or petition for review.

(b) Such payments shall not be withheld until a subsequent appeals examiner decision or commission decision modifies or reverses the previous decision, in which event benefits shall be paid or denied in accordance with such decision.

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

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

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

Approved March 8, 2001.

CHAPTER 38
(S.B. No. 1046)

AN ACT

RELATING TO THE CLASSIFICATION OF EMPLOYEES; AMENDING SECTION 67-5303, IDAHO CODE, TO LIMIT THE DEFINITION OF NONCLASSIFIED EMPLOYEES OF THE STATE BRAND BOARD TO THE STATE BRAND INSPECTOR AND ALL DISTRICT SUPERVISORS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 25-1104, IDAHO CODE, TO PROVIDE CERTAIN AUTHORITY TO THE STATE BRAND INSPECTOR IN RELATION TO THE FOUR DISTRICT SUPERVISORS, TO PROVIDE THAT THE IDAHO CLASSIFIED PERSONNEL SYSTEM SHALL GOVERN THE EMPLOYMENT OF CERTAIN EMPLOYEES AND TO CORRECT A CODIFIER ERROR.

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

SECTION 1. That Section 67-5303, Idaho Code, be, and the same is

hereby amended to read as follows:

67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state of Idaho and all employees in such departments, except those employees specifically defined as nonclassified, shall be classified employees, who are subject to this act and to the system of personnel administration which it prescribes. Nonclassified employees shall be:

(a) Members of the state legislature and all other officers of the state of Idaho elected by popular vote, and persons appointed to fill vacancies in elective offices, and employees of the state legislature.

(b) Members of statutory boards and commissions and heads of departments appointed by and serving at the pleasure of the governor, deputy directors appointed by the director and members of advisory boards and councils appointed by the departments.

(c) All employees and officers in the office, and at the residence, of the governor; and all employees and officers in the offices of the ~~lieutenant-governor~~ lieutenant governor, secretary of state, attorney general, state treasurer, state controller, and state superintendent of public instruction who are appointed on and after the effective date of this act.

(d) Except as otherwise provided by law, not more than one (1) declared position for each board or commission and/or head of a participating department in addition to those declared to be nonclassified by other provisions of law.

(e) Part-time professional consultants who are paid on a fee basis for any form of legal, medical or other professional service, and who are not engaged in the performance of administrative duties for the state.

(f) Judges, temporary referees, receivers and jurors.

(g) All employees of the Idaho supreme court and district courts.

(h) All employees of the Idaho state bar.

(i) Assistant attorneys general attached to the office of the attorney general.

(j) Officers, members of the teaching staffs of state educational institutions, the professional staff of the Idaho department of education administered by the board of regents and the board of education, and the professional staffs of the Idaho division of professional-technical education and vocational rehabilitation administered by the state board for professional-technical education. "Teaching staff" includes teachers, coaches, resident directors, librarians and those principally engaged in academic research. The word "officer" means presidents, vice presidents, deans, directors, or employees in positions designated by the state board who receive an annual salary of not less than step "A" of the pay grade equivalent to three hundred fifty-five (355) Hay points in the state compensation schedule. A nonclassified employee who is designated as an "officer" on July 5, 1991, but does not meet the requirements of this subsection, may make a one (1) time irrevocable election to remain nonclassified. Such an election must be made not later than August 2, 1991. When such positions become vacant, these positions will be reviewed and designated as either classified or nonclassified in accordance with this subsection.

(k) Employees of the military division.

(l) Patients, inmates or students employed in a state institution.

(m) Persons employed in positions established under federal grants,

which, by law, restrict employment eligibility to specific individuals or groups on the basis of nonmerit selection requirements. Such employees shall be termed "project exempt" and the tenure of their employment shall be limited to the length of the project grant, or twenty-four (24) months, or four thousand one hundred sixty (4,160) hours of credited state service, whichever is of the shortest duration. No person hired on a project-exempt appointment shall be employed in any position allocated to the classified service.

(n) Temporary employees.

(o) All employees and officers of the following named commodity commissions, and all employees and officers of any commodity commission created hereafter: the Idaho potato commission, as provided in chapter 12, title 22, Idaho Code; the Idaho honey advertising commission, as provided in chapter 28, title 22, Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22, Idaho Code; the Idaho prune commission, as provided in chapter 30, title 22, Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, title 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33, title 22, Idaho Code; the Idaho pea and lentil commission, as provided in chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in chapter 37, title 22, Idaho Code; the Idaho mint grower's commission, as provided in chapter 38, title 22, Idaho Code; the state board of sheep commissioners, as provided in chapter 1, title 25, Idaho Code; the state brand ~~board~~ inspector, and all district supervisors, as provided in chapter 11, title 25, Idaho Code; the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and the Idaho dairy products commission, as provided in chapter 31, title 25, Idaho Code.

(p) All inspectors of the fresh fruit and vegetable inspection service of the Idaho department of agriculture, except those positions involved in the management of the program.

(q) All employees of the division of correctional industries within the department of correction.

(r) All wardens employed by the department of correction.

(s) All public information positions with the exception of secretarial positions, in any department.

(t) Any division administrator.

(u) Any regional administrator or assistant administrator in the division of environmental protection in the department of health and welfare.

(v) All employees of the division of financial management.

(w) All employees of the Idaho food quality assurance institute.

(x) The state appellate public defender, deputy state appellate public defenders and all other employees of the office of the state appellate public defender.

(y) All quality assurance specialists or medical investigators of the Idaho board of medicine.

SECTION 2. That Section 25-1104, Idaho Code, be, and the same is hereby amended to read as follows:

25-1104. OFFICERS, DEPUTIES AND ASSISTANTS. The state brand inspector, with the approval of the state brand board, and within the limits of any appropriation made available for such purposes, shall appoint,

fix the compensation, determine the tenure of office, and prescribe the duties and powers of ~~such~~ four (4) district supervisors. The employment of other officers, deputies, and assistants as may be necessary for the performance of the duties of his office~~, and~~ shall be subject to the provisions of chapter 53, title 67, Idaho Code. The state brand inspector shall station deputies and assistants in such localities as he shall deem ~~advi~~sable for the performance of his duties, and the sher~~iff and~~ his deputies in the counties of the state may perform the duties of ex officio brand inspectors under the guidelines set forth by the state brand board and state law. When the sheriff or his deputies act in the capacity of ex officio brand inspector as provided herein, they shall collect all brand inspection fees and other fees as provided by law and remit the same to the state brand inspector. Compensation for the sheriff and his deputies when acting as ex officio brand inspectors may be fixed by contract between the state brand board and the sheriff in accordance with section 31-3101, Idaho Code.

Approved March 8, 2001.

CHAPTER 39
(S.B. No. 1048)

AN ACT

RELATING TO SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO A MINOR; AMENDING SECTION 39-5705, IDAHO CODE, TO STRIKE A REQUIREMENT TO VERIFY AGE; AMENDING SECTION 39-5708, IDAHO CODE, TO PROVIDE A SCHEDULE OF PENALTIES FOR VIOLATION OF PERMIT; AMENDING SECTION 39-5710, IDAHO CODE, TO PROVIDE A FORMULA FOR DETERMINATION OF THE NUMBER OF INSPECTIONS TO BE CONDUCTED; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 39-5705, Idaho Code, be, and the same is hereby amended to read as follows:

39-5705. SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO A MINOR. (1) It shall be unlawful to sell, distribute or offer tobacco products to a minor.

(2) ~~Tobacco products may not be sold or distributed--at--retail--to any person under eighteen (18) years of age unless the seller first verifies that person's age by means of photographic identification containing the person's date of birth.~~

~~(3)~~ It shall be an affirmative defense that the seller of a tobacco product to a minor in violation of this section had requested, examined and reasonably relied upon a photographic identification from such person establishing that person's age as at least eighteen (18) years of age prior to selling such person a tobacco product. The failure of a seller to request and examine photographic identification from a person under eighteen (18) years of age prior to the sale of a tobacco product to such person shall be construed against the seller and form a conclusive basis for the seller's violation of this section.

SECTION 2. That Section 39-5708, Idaho Code, be, and the same is hereby amended to read as follows:

39-5708. CIVIL PENALTIES FOR VIOLATIONS OF PERMIT. Any permittee who fails to comply with any part of this chapter, or any current state or local law or rule or regulation regarding the sale or distribution of tobacco products shall be subject to a civil penalty as provided in this section or have their permit suspended, pursuant to compliance with the contested case provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, or both.

(1) If a seller who is not a permittee violates section 39-5705, Idaho Code, and sells or distributes tobacco products to a minor, the seller shall be fined one hundred dollars ($100).

(2) In the case of a first violation, the permittee shall be notified in writing of penalties to be levied for further violations.

(3) In the case of a ~~first~~ second violation, the permittee shall be fined two hundred dollars ($200) and shall be notified in writing of penalties to be levied for further violations. For a violation of section 39-5705, Idaho Code, the permittee shall not be fined if the permittee can show that a training program was in place for the employee and that the permittee has a form signed by that employee on file stating that they understand the tobacco laws dealing with minors and the unlawful purchase of tobacco, but the permittee shall be notified in writing of penalties to be levied for any further violations. If no such training is in place, the permittee shall be fined two hundred dollars ($200).

(~~3~~4) In the case of a ~~second~~ third violation in a two (2) year period, the permittee shall be fined ~~four~~ two hundred dollars ($~~4~~200) and the permit may be suspended for up to seven (7) days. If the violation is by an employee, at the same location, who was involved in any previous citation for violation, the permittee shall be fined four hundred dollars ($400). Effective training and employment practices by the permittee, as determined by the department shall be a mitigating factor in determining ~~permit~~ suspension. Tobacco retailers must remove all tobacco products from all areas accessible to or visible to the public while the permit is suspended.

(~~4~~5) In the case of ~~three~~ four (~~3~~4) or more violations within a two (2) year period, the permittee shall be fined ~~one thousand~~ four hundred dollars ($~~1,0~~400) and the permit shall be revoked until such time that the permittee demonstrates an effective training plan to the department, but in no case shall the revocation be for less than thirty (30) days. Tobacco retailers must remove all tobacco products from all areas accessible to or visible to the public while the permit is revoked.

(~~5~~6) All moneys collected for violations pursuant to this section shall be remitted to the prevention of minors' access to tobacco fund created in section 39-5711, Idaho Code.

SECTION 3. That Section 39-5710, Idaho Code, be, and the same is hereby amended to read as follows:

39-5710. CONDUCT OF ENFORCEMENT ACTIONS. (1) It is the intent of the legislature that law enforcement agencies and the department shall enforce this chapter and rules promulgated pursuant thereto in a manner that can reasonably be expected to significantly reduce the extent to

which tobacco products are sold or distributed to minors.

(2) Law enforcement agencies may conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this chapter. A copy of all citations issued under this chapter shall be submitted to the department.

(3) The department shall conduct at least ~~two~~ one (~~2~~1) random, unannounced inspections per year, with the assistance of a minor, at all locations where tobacco products are sold or distributed at retail to ensure compliance with this chapter. Each year the department shall conduct random unannounced inspections, with the assistance of a minor, equal to the number of permittees multiplied by the violation percentage rate reported for the previous year multiplied by a factor of ten (10). Local law enforcement agencies are encouraged to contract with the ~~department to perform~~ these required inspections.

(4) Minors may assist with random, unannounced inspections with the written consent of a parent or legal guardian. When assisting with these inspections, minors shall not provide false identification, nor make any false statement regarding their age.

(5) Citizens may file a written complaint of noncompliance of this chapter with the department, or with a law enforcement agency. Complaints shall be investigated and the proper enforcement actions taken.

(6) Within a reasonable time, not later than two (2) business days after an inspection has occurred, a representative of the business inspected shall be informed in writing of the results of the inspection.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2001.

Approved March 8, 2001.

CHAPTER 40
(S.B. No. 1058)

AN ACT

RELATING TO THE IMPORTATION OF CIGARETTES; AMENDING SECTION 63-2523, IDAHO CODE, TO UPDATE A REFERENCE TO THE INTERNAL REVENUE CODE FOR PURPOSES OF PENALTIES; REPEALING SECTION 63-2524, IDAHO CODE; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 63-2523, Idaho Code, be, and the same is hereby amended to read as follows:

63-2523. PROHIBITIONS. It shall be unlawful for any person:

(1) To sell or distribute in this state; to acquire, hold, own, possess or transport, for sale or distribution in this state; or to bring into this state for sale or distribution in this state:

(a) Any cigarettes the package of which:

(i) Bears any statement, label, stamp, sticker or notice

indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States including, but not limited to, labels stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S." or similar wording; or

(ii) Does not comply with:

1. All requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States including, but not limited to, the precise warning labels specified in the federal cigarette labeling and advertising act, 15 U.S.C. section 1333; and

2. All federal trademark and copyright laws;

(b) Any cigarettes imported into the United States in violation of ~~26 U.S.C.~~ section 5754 of the Internal Revenue Code as defined in section 63-3004, Idaho Code, or any other federal law, or implementing federal regulations;

(c) Any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(d) Any cigarettes for which there has not been submitted to the secretary of the U.S. department of health and human services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal cigarette labeling and advertising act, 15 U.S.C. section 1335a;

(2) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(a) Any statement, label, stamp, sticker or notice described in subparagraph (1)(a)(i) of this section;

(b) Any health warning that is not specified in, or does not conform with the requirements of, the federal cigarette labeling and advertising act, 15 U.S.C. section 1333; or

(3) To affix any stamp required pursuant to chapter 25, title 63, Idaho Code, to the package of any cigarettes described in subsection (1) of this section or altered in violation of subsection (2) of this section.

SECTION 2. That Section 63-2524, Idaho Code, be, and the same is hereby repealed.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2001.

Approved March 8, 2001.

CHAPTER 41
(S.B. No. 1165)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE INDUSTRIAL COMMISSION FOR FISCAL YEAR 2001; 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 43, Laws of 2000, there is hereby appropriated to the Industrial Commission 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, 2000, through June 30, 2001:

I. COMPENSATION:

FOR:	
Trustee and Benefit Payments	$189,000
FROM:	
Industrial Administration Fund	$189,000

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 8, 2001.

CHAPTER 42
(S.B. No. 1091)

AN ACT

RELATING TO FUNDS OF MUNICIPAL CORPORATIONS; AMENDING SECTION 50-1013, IDAHO CODE, TO PROVIDE ADDITIONAL AUTHORIZED INVESTMENTS FOR FUNDS OF MUNICIPAL CORPORATIONS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 50-1013, Idaho Code, be, and the same is hereby amended to read as follows:

50-1013. DEPOSIT AND INVESTMENT OF FUNDS. The treasurer shall be required to keep all money in his hands belonging to the corporation in such place or places of deposit as shall be provided by ordinance; provided, however, that the treasurer may be directed and empowered by resolution, to invest any money in his hands in any of the following:

(a) Revenue bonds issued by the ~~R~~revenue ~~B~~bond ~~A~~act.

(b) City coupon bonds provided for under section 50-1019, Idaho Code.

(c) Local improvement district bonds provided for under chapter 17, title 50, Idaho Code.

(d) Time deposit accounts with public depositories.

(e) Bonds, treasury bills, interest-bearing notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(f) General obligation bonds of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.

(g) General obligation bonds of any county, city, metropolitan water district, municipal utility district, school district or other taxing district of this state.

(h) Notes, bonds, debentures, or other similar obligations issued by the Ffarm Ccredit Ssystem or institutions forming a part thereof under the Ffarm Ccredit Aact of 1971 (12 U.S.C.,~~tit.12,~~ sections 2001-2259) and all Aacts of Ccongress amendatory thereof or supplementary thereto; in bonds or debentures of the Ffederal Hhome Lloan Bbank Bboard established under the Ffederal Hhome Lloan Bbank Aact (12 U.S.C.,~~tit.12,~~ sections 1421-1449); in bonds, debentures and other obligations of the Ffederal Nnational Mmortgage Aassociation established under the Nnational Hhousing Aact (12 U.S.C.,~~tit.12,~~ sections 1701-1750g) as amended, and in the bonds of any federal home loan bank established under said act and in other obligations of agencies and instrumentalities of the government of the state of Idaho or of the United States.

(i) Bonds, notes or other similar obligations issued by public corporations of the state of Idaho including, but not limited to, the Idaho state building authority, the Idaho housing authority and the Idaho water resource board, but such investment shall not extend beyond seven (7) days.

(j) Repurchase agreements and reverse repurchase agreements covered by any legal investment for the state of Idaho or as otherwise allowed by this section, provided that reverse repurchase agreements shall only be used for the purpose of liquidity and not for leverage or speculation.

(k) Tax anticipation bonds or notes, income and revenue anticipation bonds or notes and registered warrants of the state of Idaho or of taxing districts of the state of Idaho.

(l) Savings accounts including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(m) Time deposit accounts and other savings accounts of state or federal savings and loan associations located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the federal savings and loan corporation, including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(n) Share, savings and deposit accounts of state and federal credit unions located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the national credit union share insurance fund and/or any other authorized share guaranty corporation, including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(o) Prime banker's acceptances.

(p) Prime commercial paper.

(q) Money market funds, mutual funds, or any other similar funds whose portfolios consist of any allowed investment as specified in this section.

(r) Bonds, debentures or notes of any corporation organized, controlled and operating within the United States which have, at the time of their purchase, an A rating or higher by a commonly known rating service.

Approved March 15, 2001.

CHAPTER 43
(S.B. No. 1162)

AN ACT
RELATING TO POWERS AND DUTIES OF THE PARK AND RECREATION BOARD; AMENDING SECTION 67-4223, IDAHO CODE, TO AUTHORIZE THE BOARD TO WAIVE FEES FOR CERTAIN DISABLED IDAHO VETERANS.

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

SECTION 1. That Section 67-4223, Idaho Code, be, and the same is hereby amended to read as follows:

67-4223. POWERS OF BOARD. The park and recreation board shall:

(a) Adopt, amend or rescind rules as may be necessary for the proper administration of the provisions of sections 67-4218, et seq., Idaho Code, and the use and protection of park and recreational areas subject to its jurisdiction. A violation of any rule promulgated by the board pursuant to this provision which concerns the use and protection of park and recreation areas is an infraction.

(b) Make expenditures for the acquisition, care, control, supervision, improvement, development, extension and maintenance of all lands under the control of the department and to make arrangements, agreements, contracts or commitments, which may or may not involve expenditures or transfer of funds, with the head of any state institution, department or agency for the improvement or development of lands or properties under the control of the board, or any other department or agency of the state of Idaho.

(c) Appoint advisory, local and regional park and recreational councils, to consider, study and advise in the work of the department for the extension, development, use and maintenance of any areas which are to be considered as future park or recreational sites or which are designated as park recreational areas.

(d) Appoint a six (6) member recreational vehicle advisory committee, who shall be compensated as provided in section 59-509(f), Idaho Code, and act in an advisory capacity to the board on matters relating to the development and improvement of recreational vehicle related facilities and services as provided in subsection (e) of this section. Each member of the advisory committee shall be representative of recreational vehicle users with one (1) from each of the districts described in section 67-4221, Idaho Code. The terms of appointment shall be concurrent with the incumbent park and recreation board member from the respective districts.

(e) Administer the funds derived from the recreational vehicle account established in section 49-448, Idaho Code, to provide financial assistance in the form of grants to public entities for the acquisition, lease, development, improvement, operations and maintenance of facilities and services designed to promote the health, safety and enjoyment of recreational vehicle users. Up to fifteen percent (15%) of the recreational vehicle account generated each year may be used by the department to defray recreational vehicle program administrative costs. Any moneys unused at the end of the fiscal year shall be returned to the state treasurer for deposit in the recreational vehicle account.

(f) Cooperate with the United States and its agencies and local governments of the state for the purpose of acquiring, supervising, improving, developing, extending or maintaining lands which are designated as state parks, state monuments or state recreational areas and to secure agreements or contracts with the United States and its agencies or local governments of the state for the accomplishment of the purposes of sections 67-4218, et seq., Idaho Code.

(g) Construct, lease or otherwise establish public park or recreational privileges, facilities and conveniences and to operate said recreational services and to make and collect reasonable charges for their use or to enter into contracts for their operation. The board may discount fees in order to offer use incentives to generate additional revenue for operation of the state park system. The board may provide for waiver of fees to any resident of Idaho who is a disabled veteran and whose disability is rated at one hundred percent (100%) or higher, permanent and total. The net proceeds derived shall be credited to the park and recreation account established in section 67-4225, Idaho Code, and are hereby specifically appropriated to defray the cost of the public park or recreational services. The department is specifically authorized to enter into contracts with the United States and its agencies which require that the state expend any excess of revenue above expenses for improvements of the recreational or park area from which the excess was derived.

(h) Prepare, maintain and keep up-to-date a comprehensive plan for the provision of the outdoor recreational resources of the state; to develop, operate and maintain outdoor recreational areas and facilities of the state, and to acquire lands, waters and interests in lands and waters for such areas and facilities.

(i) Apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation. It may enter into contracts and agreements with the United States or any appropriate agency thereof, keep financial and other records relating thereto and furnish to appropriate officials and agencies of the United States reports and information as may be reasonably necessary to enable officials and agencies to perform their duties under such programs. In connection with obtaining the benefits of any program, the park and recreation board shall coordinate its activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development and maintenance of outdoor recreational resources and facilities.

(j) Obligate the state regarding the responsible management of any federal funds transferred to it for the purpose of any federal enactment and, in accordance with the exercise of this responsibility, the state hereby consents to be sued in any United States district court for the recovery of any federal funds that the responsible federal official, department or agency finds have been misused or disposed of contrary to the agreement with the federal official, department or agency or contrary to the provisions of federal enactment or applicable federal regulations.

(k) Cooperate and contract with and receive and expend aid, donations and matching funds from the government of the United States, receive and expend funds from the STORE and to receive and expend donations from other sources to acquire, develop, operate and maintain outdoor recreational areas and facilities of the state and, when authorized

or directed by any act of congress or any rule or regulation of any agency of the government of the United States, to expend funds donated or granted to the state of Idaho by the federal government for such purposes.

Provided, however, the park and recreation board shall make no commitment or enter into any agreement pursuant to an exercise of authority under sections 67-4218, et seq., Idaho Code, until it has determined that sufficient funds are available to it for meeting the state's share, if any, of project costs. It is legislative intent that, to the extent as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of sections 67-4218, et seq., Idaho Code, such areas and facilities shall be publicly maintained for outdoor recreational purposes. The park and recreation board may enter into and administer agreements with the United States or any appropriate agency thereof for planning, acquisition and development projects involving participating federal-aid funds or state funds on behalf of any subdivision or subdivisions of this state. Provided, that the subdivision or subdivisions give necessary assurances to the park and recreation board that they have available sufficient funds to meet their shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of the subdivision or subdivisions for public outdoor recreational use.

(1) Establish, develop, supervise and maintain through cooperative agreement, lease, purchase or other arrangement the Idaho recreation trail system, with the advice of the coordinator created in section 67-4233, Idaho Code, and consistent with the goals of recreation, transportation and public access to outdoor areas.

Approved March 15, 2001.

CHAPTER 44
(S.B. No. 1078)

AN ACT

RELATING TO COMPENSATION OF HIGHWAY DISTRICT COMMISSIONERS; AMENDING SECTION 40-1314, IDAHO CODE, TO INCREASE THE MAXIMUM ALLOWABLE SALARY FOR COMMISSIONERS OF DISTRICTS ORGANIZED UNDER CHAPTER 17, TITLE 40, IDAHO CODE, TO NINE HUNDRED DOLLARS PER MONTH AND TO ONE THOUSAND DOLLARS PER MONTH FOR THE PRESIDENT OR CHAIRMAN OF THE DISTRICT, TO INCREASE THE SALARY OF COMMISSIONERS OF ALL OTHER DISTRICTS TO SEVENTY-FIVE DOLLARS PER DAY NOT TO EXCEED A MAXIMUM OF SIX THOUSAND DOLLARS PER YEAR, AND TO PROVIDE A CODE REFERENCE; AND AMENDING SECTION 40-1404A, IDAHO CODE, TO INCREASE THE MAXIMUM ALLOWABLE SALARY OF COMMISSIONERS IN COUNTYWIDE HIGHWAY DISTRICTS IN COUNTIES WITH A POPULATION OF MORE THAN TWO HUNDRED THOUSAND TO ONE THOUSAND TWO HUNDRED DOLLARS PER MONTH AND TO ONE THOUSAND FOUR HUNDRED DOLLARS PER MONTH FOR THE PRESIDENT OF THE DISTRICT.

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

SECTION 1. That Section 40-1314, Idaho Code, be, and the same is hereby amended to read as follows:

40-1314. COMPENSATION OF HIGHWAY DISTRICT COMMISSIONERS, OFFICERS, AGENTS AND EMPLOYEES. (1) The highway district commissioners may be compensated as follows:

(a) Commissioners of a countywide highway district organized under the provisions of chapter 14, title 40, Idaho Code, as provided in sections 40-1404 and 40-1404A, Idaho Code.

(b) Commissioners of a countywide highway district organized under the provisions of chapter 17, title 40, Idaho Code, a salary not to exceed ~~five~~ nine hundred dollars ($~~5~~900) per calendar month for each member with the exception of the president or chairman of the highway commissioners who may receive ~~six hundred~~ one thousand dollars ($~~6~~1,000) per calendar month, provided the population of the county exceeds fifty thousand (50,000).

(c) Commissioners of all other highway districts, a salary of ~~fifty~~ seventy-five dollars ($75~~0~~.00) for each day in the actual performance of duties, but the total amount to be received as compensation shall not exceed the sum of ~~four~~ six thousand dollars ($~~4~~6,000) per year.

(2) Actual expenses shall be paid in addition to their compensation. The payment for expenses shall be paid from the funds of the highway district upon the presentation of itemized vouchers, signed by the commissioners and under oath made to the secretary of the district.

(3) When a commissioner is an officer and/or agent of the district, the two (2) remaining commissioners may fix the compensation to be paid him for his services as an officer and/or agent. A commissioner acting as an officer and/or agent of the district shall be entitled to his necessary and actual expenses in addition to his salary, but shall not be entitled to draw compensation as a commissioner when placed upon a salary. The board shall fix the compensation to be paid to the other officers and agents and employees of the highway district, to be paid out of the treasury of the highway district.

(4) Commissioners are considered employees of the district. The district shall be liable and responsible for the actions of the commissioners, officers, agents and/or employees of the district when the commissioners, officers, agents and/or employees are performing their duties on behalf of the district.

SECTION 2. That Section 40-1404A, Idaho Code, be, and the same is hereby amended to read as follows:

40-1404A. ELECTIONS, TERMS AND SALARIES OF COMMISSIONERS IN CERTAIN COUNTYWIDE HIGHWAY DISTRICTS. In countywide highway districts located in a county with a population of more than two hundred thousand (200,000) persons in which the voters have chosen to establish a countywide highway district at a previous election, the county shall be divided by the county commissioners immediately upon the effective date of this act into five (5) subdistricts which shall be as nearly equal in population as practicable. No precincts shall be divided. A highway district commissioner shall be a resident of the subdistrict which he represents. Voters in each subdistrict shall vote only for one (1) candidate seeking to represent that subdistrict. County commissioners, mayors and city

council members shall not be eligible to hold office as a countywide highway district commissioner. At the election held in 1998, commissioners representing subdistricts two and five shall be elected for two (2) year terms and commissioners representing subdistricts three and four shall be elected for four (4) year terms. Thereafter, all commissioners shall be elected for four (4) year terms. Any incumbent in office on the effective date of this act may complete the term to which they were elected and shall represent the subdistrict in which they reside. Any incumbent in office on the effective date of this act whose term expires on January 1, 2000, shall retain that office until January 1, 2000, shall be assigned the subdistrict in which they reside by the county commissioners, which subdistrict shall be numbered one as provided in this section and that commissioner need not stand for election in 1998.

A qualified voter of the countywide highway district shall be eligible to vote for a countywide highway district commissioner residing in the elector's subdistrict, and the election shall be conducted as provided by Idaho statutes relating to holding general elections at the county level.

The highway commissioners shall take office on January 1 of the year immediately following their election, and each may receive a salary not to exceed ~~six~~ one thousand two hundred dollars ($61,200) per calendar month with the exception of the president of the highway commissioners who may receive a salary not to exceed ~~seven~~ one thousand four hundred dollars ($71,400) per calendar month.

Approved March 16, 2001.

CHAPTER 45
(S.B. No. 1137)

AN ACT

RELATING TO GOLDEN STAR TRAFFIC ACCIDENT MEMORIALS; AMENDING SECTION 49-1316, IDAHO CODE, TO PROVIDE THAT TRAFFIC ACCIDENT MEMORIALS SHALL NOT BE LIMITED TO GOLDEN STARS, AND TO REQUIRE THE CONSENT OF THE NEXT OF KIN OF THE DECEASED PRIOR TO PLACING A TRAFFIC ACCIDENT MEMORIAL ADJACENT TO THE SITE OF THE ACCIDENT AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 49-1316, Idaho Code, be, and the same is hereby amended to read as follows:

49-1316. ERECTION OF ~~GOLDEN STARS AS A~~ MEMORIALS TO PERSONS KILLED IN TRAFFIC ACCIDENTS. As a means of promoting safety upon the highways of this state, the transportation department, the state police and other law enforcement officers shall permit relatives or friends of a person killed in a traffic accident upon a highway of the state, with the consent of the next of kin of the deceased, to erect a ~~golden star~~ traffic accident memorial in memory of the decedent. The ~~golden star~~ traffic accident memorial shall be erect~~ed adj~~acent to the portion of the highway where the accident occurred so that the ~~star~~ traffic accident memo-

rial serves as a reminder that a fatality occurred on that stretch of highway and that public safety will thereby be enhanced. The transportation department shall promulgate rules ~~and regulations~~ to implement the provisions of this section, to provide ~~the~~ size ~~a golden star~~ limitations the traffic accident memorial must conform to and to retain jurisdiction over areas where ~~the golden stars~~ traffic accident memorials are placed.

Approved March 19, 2001.

CHAPTER 46
(S.B. No. 1036)

AN ACT

RELATING TO ADJUSTMENTS TO TAXABLE INCOME; AMENDING SECTION 63-3022, IDAHO CODE, TO PROVIDE THAT IF THE CONTRIBUTION IS MADE TO COLLEGE SAVINGS ACCOUNTS ON OR BEFORE APRIL 15, 2001, IT MAY BE DEDUCTED FOR TAX YEAR 2000, TO PROVIDE THAT AN INDIVIDUAL CAN MAKE ANOTHER CONTRIBUTION AND CLAIM THE DEDUCTION ACCORDING TO THE LIMITS PROVIDED IN THIS SUBSECTION DURING 2001 FOR TAX YEAR 2001 AS LONG AS THE CONTRIBUTION IS MADE ON OR BEFORE DECEMBER 31, 2001, TO PROVIDE THAT, IN THE CASE OF AN INDIVIDUAL, THE AMOUNT OF A NONQUALIFIED WITHDRAWAL FROM AN INDIVIDUAL TRUST ACCOUNT OR SAVINGS ACCOUNT ESTABLISHED PURSUANT TO CHAPTER 54, TITLE 33, IDAHO CODE, SHALL BE ADDED TO TAXABLE INCOME 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 63-3022, 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, 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 suc-

ceeding 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) 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.

(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.

(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 com-

bined 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.

(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.

(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.

(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.

(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.

(~~o~~n) 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. If the contribution is made on or before April 15, 2001, it may be deducted for tax year 2000 and an individual can make another contribution and claim the deduction according to the limits provided in this subsection during 2001 for tax year 2001, as long as the contribution is made on or before December 31, 2001.

(o) In the case of an individual, add the amount of a nonqualified withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, 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, 2001.

Approved March 19, 2001.

CHAPTER 47
(H.B. No. 2)

AN ACT

RELATING TO MEDICAL ASSISTANCE; AMENDING SECTION 56-227E, IDAHO CODE, TO CLARIFY CONDITIONS WHICH CONSTITUTE A VIOLATION OF THE LIMITATION ON

CLAIMS FOR TRANSPORTATION OF MEDICAID CLIENTS; AND AMENDING SECTION 2, CHAPTER 360, LAWS OF 2000, TO EXTEND THE SUNSET CLAUSE.

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

SECTION 1. That Section 56-227E, Idaho Code, be, and the same is hereby amended to read as follows:

56-227E. TRANSPORTATION OF MEDICAID CLIENTS. When five (5) or more medicaid clients are being transported by a noncommercial transportation provider in a motor vehicle, reimbursement to the driver or the owner of the motor vehicle shall be calculated as though the vehicle contained five (5) clients. If this section creates an undue hardship, the director may, in writing and signed by the director, grant exceptions on a case-by-case basis. Any person ~~receiving~~ who submits a claim for reimbursement beyond the amounts allowed in this section shall be subject to the provisions of sections 56-209h and 56-227A thr~~ough~~ 56-227C, Idaho Code, and the director shall promptly cause such action~~s~~ as appropriate to be instituted.

SECTION 2. That Section 2, Chapter 360, Laws of 2000, be, and the same is hereby amended to read as follows:

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; provided that the provisions of this act shall be null, void and of no force and effect on and after June 30, 200~~1~~2.

Approved March 19, 2001.

CHAPTER 48
(H.B. No. 62)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-340B, IDAHO CODE, TO PROVIDE AN ADDITIONAL EXEMPTION FOR RECORDS OF A PRISONER OR FORMER PRISONER UNDER CONDITIONS SPECIFIED; AND AMENDING SECTION 9-342, IDAHO CODE, TO LIMIT ACCESS TO RECORDS OF AN AGENCY FORMERLY HAVING HAD CUSTODY OF A PRISONER.

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(6), 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) Until July 1, 2001, records of the department of correction 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 would substantially prejudice or prevent the carrying out of the functions of the department of correction 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.

(c) Records of the commission of pardons and parole shall be exempt from public disclosure pursuant to section 20-213A, Idaho Code, and section 20-223, Idaho Code. Records exempt from disclosure shall also include those containing the names, addresses and written statements of victims.

(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 Idaho state police 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 discrimina-

tion 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 Idaho state police. Such records shall be released only in accordance with chapter 30, title 67, Idaho Code.

(12) Records of a prisoner or former prisoner in the custody of any state or local correctional facility, when the request is made by another prisoner in the custody of any state or local correctional facility.

SECTION 2. That Section 9-342, Idaho Code, be, and the same is hereby amended to read as follows:

9-342. ACCESS TO RECORDS ABOUT A PERSON BY A PERSON. (1) A person may inspect and copy the records of a public agency or independent public body corporate and politic pertaining to that person, even if the record is otherwise exempt from public disclosure.

(2) A person may request in writing an amendment of any record per-

taining to that person. Within ten (10) days of the receipt of the request, the public agency or independent public body corporate and politic shall either:

(a) Make any correction of any portion of the record which the person establishes is not accurate, relevant, or complete; or

(b) Inform the person in writing of the refusal to amend in accordance with the request and the reasons for the refusal, and indicate clearly the person's right to appeal the refusal and the time period for doing so. The procedures for appealing a refusal to amend shall be the same as those set forth in sections 9-343 and 9-344, Idaho Code, and the court may award reasonable costs and attorney's fees to the prevailing party or parties, if it finds that the request for amendment or refusal to amend was frivolously pursued.

(3) The right to inspect and amend records pertaining to oneself does not include the right to review:

(a) Otherwise exempt investigatory records of a public agency or independent public body corporate and politic if the investigation is ongoing;

(b) Information that is compiled in reasonable anticipation of a civil action or proceeding which is not otherwise discoverable;

(c) The information relates to adoption records;

(d) Information which is otherwise exempt from disclosure by statute or court rule;

(e) Records of a prisoner maintained by the state or local agency having custody of the prisoner or formerly having custody of the prisoner or by the commission of pardons and parole.

Approved March 19, 2001.

CHAPTER 49
(H.B. No. 63)

AN ACT

RELATING TO INJURY TO CHILDREN; AMENDING SECTION 18-1501, IDAHO CODE, TO PROVIDE PENALTIES FOR CERTAIN ADDITIONAL CIRCUMSTANCES CAUSING ENDANGERMENT OR INJURY TO A CHILD.

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

SECTION 1. That Section 18-1501, Idaho Code, be, and the same is hereby amended to read as follows:

18-1501. INJURY TO CHILDREN. (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(3) A person over the age of eighteen (18) commits the crime of injury to a child if the person transports a minor in a motor vehicle or vessel as defined in section 67-7003, Idaho Code, while under the influence of alcohol, intoxicating liquor, a controlled substance, or any combination thereof, in violation of section 18-8004 or 67-7034, Idaho Code. Any person convicted of violating this subsection is guilty of a misdemeanor. If a child suffers bodily injury or death due to a violation of this subsection, the violation will constitute a felony punishable by imprisonment for not more than ten (10) years, unless a more severe penalty is otherwise prescribed by law.

(4) The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to have violated the duty of care to such child.

Approved March 19, 2001.

CHAPTER 50
(H.B. No. 64)

AN ACT

RELATING TO ADMINISTRATION OF COUNTY JAILS; AMENDING SECTION 20-619, IDAHO CODE, TO INCREASE THE FEE A COUNTY JAIL MAY CHARGE TO NONINDIGENT INMATES FOR SEEING MEDICAL PERSONNEL.

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

SECTION 1. That Section 20-619, Idaho Code, be, and the same is hereby amended to read as follows:

20-619. FEE FOR MEDICAL SERVICE. (1) County sheriff departments administering county jails may charge a nominal fee of ~~one~~ five dollars ($~~1~~5.00) to any nonindigent inmate who has sufficient funds in his commissary/personal account for the purpose of seeing the jail provided doctor or nurse for a medical complaint. In the event that an inmate is indigent, such service shall be provided by the county at no cost.

(2) The county sheriff departments administering county jails may charge actual costs to any nonindigent inmate who has sufficient funds in his commissary/personal account for pharmaceuticals prescribed or authorized by jail medical staff.

(3) A "nonindigent" inmate, for purposes of this section, is an inmate who has money in his commissary/personal account normally used for the purchase of personal items for the inmate.

Approved March 19, 2001.

CHAPTER 51
(H.B. No. 100)

AN ACT

RELATING TO DISTRIBUTION OF SESSION LAWS; AMENDING SECTION 67-906, IDAHO CODE, TO PROVIDE THAT SESSION LAWS SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE LIST MAINTAINED BY THE SECRETARY OF STATE; AMENDING SECTION 67-907, IDAHO CODE, TO PROVIDE THAT BOOKS DISTRIBUTED TO OFFICERS IN THIS STATE, EXCEPT LEGISLATIVE OFFICERS, ARE THE PROPERTY OF THE STATE AND MUST BE DELIVERED TO SUCCESSORS IN OFFICE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-906, Idaho Code, be, and the same is hereby amended to read as follows:

67-906. DISTRIBUTION OF SESSION LAWS AND JOURNALS. (1) Immediately after the session laws are bound, they shall be delivered to the secretary of state, and the secretary of state shall distribute them within thirty (30) days of receipt from the printer in accordance with the list maintained by the secretary of state. ~~as follows:~~

~~(a) To each department of government of this state, one (1) copy;~~

~~(b) To the library of congress, four (4), and to the state library, two (2) copies;~~

~~(c) To the senators and representatives in the United States congress representing Idaho, and to each of the justices of the Supreme Court of this state, and judges and magistrates of the district courts, one (1) copy;~~

~~(d) To each member of the legislature of the session when such session laws were adopted, one (1) copy;~~

~~(e) To the office of the attorney general, five (5) additional copies;~~

~~(f) To the legislature in sufficient number for one (1) copy for each standing committee of the house and senate;~~

~~(g) To the clerk of the district court of each county, sufficient copies of the session laws to supply one (1) copy for the board of county commissioners, and one (1) copy to each elected county officer and to the public defender;~~

~~(h) To Idaho state law library, five (5) copies;~~

~~(i) To each state and territory in the United States, one (1) copy for the use of the state law library;~~

~~(j) To each university or college law library sending to Idaho state law library copies of its law review, one (1) copy; and~~

~~(k) To the University of Idaho, College of Law library, thirty two (32) copies.~~

(2) Immediately after the journals that are to be sold through the secretary of state's office are delivered to the secretary of state, the secretary of state shall offer such journals for sale to any person at the price fixed for such journals by the printing committee as provided in section 67-509, Idaho Code. Any moneys received by the secretary of state from the sale of journals shall be deposited in the general account in the state operating fund.

SECTION 2. That Section 67-907, Idaho Code, be, and the same is hereby amended to read as follows:

67-907. BOOKS DISTRIBUTED TO OFFICERS -- ~~MARKING AS~~ PROPERTY OF STATE. ~~The secretary must indelibly mark each book~~ Books distributed to officers in this state, ~~(~~except legislative officers~~)~~, ~~to indicate state ownership. Such books remain~~ are the property of the state, and must be, by the officers receiving them, delivered to their successors.

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 19, 2001.

CHAPTER 52
(H.B. No. 109)

AN ACT
RELATING TO TAXES ON CIGARETTES; REPEALING SECTION 63-2521, IDAHO CODE; AND AMENDING CHAPTER 25, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-2521, IDAHO CODE, TO PROVIDE FOR PAYMENTS OF REFUNDS OF CIGARETTE TAXES.

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

SECTION 1. That Section 63-2521, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 25, 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 63-2521, Idaho Code, and to read as follows:

63-2521. REFUNDS -- LIMITATIONS -- INTEREST. (1) Where there has been an overpayment of any cigarette tax imposed by this chapter, the amount of such overpayment shall be credited against any taxes then due to the state tax commission from the taxpayer and any balance of such excess shall be refunded to the taxpayer.

(2) No such credit or refund of taxes, penalties or interest paid, shall be allowed or made after three (3) years from the time the return was filed, unless before the expiration of such period a claim therefor is filed by the taxpayer with the commission.

(3) Interest shall be allowed on the amount of such credits or refunds at the rate provided in section 63-3045, Idaho Code, from the date such tax was paid.

(4) If the state tax commission denies a claim for refund in whole or in part, it shall provide notice of the denial and the claimant may petition the state tax commission for a redetermination of the denial in the manner provided in section 63-3045, Idaho Code. Appeal of a tax com-

mission decision denying in whole or in part a claim for refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code.

Approved March 19, 2001.

CHAPTER 53
(H.B. No. 111)

AN ACT

RELATING TO EXTENSIONS OF TIME TO FILE INCOME TAX RETURNS; AMENDING SECTION 63-3033, IDAHO CODE, TO ELIMINATE THE REQUIREMENT TO MAKE ESTIMATED PAYMENTS OF LESS THAN FIFTY DOLLARS AND TO CLARIFY THE PENALTY FOR UNDERPAYMENT OF ESTIMATED TAXES; PROVIDING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

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

SECTION 1. That Section 63-3033, Idaho Code, be, and the same is hereby amended to read as follows:

63-3033. EXTENSION OF TIME. (a) Taxpayers shall have an automatic extension of time for filing any return, declaration, statement or other document, or payment required by this chapter for a period of six (6) months if on or before the unextended due date the taxpayer has paid at least eighty percent (80%) of the total tax due on the income tax return when it is filed, or the total tax due on the income tax return for the prior year if a return was filed for the prior year.

(b) If, on the unextended due date, the payment required to meet the provisions of subsection (a) of this section, after consideration of any previous credits or payments applicable to the return, is fifty dollars ($50.00) or less, such payment shall not be required in order to qualify for the extension. However, interest shall accrue as provided in subsection (f) of this section.

(c) Taxpayers residing outside any of the United States and Puerto Rico (including persons in military or naval service) shall have an automatic extension of time within which to file income tax returns with this state for a period which shall expire on the fifteenth day of the sixth month following the close of their taxable year.

(~~c~~d) Taxpayers who are military personnel or residents of foreign nations and entitled to extensions for filing federal income tax returns as a result of the application of the provisions of sections 911 and 7508 of the Internal Revenue Code, shall be entitled to extensions of time for the same period for filing income tax returns with the state of Idaho subject to the requirements imposed in implementation of the indicated sections.

(~~d~~e) Any taxpayer entitled to an extension under subsection (~~b~~c) or (~~c~~d) of this section shall attach a statement to his return claiming his right to the extension.

(~~e~~f) If the amount of payment made under subsection (a) of this section is less than eighty percent (80%) of the total tax due under the provisions of this chapter and is less than the amount of the total tax

due on the income tax return for the prior year, except as permitted by subsection (b) of this section, a penalty may be applied to the total of the balance due unless reasonable cause can be established. The penalty shall be:

(1) If the ~~return is filed and~~ taxes for the taxable year are paid on or before the extended due date, two percent (2%) per month from the original due date to the date of payment.

(2) If the ~~return--is not filed or the~~ taxes for the taxable year are not paid on or before the extended due date, the penalty provided in section 63-3046(c), Idaho Code, from the original due date.

(~~f~~g) In all cases of an extension of time in which to file any return, interest shall be paid on any tax due from the original due date to date of payment at the rate provided in section 63-3045, Idaho Code.

SECTION 2. This act shall be in full force and effect on and after January 1, 2002 and shall first apply to tax returns due on and after January 1, 2002.

Approved March 19, 2001.

CHAPTER 54
(H.B. No. 112)

AN ACT

RELATING TO ELECTRONICALLY FILED TAX RETURNS; AMENDING SECTION 63-115, IDAHO CODE, TO PROVIDE A NONREFUNDABLE CREDIT AGAINST TAXES FOR ELECTRONICALLY FILING A TAX RETURN WITH THE STATE TAX COMMISSION; PROVIDING AN EFFECTIVE DATE AND PROVIDING APPLICATION.

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

SECTION 1. That Section 63-115, Idaho Code, be, and the same is hereby amended to read as follows:

63-115. 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, or section 63-117, Idaho Code.

(2) In the case of any tax return electronically filed with the state tax commission as provided in subsection (1) of this section, there shall be allowed a credit against any taxes properly reported on such return a nonrefundable credit of two dollars ($2.00).

(3) 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~~4) 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, 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.

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

(56) 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:

(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;

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

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

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

(67) 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, and shall apply to tax returns filed for periods beginning on and after January 1, 2002.

Approved March 19, 2001.

CHAPTER 55
(H.B. No. 119)

AN ACT

RELATING TO SALES TAX DISTRIBUTION; AMENDING SECTION 63-3638, IDAHO CODE, TO CLARIFY THE TIME AND METHOD OF CERTAIN DISTRIBUTIONS 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 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:

(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.

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

(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.

(4) 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.

(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.

(6) An amount required by the provisions of chapter 53, title 33, Idaho Code. ~~of this section~~

(7) One dollar ($1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, 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.

(8) Thirteen and three-quarters percent (13.75%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be paid in installments each calendar quarter by the tax commission as follows:

(a) 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.

(b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as follows:

(i) One million three hundred twenty thousand dollars

($1,320,000) annually 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 does not equal the amount paid in the fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.

(iii) 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.

(~~ii~~iv) 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~~v) 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.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (8)(d).

(vii) 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.

(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 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, 2001.

Approved March 19, 2001.

CHAPTER 56
(H.B. No. 120)

AN ACT

RELATING TO REFUNDS OF INCOME TAXES; AMENDING SECTION 63-3035, IDAHO CODE, TO STRIKE PROVISIONS RELATING TO THE TIME WITHIN WHICH TO CLAIM REFUNDS FROM WITHHOLDING, RELATING TO REFUNDS OF LESS THAN WHOLE DOLLAR AMOUNTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3035A, IDAHO CODE, TO STRIKE PROVISIONS RELATING TO THE TIME WITHIN WHICH TO CLAIM REFUNDS FROM WITHHOLDING OF LOTTERY WINNINGS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3036A, IDAHO CODE, TO CHANGE A CROSS REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 63-3072, IDAHO CODE, TO PROVIDE THE TIME WITHIN WHICH TO CLAIM REFUNDS FROM WITHHOLDING AND TO PROVIDE PROCEDURES.

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

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

63-3035. STATE WITHHOLDING TAX ON PERCENTAGE BASIS -- WITHHOLDING, COLLECTION AND PAYMENT OF TAX. (a) Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee (other than employees specified in Internal Revenue Code section 3401(a)(2)) shall, at the time of such payment of wages, salary, bonus or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this chapter. The state tax commission shall prepare tables showing amounts to be withheld, and shall supply same to each employer subject to this section. In the event that an employer can demonstrate administrative inconvenience in complying with the exact requirements set forth in these tables, he may, with the consent of the state tax commission and upon application to it, use a different method which will produce substantially the same amount of taxes withheld. Every employer making payments of wages or salaries earned in Idaho, regardless of the place where such payment is made:

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

(2) must pay to the state tax commission monthly on or before the 20th day of the succeeding month, or at such other times as the state tax commission may allow, an amount of tax which, under the provisions of this chapter, he is required to deduct and withhold;

(3) shall register with the state tax commission, in the manner prescribed by it, to establish an employer's withholding account number. The account number will be used to report all amounts withheld, for the annual reconciliation required in this section, and for such other purposes relating to withholding as the state tax commission may require; and

(4) must, notwithstanding the provisions of paragraphs (1) and (2) of this subsection, if the amount of withholding of such employer for the preceding twelve (12) month period equals or exceeds sixty thousand dollars ($60,000) per annum or an average of five thousand dollars ($5,000) per month per annum, pay to the state tax commission on the basis of withholding periods which begin on the 16th day of the month and end on the 15th day of the following month, and payment shall be made not later than five (5) days after the end of the withholding period.

(5) If the payments made pursuant to subsections (a)(2) and (a)(4) of this section are equal to the withholding under this section shown or required to be shown on the return required by subsection (b)(1) of this section, no penalty shall apply to the underpayment for the period between the due date of the payment and the due date of the return. Interest, at the rate provided by section 63-3045, Idaho Code, shall apply to any such underpayment.

(6) Commencing in 1994, the state tax commission shall determine whether the threshold amounts established by subsection (a)(4) of this section must be adjusted to reflect fluctuations in the cost of living. The commission shall base its determination on the cumulative effect of the annual cost-of-living percentage modifications

determined by the United States secretary of health and human services pursuant to 42 USC 415(i). When the cumulative percentage applied to the monthly threshold amount equals or exceeds one thousand dollars ($1,000), the commission shall promulgate a rule adjusting the monthly threshold amount by one thousand dollars ($1,000) and making the necessary proportional adjustment to the annual threshold amount. The rule shall be effective for the next succeeding calendar year and each year thereafter until again adjusted by the commission. The tax commission shall determine subsequent adjustments in the same manner, in each case using the year of the last adjustment as the base year.

(b) (1) Every employer shall~~,~~ file a return upon such form as shall be prescribed by the state tax commission, but not more frequently than quarterly, or as required pursuant to any agreement between the state tax commission and the department of labor under section 63-3035B, Idaho Code. The return shall show, for the period to which it relates, the total amount of wages, salary, bonus or other emoluments paid to his employees, the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code, the amount deducted therefrom in accordance with the provisions of this section, the amount of any previous payments made pursuant to this section, and such pertinent and necessary information as the state tax commission may require.

(2) Every employer making a declaration of withholding as provided herein shall furnish to the employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and on or before the last day of February every employer shall file a copy thereof with the state tax commission. Every employer who is required, under Internal Revenue Code section 6011, to file returns on magnetic media or in other machine readable form may be required by rules of the state tax commission to file corresponding state returns on similar magnetic media or other machine readable form.

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

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

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his

tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. ~~No credit or refund shall be made to an employee who fails to file his return, as required under this chapter, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited. In the event that the excess tax deducted is less than one dollar ($1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed.~~

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

(g) An employee receiving wages shall on any day be entitled to not more than, but may claim fewer than, the number of withholding exemptions to which he is entitled under the Internal Revenue Code for federal income tax withholding purposes.

(h) An employer shall use the exemption certificate filed by the employee with the employer under the withholding exemption provisions of the Internal Revenue Code in determining the amount of tax to be withheld from the employee's wages or salary under this chapter. The tax commission may redetermine the number of withholding exemptions to which an employee is entitled under subsection (g) of this section, and the state tax commission may require such exemption certificate to be filed on a form prescribed by the commission in any circumstance where the commission finds that the exemption certificate filed for Internal Revenue Code purposes does not properly reflect the number of withholding exemptions to which the employee is entitled under this chapter. In no event shall any employee give an exemption certificate which claims a higher number of withholding exemptions than the number to which the employee is entitled by subsection (g) of this section.

SECTION 2. That Section 63-3035A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3035A. STATE INCOME TAX WITHHOLDING TAX ON LOTTERY WINNINGS. (1) Whenever the Idaho state lottery is required by the ~~i~~Internal ~~r~~Revenue ~~c~~Code to withhold, collect and pay over income tax ~~o~~n any prize~~,~~ pro~~c~~eeds or winnings it shall, at the time of payment of such prize, proceeds or winnings to the recipient, withhold from the payment an amount equal to eight and two-tenths percent (8.2%) of the prize, proceeds or winnings to be applied to Idaho income taxes due from the recipient.

(2) The state tax commission shall accept amounts withheld according to this section as payment by the recipient of the amount so withheld of income taxes imposed on the recipient for the taxable year in which the prize, proceeds or winnings are includable in the recipient's

Idaho taxable income.

(3) When the total amount withheld (along with other credits due, withholding or payments attributable to the taxpayer) exceeds the taxes due from the recipient, the state tax commission shall, after examining the state income tax return filed by the recipient, refund the amount of the excess withheld in the manner provided for refunds of withholding under section 63-3035, Idaho Code. ~~The state tax commission shall make no credit or refund to a person who fails to file within three (3) years from the due date, without regard to extensions, the return on which the tax withheld could have been credited.~~

(4) The Idaho state lottery shall remit the amounts withheld to the state tax commission on or before the date similar payments and reports are due to the internal revenue service.

(5) The Idaho state lottery shall furnish to the recipient, not later than thirty (30) days after the end of the calendar year, a record of the tax withheld during that year and shall, not later than the last day of the following February, file a copy of the record with the state tax commission.

(6) The Idaho state lottery and the state tax commission may agree to different times and procedures for making the remittances or reports required in this section.

(7) Nothing in this section relieves any taxpayer from an obligation to file a return or pay taxes at the time and in the manner required by this chapter.

SECTION 3. That Section 63-3036A, Idaho Code, be, and the same is hereby amended to read as follows:

63-3036A. PAYMENT OF ESTIMATED TAX. (a) Any corporation subject to this chapter which is required to make a payment of estimated taxes to the ~~I~~internal ~~R~~revenue ~~S~~service and will have an Idaho income tax liability of five hundred dollars ($500) or more shall pay to the state tax commission estimated taxes due under this chapter.

(b) The provisions of the Internal Revenue Code relating to determination of reporting periods and the due dates of payments of estimated tax shall apply to the estimated payments due under this section.

(c) The amount of estimated tax due shall be determined as follows:

(1) Commencing with the calendar quarter that begins July 1, 1987, in the case of any corporation which was required to pay tax under this chapter for its immediately preceding taxable year, the amount of each quarterly payment for its current taxable year shall be twenty-five ~~per cent~~ percent (25%) of the lesser of:

(i) The tax amount required to be reported on the return for the immediately preceding taxable year; or

(ii) Ninety ~~per cent~~ percent (90%) of the tax required to be paid with the current year's return.

(2) Any corporation required to make estimated payments under this section and who makes annualized estimated payments under the Internal Revenue Code shall be permitted to annualize its estimated payments under this section in the manner prescribed by regulation of the state tax commission. Such regulations shall, to the extent practicable, follow the provisions of the Internal Revenue Code and the regulations thereunder relating to annualization of estimated payments.

(d) The amounts paid as estimated taxes pursuant to subsection (c) of this section shall be considered to be in part payment of the tax imposed by this chapter on the person reporting such estimated tax. The part payment shall apply to such tax for the tax year during which the reporting period for which the estimate is made occurs. In the event that such part payments, together with all other part payments, estimated payments, withheld taxes or other credits allowable against the taxes imposed by this chapter shall exceed the amount of tax due, the state tax commission shall refund such excess within the time and in the manner prescribed in section 63-30~~35(e)~~72(c), Idaho Code, relating to refund of taxes withheld by employers.

(e) The provisions of this section shall in no way relieve any person from any obligation to file a return under any provision of this chapter at the time such return may be due. In the event that the estimated payments required under this section, together with any other part payments, estimated payments, withheld taxes or other credits applicable to the same taxable year are less than the amount of taxes imposed by this chapter, the unpaid tax shall be paid at the time prescribed in section 63-3034, Idaho Code.

(f) The payment due for the first full reporting period occurring after the effective date of this act, and the payment due for each of the next three (3) succeeding reporting periods shall be one-half (1/2) of the amount otherwise due under this section.

SECTION 4. That Section 63-3072, Idaho Code, be, and the same is hereby amended to read as follows:

63-3072. CREDITS AND REFUNDS. (a) Subject to the provisions of subsections (b), (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) ~~The state tax commission is authorized, and the state board of tax appeals is authorized to order the state tax commission in proper cases, to credit, remit, refund, or pay back all tax, penalties, and interest, erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claim for refund shall be certified to the state board of examiners by the state tax commission.~~

~~(c)~~ Except in regard to amounts withheld as provided in ~~subsection (e) of~~ section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made ~~within~~ the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

(c) With regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund shall be made within three (3) years from the due date of the return, without

regard to extensions, for the taxable year in respect to which the tax was withheld.

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (~~c~~b) and (g) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(e) If a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the period of limitations prescribed in subsection (~~c~~b) of this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss which results in such carryback.

(f) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss, claimed in such other tax year may be made and a claim for credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section.

(g) Prior to the expiration of the time prescribed in this section for credit or refund of any tax imposed by the provisions of this chapter, both the state tax commission or its delegate or deputy and the taxpayer may consent in writing to extend such period of time. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with the provisions of this subsection the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of claiming a credit or refund of tax, penalties or interest by the other taxpayers reflecting the pass-through entity adjustments.

(h) The expiration of the period of limitations as provided in this section shall be suspended for the time period ~~during which the taxpayer is prohibited from claiming a credit or refund of tax, penalties or interest imposed under the provisions of this chapter, and for thirty (30) days thereafter~~ between the issuance by the state tax commission of a notice under either section 63-3045 or 63-3065, Idaho Code, and the

final resolution of any proceeding resulting from the notice.

(i) Appeal of a state tax commission decision denying in whole or in part a claim for credit or refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code.

(j) For purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed.

Approved March 19, 2001.

CHAPTER 57
(H.B. No. 122)

AN ACT

RELATING TO THE USE TAX; AMENDING SECTION 63-3621, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM TAXATION FOR CERTAIN PERSONALLY OWNED MOTOR VEHICLES.

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

SECTION 1. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as follows:

63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after July 1, 1965, for storage, use, or other consumption in this state at the rate of five percent (5%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. A retailer shall not be considered to have stored, used or consumed wireless telecommunications equipment by virtue of giving, selling or otherwise transferring such equipment at a discount as an inducement to a consumer to commence or continue a contract for telecommunications service.

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other places of business in this state, and such other information as the state tax commission may require.

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the purchaser a resale certificate to the effect that the property is purchased for resale or rental. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property purchased is taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate.

A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate relieves the person selling the property from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds the permit provided for by section 63-3620, Idaho Code, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter.

The resale certificate shall bear the name and address of the purchaser, shall be signed by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(f) If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used.

(g) Any person violating any provision of this section is guilty of a misdemeanor and punishable by a fine not in excess of one hundred dol-

lars ($100), and each violation shall constitute a separate offense.

(h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

(i) It shall be presumed that tangible personal property delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage, use, or other consumption in this state. This presumption may be controverted by evidence satisfactory to the state tax commission that the property was not purchased for storage, use, or other consumption in this state.

(j) When the tangible personal property subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

(k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state.

(l) The use tax herein imposed shall not apply to the use of household goods, ~~and~~ personal effects and personally owned motor vehicles by a resident of this state, if such articles were acquired by such person in another state while a resident ~~of that~~ state and primar~~ily~~ for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

(m) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

(1) A nonprofit organization as defined in section 63-3622O, Idaho Code; or

(2) The state of Idaho; or

(3) Any political subdivision of the state.

This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person.

Approved March 19, 2001.

CHAPTER 58
(H.B. No. 160)

AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3004, IDAHO CODE, TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE; DECLARING AN EMERGENCY AND PROVIDING A RETROACTIVE EFFECTIVE DATE.

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

SECTION 1. That Section 63-3004, Idaho Code, be, and the same is hereby amended to read as follows:

63-3004. INTERNAL REVENUE CODE. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 200~~0~~1.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2001.

Approved March 19, 2001.

CHAPTER 59
(H.B. No. 178)

AN ACT

APPROPRIATING ADDITIONAL MONEYS TO THE IDAHO STATE HISTORICAL SOCIETY FOR FISCAL YEAR 2001; AUTHORIZING FIVE ADDITIONAL FULL-TIME EQUIVALENT 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 434, Laws of 2000, there is hereby appropriated to the State Board of Education for the Idaho State Historical Society 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 TRUSTEE AND BENEFIT PAYMENTS	TOTAL
I. HISTORIC PRESERVATION AND EDUCATION:				
FROM:				
General Fund	$ 59,600	$ 1,500		$ 61,100
Federal Grant Fund	293,000	50,000	$27,000	370,000
TOTAL	$352,600	$51,500	$27,000	$431,100
II. HISTORIC SITE MAINTENANCE AND INTERPRETATION:				
FROM:				
General Fund	$ 14,900			$ 14,900
GRAND TOTAL	$367,500	$51,500	$27,000	$446,000

SECTION 2. In addition to the authorization granted in Section 2, Chapter 434, Laws of 2000, the Idaho State Historical Society is authorized five (5) full-time equivalent positions for the period July 1, 2000, through June 30, 2001.

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 19, 2001.

CHAPTER 60
(H.B. No. 217)

AN ACT

RELATING TO THE STATE CONTROLLER; AMENDING SECTION 67-3604, IDAHO CODE, TO PROVIDE THAT ERROR CORRECTIONS RESULTING FROM A FISCAL YEAR'S ACTIVITIES IN STATE ACCOUNTS AS TO APPROPRIATIONS MAY BE RECORDED BY THE STATE CONTROLLER WITHOUT LEGISLATIVE AUTHORIZATION IN THE FOLLOWING FISCAL YEAR, PROVIDED THE CORRECTIONS DO NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS AND ARE RECORDED WITHIN SIX MONTHS OF THE END OF THE FISCAL YEAR AND TO PROVIDE CORRECTIONS EXCEEDING FIVE HUNDRED THOUSAND DOLLARS OR DISCOVERED MORE THAN SIX MONTHS AFTER THE END OF THE FISCAL YEAR SHALL BE APPROVED BY THE LEGISLATURE.

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

SECTION 1. That Section 67-3604, Idaho Code, be, and the same is hereby amended to read as follows:

67-3604. CLOSING ACCOUNTS BY STATE CONTROLLER. The state controller shall close his accounts as to all appropriations on the day following the close of each fiscal year, and transfer all balances unencumbered at the close of business on the preceding day to the accounts from which such appropriations are severally made. Error corrections resulting from a fiscal year's activities may be recorded without legislative authori-

zation in the following fiscal year, provided the corrections do not exceed five hundred thousand dollars ($500,000) and are recorded within six (6) months of the end of the fiscal year. Corrections exceeding five hundred thousand dollars ($500,000) or discovered more than six (6) months after the end of the fiscal year shall be approved by the legislature.

Approved March 19, 2001.

CHAPTER 61
(H.B. No. 218)

AN ACT

RELATING TO SERVICES PROVIDED BY STATE AGENCIES; AMENDING SECTION 48-606, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO DELETE REFERENCE TO INTERACCOUNT RECEIPTS, TO PROVIDE THAT FUNDS MAY BE EXPENDED PURSUANT TO LEGISLATIVE APPROPRIATION, TO PROVIDE THAT AT THE BEGINNING OF EACH FISCAL YEAR MONEYS IN THE CONSUMER PROTECTION FUND WHICH EXCEED THE CURRENT YEAR'S APPROPRIATION PLUS ANY RESIDUAL ENCUMBRANCES MADE AGAINST PRIOR YEARS' APPROPRIATIONS BY FIFTY PERCENT OR MORE SHALL BE TRANSFERRED TO THE GENERAL FUND AND TO PROVIDE THAT ANY MONEYS COLLECTED BY THE ATTORNEY GENERAL AS TRUSTEE FOR DISTRIBUTIONS TO INJURED CONSUMERS SHALL BE DEPOSITED IN THE STATE TREASURY UNTIL SUCH TIME AS PAYMENT IS MADE TO AN INDIVIDUAL OR INDIVIDUALS FOR RESTITUTION PURPOSES OR PURSUANT TO A COURT APPROVED CY PRES DISTRIBUTION; AMENDING SECTION 67-1401, IDAHO CODE, TO PROVIDE THAT THE ATTORNEY GENERAL SHALL PROVIDE LEGAL REPRESENTATION TO CERTAIN ENUMERATED STATE ENTITIES, TO PROVIDE THAT THE ATTORNEY GENERAL SHALL GIVE WRITTEN OPINIONS WITHOUT FEE TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION, TO DELETE REQUIREMENT THAT THE ATTORNEY GENERAL GIVE WRITTEN OPINIONS WITHOUT FEE TO THE TRUSTEES OR COMMISSIONERS OF STATE INSTITUTIONS AND TO PROVIDE THAT WRITTEN OPINIONS OF THE ATTORNEY GENERAL SHALL BE GIVEN UPON REQUEST BY CERTAIN STATE ENTITIES; AMENDING SECTION 67-1406, IDAHO CODE, TO CLARIFY WHICH STATE ENTITIES MAY EMPLOY PRIVATE COUNSEL; REPEALING SECTION 67-1407, IDAHO CODE; AMENDING CHAPTER 14, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1407, IDAHO CODE, TO PROVIDE FOR THE ASSESSMENT OF FEES FOR CERTAIN SERVICES; AMENDING SECTION 67-1408, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO DELETE LANGUAGE RELATING TO ASSESSMENTS AND APPROPRIATION REQUESTS FOR STATE LEGAL SERVICES; AMENDING SECTION 67-1409, IDAHO CODE, TO CLARIFY WHICH ENTITIES ARE EXEMPTED FROM CERTAIN REQUIREMENTS RELATING TO LEGAL SERVICES CONTRACTS; AND AMENDING SECTION 67-3531, IDAHO CODE, TO PROVIDE THAT THE DIVISION OF FINANCIAL MANAGEMENT SHALL PREPARE AN ESTIMATE OF COSTS FOR SERVICES PROVIDED BY CERTAIN STATE SERVICE AGENCIES, TO PROVIDE THAT THE DIVISION OF FINANCIAL MANAGEMENT SHALL NOTIFY STATE AGENCIES OF SUCH ESTIMATES BY NOVEMBER 1 AND TO PROVIDE THAT THE DIVISION OF FINANCIAL MANAGEMENT AND THE LEGISLATIVE SERVICES OFFICE SHALL ALLOW STATE AGENCIES TO MODIFY THEIR BUDGET REQUESTS IN RESPONSE TO SUCH ESTIMATES.

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

SECTION 1. That Section 48-606, Idaho Code, be, and the same is hereby amended to read as follows:

48-606. PROCEEDINGS BY ATTORNEY GENERAL. (1) Whenever the attorney general has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this chapter to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person:

(a) To obtain a declaratory judgment that a method, act or practice violates the provisions of this chapter;

(b) To enjoin any method, act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, upon the giving of appropriate notice to that person as provided by the Idaho rules of civil procedure;

(c) To recover on behalf of consumers actual damages or restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter;

(d) To order specific performance by the violator;

(e) To recover from the alleged violator civil penalties of up to five thousand dollars ($5,000) per violation for violation of the provisions of this chapter; and

(f) To recover from the alleged violator reasonable expenses, investigative costs and attorney's fees incurred by the attorney general.

(2) The action may be brought in the district court of the county in which such 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 action may be brought in any district court in this state. The said courts are authorized to issue temporary restraining orders or preliminary or permanent injunctions to restrain and prevent violations of the provisions of this chapter, and such injunctions shall be issued without bond.

(3) Unless the attorney general finds in writing that the purposes of this chapter will be substantially and materially impaired by delay in instituting legal proceedings, he shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated to the person against whom proceedings are contemplated and allow such person a reasonable opportunity to appear before the attorney general and execute an assurance of voluntary compliance or a consent judgment as in this chapter provided.

(4) In lieu of instigating or continuing an action or proceeding, the attorney general may accept a consent judgment with respect to any act or practice alleged to be a violation of the provisions of this chapter, and it may include a stipulation for the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The consent judgment may also include a stipulation for civil penalties to be paid, not in excess of five thousand dollars ($5,000) per alleged violation; a stipulation to pay to consumers actual damages or to allow for restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter; and/or a stipulation for specific performance. Before any consent judgment entered into pursuant to this

section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all penalties provided by law therefor, including the penalties set forth in section 48-615, Idaho Code.

(5) All penalties, costs and fees recovered by the attorney general shall be remitted to the consumer protection ~~account~~ fund which is hereby created in the state ~~operating--fund~~ treasury. Moneys in the ~~account shall be treated--as--interaccount--receipts--and~~ fund may be expended pursuant to ~~interaccount~~ legislative appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter. At the beginning of each fiscal year, those moneys in the consumer protection fund which exceed the current year's appropriation plus any residual encumbrances made against prior years' appropriations by fifty percent (50%) or more shall be transferred to the general fund.

(6) Any moneys collected by the attorney general as trustee for distributions to injured consumers shall be deposited in the state treasury until such time as payment is made to an individual or individuals for purposes of restitution or pursuant to a court approved cy pres distribution.

SECTION 2. That Section 67-1401, Idaho Code, be, and the same is hereby amended to read as follows:

67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in this chapter, it is the duty of the attorney general:

1. To perform all legal services for the state and to represent the state and all departments, agencies, offices, officers, boards, commissions, institutions and other state entities, in all courts and before all administrative tribunals or bodies of any nature. ~~Provided--however, that--such--r~~Representation shall be ~~for the legislative, and judicial branches, the governor, those state entities within--the--department--of self-governing--agencies,--colleges--and--universities, only upon request~~ provided to those entities exempted pursuant to the provisions of section 67-1406, Idaho Code. Whenever required to attend upon any court or administrative tribunal the attorney general shall be allowed necessary and actual expenses, all claims for which shall be audited by the state board of examiners.

2. To advise all departments, agencies, offices, officers, boards, commissions, institutions and other state entities in all matters involving questions of law.

3. After judgment in any of the causes referred to in the first subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

4. To account for and pay over to the proper officer all moneys received which belong to the state.

5. To supervise nonprofit corporations, corporations, charitable or benevolent societies, person or persons holding property subject to any public or charitable trust and to enforce whenever necessary any noncompliance or departure from the general purpose of such trust and, in order to accomplish such purpose, said nonprofit corporations, corporations, charitable or benevolent societies, person or persons holding

property subject to any public or charitable trust are subject at all times to examination by the attorney general, on behalf of the state, to ascertain the condition of its affairs and to what extent, if at all, said trustee or trustees may have failed to comply with trusts said trustee or trustees have assumed or may have departed from the general purpose for which it was formed. In case of any such failure or departure, the attorney general shall institute, in the name of the state, any proceeding necessary to enforce compliance with the terms of the trust or any departure therefrom.

6. To give an opinion in writing, without fee, to the legislature or either house thereof, or any senator or representative, and to the governor, secretary of state, treasurer, state controller, and the ~~trustees or commissioners of state institutions~~ superintendent of public instruction, when ~~required~~ requested, upon any question of law relating to their respective offices. The attorney general shall keep a record of all written opinions rendered by the office and such opinions shall be compiled annually and made available for public inspection. All costs incurred in the preparation of said opinions shall be borne by the office of the attorney general. A copy of the opinions shall be furnished to the supreme court and to the state librarian.

7. When required by the public service, to repair to any county in the state and assist the prosecuting attorney thereof in the discharge of duties.

8. To bid upon and purchase, when necessary, in the name of the state, and under the direction of the state controller, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction in whole or in part of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance, taking precedence of the judgment in favor of the state, under the direction of the state controller, to redeem such property from such prior judgment, lien, or encumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

10. When necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as may be necessary to set aside and annul all conveyances fraudulently made by such judgment debtors; the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

11. To exercise all the common law power and authority usually appertaining to the office and to discharge the other duties prescribed by law.

12. To report to the governor, at the time required by this code, the condition of the affairs of the attorney general's office and of the reports received from prosecuting attorneys.

13. To appoint deputy attorneys general and special deputy attorneys general and other necessary staff to assist in the performance of the duties of the office. Such deputies and staff shall be nonclassified employees within the meaning of section 67-5302, Idaho Code.

SECTION 3. That Section 67-1406, Idaho Code, be, and the same is hereby amended to read as follows:

67-1406. EMPLOYMENT OF ATTORNEYS RESTRICTED -- EXEMPTIONS. Notwithstanding any other provision of law to the contrary, no department, agency, office, officers, board, commission, institution or other state entity shall be represented by or obtain its legal advice from an attorney at law other than the attorney general except as follows:

(1) The legislative and judicial branches of government and the governor may employ attorneys other than those under the supervision of the attorney general, and such attorneys may appear in any court. However, such entities may, upon request, utilize the attorney general's legal services.

(2) Those state entities within the department of self-governing agencies which are enumerated in sections 67-2601(2)(a), 67-2601(2)(b) and 67-2601(3), Idaho Code, and colleges and universities~~,~~ may employ private counsel to advise them and represent them before courts of the state of Idaho. Such ~~entities~~ may also obtain legal services from the attorney general on such terms as the parties may agree.

(3) Whenever the attorney general determines that it is necessary or appropriate in the public interest, the attorney general may authorize contracts for legal services pursuant to the provisions of section 67-1409, Idaho Code.

(4) The provisions of section 67-1401, Idaho Code, shall govern the normal relationship between the attorney general and the state entities in the executive branch of state government. However, if after consultation with the attorney general, the governor determines in his sole judgment, which shall not be subject to judicial review, that counsel assigned to represent or give legal advice to any state entity, other than the lieutenant governor, state controller, state treasurer, secretary of state, attorney general, and the superintendent of public instruction, cannot effectively advocate or pursue the policies of the governor, the governor shall request that other counsel be provided by the attorney general, and the attorney general shall provide from within the office of the attorney general or obtain from outside the office of the attorney general, depending upon the request of the governor, qualified counsel acceptable to the governor to represent such state entity.

(5) Any separate counsel employed pursuant to the foregoing exceptions shall be compensated with funds appropriated to such state entity, unless such separate counsel shall have been employed at the request or convenience of the attorney general or because of a conflict in representation by the attorney general.

SECTION 4. That Section 67-1407, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Chapter 14, 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 67-1407, Idaho Code, and to read as follows:

67-1407. FEES ASSESSED FOR SERVICES. In conjunction with the attorney general, the division of financial management shall determine on or before November 1 of each year an amount to be billed to state entities for purposes of carrying out the provisions of this title. Such amount

shall be paid by each state entity in the succeeding fiscal year to the indirect cost recovery fund. Before June 30 of each fiscal year, the state controller shall transfer an amount equal to such deposits to the state general fund.

SECTION 6. That Section 67-1408, Idaho Code, be, and the same is hereby amended to read as follows:

67-1408. BILLING OF STATE ENTITIES FOR LEGAL SERVICES. ~~--APPROPRIATION-REQUESTS-FOR-GENERAL-STATE-LEGAL-SERVICES.~~ The attorney general, in rendering assistance to the departments, agencies, offices, officers, boards, commissions, institutions and other state entities, shall charge for all costs of such assistance as determined pursuant to section 67-1407, Idaho Code, including, but not limited to, salaries of attorneys, paralegals, administrative, clerical and other ~~personnel,~~ investigative services, independent contractors, operating expenses and capital outlay expenses of the office of the attorney general. Whenever the attorney general determines that it would be beneficial to physically locate attorneys within an agency, the attorney general and agency may enter into an agreement defining which operating, capital or other expenses will be paid by the attorney general and which expenses will be paid by the agency.

~~On--or--before--August--15--of-each-year,-the-attorney-general-shall estimate-the-legal-service-expenses-that-will-be-incurred-by-the--office of--the--attorney--general--during--the-succeeding-fiscal-year-and-shall notify-all-state-entities-that-receive-legal-services-of-their-estimated share-of-such-expenses-for-the-succeeding--fiscal--year.--The--estimated amount--shall-be-paid-by-each-state-entity-in-the-succeeding-fiscal-year to-the-state-legal-services-fund-unless-the-legislature,--by--appropriation--or--otherwise,--adjusts-the-charge.-On-or-before-August-15-of-each year,-the-attorney-general-shall-notify-the-legislative-services--office and--the--division-of-financial-management-of-the-office-of-the-governor regarding-the-amount-of-the-charge-to-each-state--entity--and--also--the amount--of--the-general-fund-budget-request-for-statewide-legal-services provided-to-the-state.~~ The attorney general shall manage the attorney general's office to provide unified legal services based upon the legal needs of the state. For this purpose the attorney general may, during any fiscal year, assign personnel based upon the legal needs existing regardless of the source of funding therefor.

SECTION 7. That Section 67-1409, Idaho Code, be, and the same is hereby amended to read as follows:

67-1409. CONTRACTS FOR LEGAL SERVICES. (1) The attorney general shall determine which legal services can most efficiently and effectively be provided by the attorney general's staff and which legal services can most efficiently and effectively be provided by contract. The attorney general shall develop application forms and requests for proposals utilizing generally accepted cost containment considerations, for those attorneys desiring to perform contract legal services for the state. Based upon the responses received, the attorney general shall recommend to the state board of examiners which attorneys or firms should be authorized to represent the state. The state board of examiners shall consider the recommendations made by the attorney general and

shall determine which attorneys or firms so recommended are authorized to contract to provide legal services for the state, and the type or types of legal services they are authorized to provide. In determining which attorneys shall be authorized for particular types of services, the board of examiners shall select attorneys who, in the board's judgment can best provide quality legal services for the state entities at an acceptable cost. The determinations of the board of examiners shall not be subject to judicial review. Whenever the attorney general determines that an immediate appointment of a special deputy attorney general would be in the best interests of the state of Idaho, the attorney general may enter into an agreement with an attorney or firm to provide legal services for the state.

(2) The performance of all contracts for legal services shall be monitored and supervised by the attorney general or his designee, and any payments pursuant to such contracts must be approved by the attorney general. This provision shall not apply to contracts for legal services entered into by ~~the legislative and judicial branches of state government and the governor and state entities within the department of self-governing agencies, colleges, and universities~~ those entities exempted by section 67-1406, Idaho Code.

SECTION 8. That Section 67-3531, Idaho Code, be, and the same is hereby amended to read as follows:

67-3531. ANNUAL STATEWIDE INDIRECT COST ALLOCATION PLAN. (1) The division of financial management shall develop an annual statewide indirect cost allocation plan in accordance with circular A-87 of the federal office of management and budget. The central service costs of the various central service agencies shall be allocated annually to the recipient state agencies, and such central service costs shall be included in an agency's indirect cost plans for the purpose of determining an indirect cost rate with the cognizant federal agency, and shall be included in an agency's federal grant application.

(2) In conjunction with the respective state service agency, the division of financial management shall prepare an estimate of costs for state budgeting purposes for services provided by the attorney general, the state treasurer and the state controller. The division of financial management shall notify all state agencies of these cost estimates for the next fiscal year on or before November 1. The division of financial management and the legislative services office shall allow state agencies to modify their budget requests in response to such estimates.

(3) The division of financial management shall assess each recipient agency up to one hundred percent (100%) of the amounts allocated in the statewide cost allocation plan. Amounts so assessed shall be separately accounted for and can be expended only after legislative appropriation.

Approved March 19, 2001.

CHAPTER 62
(H.B. No. 133)

AN ACT

RELATING TO CORPORATIONS; AMENDING SECTION 30-1-722, IDAHO CODE, TO REVISE MEANS BY WHICH A SHAREHOLDER MAY VOTE HIS SHARES BY PROXY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 30-1-722, Idaho Code, be, and the same is hereby amended to read as follows:

30-1-722. PROXIES. (1) A shareholder may vote his shares in person or by proxy. The following shall constitute valid means by which a shareholder may authorize another person to act as proxy:

(~~2~~a) A shareholder may ~~appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney in fact~~ execute a writing authorizing another person or persons to act for such shareholder as proxy. Execution may be accomplished by the shareholder, or such shareholder's authorized officer, director, employee or agent, signing such writing or causing such person's signature to be affixed to such writing by any reasonable means including, but not limited to, facsimile signature.

(b) A shareholder may authorize another person or persons to act for such shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or similar agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the shareholder. If it is determined that such telegram, cablegram or other electronic transmission is valid, the inspectors or, if there are no inspectors, such other persons making that determination, shall specify the information upon which they relied.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to paragraph (a) or (b) of this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction for the entire original writing or transmission.

(~~3~~2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the ~~appointment form~~ writing or transmission executed pursuant to subsection (1) of this section.

(~~4~~3) An appointment of a proxy is revocable by the shareholder

unless the ~~appointment form~~ writing or transmission executed pursuant to subsection (1) of this section conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under section 30-1-731, Idaho Code.

(~~5~~4) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(~~6~~5) An appointment made irrevocable under subsection (~~4~~3) of this section is revoked when the interest with which it is coupled is extinguished.

(~~7~~6) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(~~8~~7) Subject to section 30-1-724, Idaho Code, and to any express limitation on the proxy's authority appearing on the face of the ~~appointment form~~ writing or transmission executed pursuant to subsection (1) of this section, a corporation is entitled to accept the proxy's vote or other action as that of the ~~shareholder making the appointment~~ authorizing the person to act as proxy.

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 19, 2001.

CHAPTER 63
(S.B. No. 1052)

AN ACT

RELATING TO LIMITED PARTNERSHIPS; AMENDING SECTION 53-247, IDAHO CODE, TO PROVIDE THAT WHEN ALL THE PARTNERS OR THEIR REPRESENTATIVES IN A LIMITED PARTNERSHIP ASSIGN THEIR RIGHTS IN PARTNERSHIP PROPERTY TO ONE OR MORE THIRD PERSONS WHO PROMISE TO PAY THE DEBTS AND WHO CONTINUE THE BUSINESS OF THE DISSOLVED PARTNERSHIP, CREDITORS OF THE DISSOLVED PARTNERSHIP ARE ALSO CREDITORS OF THE PERSON OR PARTNERSHIP CONTINUING THE BUSINESS AND IN SUCH A CASE THE ASSETS SHALL BE DISTRIBUTED TO THE ASSIGNEES.

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

SECTION 1. That Section 53-247, Idaho Code, be, and the same is hereby amended to read as follows:

53-247. DISTRIBUTION OF ASSETS. Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors other than partners; provided however, that when all the partners or their representatives assign their rights in partnership property to one (1) or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business and in such a case the assets shall be distributed to the assignees;

(2) To limited partners who are creditors, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section 53-231 or 53-234, Idaho Code;

(3) To general partners who are creditors, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section 53-231 or 53-234, Idaho Code;

(4) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 53-231 or 53-234, Idaho Code;

(5) Except as provided in the partnership agreement, to limited partners for the return of their contributions;

(6) Except as provided in the partnership agreement, to general partners for the return of their contributions;

(7) Except as provided in the partnership agreement, to limited partners respecting their partnership interests, in the proportions in which the limited partners share in distributions; and

(8) Except as provided in the partnership agreement, to general partners respecting their partnership interests, in the proportions in which the general partners share in distributions.

Approved March 20, 2001.

CHAPTER 64
(S.B. No. 1060)

AN ACT

RELATING TO CHARTER SCHOOLS; AMENDING SECTION 33-5204, IDAHO CODE, TO REQUIRE CHARTER SCHOOLS TO PREPARE AND SUBMIT AUDIT REPORTS AND TO ANNUALLY FILE FINANCIAL AND STATISTICAL REPORTS WITH THE STATE DEPARTMENT OF EDUCATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 33-5204, Idaho Code, be, and the same is hereby amended to read as follows:

33-5204. NONPROFIT CORPORATION -- LIABILITY -- INSURANCE. (1) A charter school shall be organized and managed under the Idaho nonprofit

corporation act. The board of directors of a charter school shall be deemed public agents authorized by a public school district or the state board of education to control the charter school, but shall function independently of any school board of trustees, except as provided in the charter. A charter school shall be considered a public school for all purposes and shall comply with the audit reporting requirements of section 33-701 6., Idaho Code, and shall annually file financial and statistical reports as required in section 33-701 7., Idaho Code. For the purposes of section 59-1302(15), Idaho Code, a charter school created pursuant to this chapter shall be deemed a governmental entity. Pursuant to the provisions of section 63-3622O, Idaho Code, sales to or purchases by a public charter school are exempt from payment of the sales and use tax.

(2) A charter school may sue or be sued, purchase, receive, hold and convey real and personal property for school purposes, and borrow money for such purposes, to the same extent and on the same conditions as a public school district, and its employees, directors and officers shall enjoy the same immunities as employees, directors and officers of public school districts and other public schools. The approving authority of a charter school shall have no liability for the acts, omissions, debts or other obligations of a charter school, except as may be provided in an agreement or contract with such charter school.

(3) Nothing in this chapter shall prevent the board of directors of a charter school, operating as a nonprofit corporation, from borrowing money to finance the purchase of school building facilities. Subject to the terms of a contractual agreement between the board and a lender, nothing herein shall prevent the board from using the facility as collateral for the loan.

(4) Charter schools shall secure insurance for liability and property loss.

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

Approved March 20, 2001.

CHAPTER 65
(S.B. No. 1132)

AN ACT

RELATING TO CHARTER SCHOOLS; AMENDING SECTION 33-5209, IDAHO CODE, TO PROVIDE APPEAL OF A DECISION NOT TO APPROVE A REVISION OF THE CHARTER.

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

SECTION 1. That Section 33-5209, Idaho Code, be, and the same is hereby amended to read as follows:

33-5209. TIME LIMITS -- REVOCATION -- APPEAL. (1) A charter granted pursuant to this chapter shall be valid for a period not to exceed five

(5) years. A charter may be granted one (1) or more subsequent renewals by the original granting authority. Each renewal shall be valid for a period not to exceed five (5) years. A material revision of the provisions of the charter petition may be made only with the approval of the authority which granted the charter.

(2) A charter may be revoked by the original granting authority if the authority finds that the charter school has done any of the following:

(a) Committed a material violation of any condition, standard or procedure set forth in the charter petition;

(b) Failed to substantially meet any of the student educational standards identified in the charter petition;

(c) Failed to meet generally accepted accounting standards of fiscal management;

(d) Failed to submit required reports to the authority which authorized the charter; or

(e) Violated any provision of law.

(3) A decision to revoke, ~~or~~ not to renew, or not to approve a revision of a charter may be appealed directly to the state board of education. The state board shall essentially follow ~~the~~ procedure as ~~provided~~ in section 33-5207, Idaho Code.

Approved March 20, 2001.

CHAPTER 66
(S.B. No. 1145)

AN ACT

RELATING TO TRAUMA CARE; AMENDING TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 81, TITLE 39, IDAHO CODE, TO CREATE WITHIN THE DEPARTMENT OF HEALTH AND WELFARE A TRAUMA ADVISORY COMMITTEE, TO PROVIDE DUTIES AND TO REQUIRE A REPORT TO THE LEGISLATURE; AND PROVIDING A SUNSET DATE.

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 81, Title 39, Idaho Code, and to read as follows:

CHAPTER 81
TRAUMA CARE

39-8101. TRAUMA CARE ADVISORY COMMITTEE. (1) There is created within the department of health and welfare a trauma care advisory committee to study and make recommendations for the care and treatment of people with traumatic injuries in this state.

(2) (a) The committee shall be comprised of legislators, individuals knowledgeable in adult or pediatric trauma care, including physicians, nurses and administrators of both large and small hospitals, and emergency medical services personnel, government officials, consumers and persons affiliated with professional health

care associations.

(b) Members of the committee shall be appointed by the director in such a manner as to make the committee representation broad and balanced among the health care delivery systems in the state, with no more than three (3) representatives coming from any single delivery system or organization. Members shall not receive compensation for their service on the committee, however they shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code.

(3) The committee shall:

(a) Assess the need for improvements in the care of people with traumatic injuries throughout the state;

(b) Review trauma systems implemented in other states and determine, if possible, the impact of such systems on trauma patient outcomes, the cost of such systems and if any of the systems studied could work in Idaho;

(c) Perform such preliminary work as necessary in anticipation of the implementation of a trauma registry including assisting the department in determining the data that should be collected, the form upon which the data will be collected and the software and hardware requirements of the state and of individual reporting hospitals;

(d) Ascertain, to the degree as possible, the cost to reporting hospitals and to the state to establish and maintain a trauma registry and the availability of private sector funding for such an endeavor;

(e) Study and/or address any other issues it deems relevant to the intent of this chapter;

(f) Submit a report to the legislature containing findings, recommendations and proposed legislation, if appropriate.

(4) The department shall:

(a) Establish committee procedures and administrative policies consistent with this chapter and department rules;

(b) Provide administrative support to the committee; and

(c) Promulgate rules, if necessary, for the administration of this chapter.

39-8102. ADVISORY COMMITTEE REPORT. The advisory committee shall submit a report to the legislature prior to January 1, 2002. The report shall include any recommendations the committee may have, including recommendations to improve trauma care and proposed legislation, if appropriate. The committee shall not submit legislation which contains a categorization of hospitals based on their capability to treat trauma patients, nor shall such legislation require the transfer of a patient against the wishes of the patient, his or her next of kin, or the patient's attending physician.

SECTION 2. This act shall be null, void and of no force and effect on and after June 30, 2003.

Approved March 20, 2001.

CHAPTER 67
(S.B. No. 1146)

AN ACT

RELATING TO PATIENT CARE RECORDS IN A HOSPITAL; AMENDING SECTION 39-1394, IDAHO CODE, TO PROVIDE FOR HOSPITAL RECORDS TO BE IN AN ELECTRONIC MEDIUM, TO INCREASE THE PERIOD OF TIME THAT CLINICAL LABORATORY TEST RECORDS AND REPORTS MUST BE KEPT BEFORE BEING DESTROYED, TO PROVIDE THAT HOSPITAL RECORDS RELATING TO ORDERS FOR THE CARE AND TREATMENT OF A PATIENT OR FOR THE ADMINISTRATION OF ANY DRUG OR PHARMACEUTICAL MUST BE AUTHENTICATED TO ENSURE ACCURACY AND PATIENT SAFETY, TO PROVIDE PROCEDURES AND MECHANISMS FOR AUTHENTICATION AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 39-1394, Idaho Code, be, and the same is hereby amended to read as follows:

39-1394. PATIENT CARE RECORDS -- RETENTION -- AUTHENTICATION. (1) Retention.

(a) Hospital records relating to the care and treatment of a patient may be preserved in microfilm, ~~or~~ other photographically reproduced form or electronic medium. Such reproduced and preserved copies shall be deemed originals for purposes of section 9-420, Idaho Code.

(b) Clinical laboratory test records and reports may be destroyed ~~three--(3)~~ five (5) years after the date of the test recorded or reported therein, pursuant to ~~subsection~~ paragraph (d) ~~hereof~~ of this subsection.

(c) X-ray films may be destroyed five (5) years after the date of exposure, or ~~five~~ (5) years after the patient reaches the age of majority, whichever is later, pursuant to ~~subsection~~ paragraph (d) ~~hereof~~ of this subsection, if there are in the hospital record written findings of a physician who has read such x-ray films.

(d) At any time after the retention periods specified in ~~sub~~paragraphs (b) and (c) ~~hereof~~ of this subsection, the hospital may, without thereby incurring liability, destroy such records, by burning, shredding or other effective method in keeping with the confidential nature of their contents, provided, however, that destruction of such records must be in the ordinary course of business and no record shall be destroyed on an individual basis.

(e) For purposes of this section, the term "hospital" shall include all facilities defined as hospitals in chapter 13, title 39, Idaho Code.

(2) Authentication.

(a) Hospital records relating to orders for the care and treatment of a patient or for the administration of any drug or pharmaceutical must be authenticated to ensure accuracy and patient safety.

(b) All orders must be authenticated by the author of the order.

(c) When telephone or oral orders must be used, they must be:

(i) Accepted only by personnel authorized to do so by medical staff policies and procedures, consistent with federal and state law; and

(ii) Authenticated by the author of the order in a timely manner as stipulated by hospital policy.

(d) Authentication may occur either manually, with the practitioner's signature, or electronically by facsimile transmission signed by the practitioner or by means of a unique electronic code known only to the practitioner.

(e) Each hospital must have in place policies and mechanisms to assure timely authentication of all orders and to assure that only the author of an order can authenticate his or her own entry.

Approved March 20, 2001.

CHAPTER 68
(H.B. No. 10)

AN ACT

RELATING TO PAYMENTS FOR SKILLED CARE SERVICES; AMENDING SECTION 56-102, IDAHO CODE, TO PROVIDE AN EXCEPTION TO PAYMENT PRINCIPLES FOR THE IDAHO STATE VETERANS HOMES AND STATE HOSPITAL SOUTH AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 56-102, Idaho Code, be, and the same is hereby amended to read as follows:

56-102. PRINCIPLES OF PROSPECTIVE RATES AND PAYMENT. The following principles shall apply to the reimbursement of freestanding skilled care and hospital-based skilled care facilities, with the exception of the nursing facilities at Idaho state veterans homes and state hospital south, which shall be reimbursed costs based on medicare reasonable cost provisions:

(1) Payments to facilities shall be through a prospective cost-based system which includes facility-specific case mix adjustments. Details of the methodology shall be set forth in rules based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state associations(s) representing hospital-based skilled care facilities. In no event shall reimbursement to any facility exceed the usual and customary charges made to private pay patients; and

(2) Each skilled care facility's case mix index shall be calculated quarterly and rates shall be adjusted based on the case mix of that facility's medicaid residents as of a certain date during the preceding quarter specified in rule; and

(3) In state fiscal year 2000, the total amount paid to skilled care facilities shall approximate the same amount in medicaid expenditures as would have been paid using the methodology in effect in state fiscal year 1999, and the percentages of medicaid funds projected to be paid to freestanding skilled care facilities and hospital-based skilled care facilities shall be the same percentages that are projected to be paid using the methodology in effect during state fiscal year 1999; and

(4) The cost limits used for the direct care and indirect care

costs of rural hospital-based skilled care facilities shall be higher than the cost limits used for the direct care and indirect care costs of freestanding skilled care and urban hospital-based skilled care facilities; and

(5) In computing the direct care per diem rate neither medicaid-related ancillary services nor raw food shall be case-mix adjusted; and

(6) Property costs shall not be subject to a cost limitation or incentive. Property costs of freestanding skilled care facilities shall be reimbursed as described in section 56-108, Idaho Code, and property costs of urban and rural hospital-based skilled care facilities shall be reimbursed as described in section 56-120, Idaho Code; and

(7) Cost limits shall apply to direct care costs and indirect care costs. The cost limits shall be based on percentages above the bed-weighted median of the combined costs of both freestanding skilled care and hospital-based skilled care facilities; and

(8) Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined by rule; and

(9) An incentive payment shall be paid to those facilities with indirect per diem costs that are less than the established indirect care cost limit. The incentive payment is calculated by taking the difference between the cost limits and the provider's per diem indirect care cost times the incentive percentage. Freestanding skilled care and hospital-based skilled care facilities shall receive the same percentage incentive payments for indirect care costs but no incentive payment for direct care costs. The percentage at which the incentive payment will be set shall be based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing hospital-based skilled care facilities; and

(10) A newly constructed facility shall be reimbursed at the median rate for skilled care facilities of that type (freestanding or hospital-based) for the first three (3) full years of operation; and

(11) A facility adding new beds will have its rates for the three (3) full years following the addition of the beds subjected to an additional reimbursement limitation. This limitation will apply beginning with the first rate setting period which uses a cost report that includes the date when the beds were added. The facility's rate will be limited to the bed-weighted average of two (2) rates: the facility's rate in effect immediately prior to the rate first subject to the limitation and the median rate for skilled care facilities of that type (freestanding or hospital-based) at the time the beds were added; and

(12) A facility acquired prior to the end of that facility's fiscal year will be reimbursed at the rate then in effect for that facility until the next cost report can be used for rate setting. If the department determines that the facility is operationally or financially unstable, the department may negotiate a reimbursement rate different than the rate then in effect for that facility; and

(13) If the department determines that a facility is located in an under-served area, or addresses an underserved need, the department may negotiate a reimbursement rate different than the rate then in effect for that facility; and

(14) From July 1, 1999, through June 30, 2002, the nursing facility inflation rate plus one percent (1%) per year shall be added to the costs reported in a facility's cost report for purposes of setting that facility's rate. The inflation rate to be used effective July 1, 2002, and the period of its use will be based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing hospital-based skilled care facilities; and

(15) To control the growth in the cost limits, the increase in the cost limits shall not exceed the skilled nursing facility inflation rate established by data resources, inc., or its successor, plus two percent (2%) per year for the period from July 1, 1999, through June 30, 2002. The maximum rate of growth in the cost limits to be used effective July 1, 2002, and the period of its use will be based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing hospital-based skilled care facilities; and

(16) To control declines in the cost limits, the cost limits for the period from July 1, 1999, through June 30, 2002, shall not be lower than the respective cost limits effective July 1, 1999. The minimum cost limits to be used effective July 1, 2002, and the period of its use will be based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing hospital-based skilled care facilities; and

(17) Rates shall be ~~rebased~~ re-based annually. Rate setting shall be prospective with new rates effective July 1 of each year, using the principles applying to skilled care facilities set forth in this chapter and the rules promulgated pursuant to this chapter. There will be no settlement between actual costs incurred during the rate year and the rate itself. Rates will be established using the most recent audited cost report trended forward to the rate year. Rates for skilled care facilities with unaudited cost reports will be interim rates established by the department until a rate is calculated based on an audited cost report. The draft audit of a cost report submitted by a facility shall be issued by the department no later than five (5) months from the date all information required for completion of the audit is filed with the department; and

(18) Changes of more than fifty cents (50¢) per patient day in allowable costs resulting from federal or state law or rule changes shall be treated as costs separate from the cost limitations until such time as they become part of the data used for calculating the cost limits and in cost reports used for rate setting; and

(19) If a review of the data submitted by a facility reveals errors that result in an incorrect case mix index, the department may retroactively adjust the facility's rate and pay the facility any amount by which the facility was underpaid or recoup from the facility any amount by which the facility was overpaid; and

(20) The rates established under the principles set forth in this section shall be phased in using a combination of the reimbursement methodology in effect as of state fiscal year 1999 and the principles set forth in this section and in rules based on negotiations between the department, the state association(s) representing freestanding skilled care facilities, and the state association(s) representing hospital-based skilled care facilities. Effective July 1, 2001, the phase-in pro-

visions will no longer apply and the department shall pay rates solely based on the principles set forth in this section and the applicable rules.

Approved March 20, 2001.

CHAPTER 69
(H.B. No. 150)

AN ACT

RELATING TO PROPERTY TAX RELIEF; AMENDING SECTION 63-602G, IDAHO CODE, TO REVISE REQUIREMENTS FOR GRANTING OF PROPERTY TAX EXEMPTION, TO PROVIDE REFERENCE TO BENEFICIARIES, PARTNERS, MEMBERS AND SHAREHOLDERS, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE CORRECT CODE CITATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-701, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-702, IDAHO CODE, TO REVISE EXCEPTIONS TO THE CLAIMANT'S PERSONAL RIGHT TO FILE CLAIMS; AMENDING SECTION 63-703, IDAHO CODE, TO REVISE PROCEDURES FOR FILING CLAIMS; AMENDING SECTION 63-704, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-706, IDAHO CODE, TO PROVIDE REFERENCE TO PERSONS OR ENTITIES ACTING ON A CLAIMANT'S BEHALF; AMENDING SECTION 63-707, IDAHO CODE, TO DELETE REFERENCE TO HOUSEHOLD INCOME, TO DELETE REQUIREMENT OF SIGNATURE BY A CLAIMANT ON EACH APPROVED CLAIMS FORM, TO PROVIDE REFERENCE TO CLAIMANT'S SPOUSE AND TO PROVIDE REFERENCE TO PERSONS OR ENTITIES ACTING ON BEHALF OF CLAIMANTS; AMENDING SECTION 63-711, IDAHO CODE, TO PROVIDE REFERENCE TO PERSONS OR ENTITIES ACTING ON BEHALF OF APPLICANTS AND OTHER PERSONS, TO PROVIDE FOR POWER OF ATTORNEY 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 63-602G, Idaho Code, be, and the same is hereby amended to read as follows:

63-602G. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS. (1) During the tax year 1983 and each year thereafter, the first fifty thousand dollars ($50,000) of the market value for assessment purposes of residential improvements, or fifty percent (50%) of the market value for assessment purposes of residential improvements, whichever is the lesser, shall be exempt from property taxation.

(2) The exemption allowed by this section may be granted only if:

(a) The residential improvements are owner-occupied and used as the primary dwelling place of the owner as of January 1. The residential improvements may consist of part of a multidwelling or multipurpose building and shall include all of such dwelling or building except any portion used exclusively for anything other than the primary dwelling of the owner. The presence of an office in an owner-occupied residential property, which office is used for multiple purposes, including business and personal use, shall not prevent the owner from claiming the exemption provided in this section; and

(b) The tax commission has certified to the board of county commissioners that all properties in the county which are subject to appraisal by the county assessor have, in fact, been appraised uniformly so as to secure a just valuation for all property within the county; and

(c) The owner has certified to the county assessor by April 15 that:

(i) He is making application for the exemption allowed by this section;

(ii) That the residential improvements are his primary dwelling place; and

(iii) That he has not made application in any other county for the exemption, and has not made application for the exemption on any other residential improvements in the county.

(d) For the purpose of this section, the definition of owner shall be the same definition set forth in section 63-701(87), Idaho Code.

When an "owner," pursuant to the provisions of section 63-701(7), Idaho Code, is any person who as grantor, or whose spouse as grantor, created a revocable or irrevocable trust and was named ~~himself or herself~~ as beneficiary of that trust, or who is a partner of a limited partnership, a member of a limited liability company, or shareholder of a corporation, he or she may provide proof of the trust, limited partnership, limited liability company, or corporation with an affidavit stating: (i) the name of the grantor, partner, member or shareholder; (ii) a statement that the grantor, or the grantor's spouse, is the beneficiary of the trust, or the person is a partner of the limited partnership, or a member of the limited liability company, or a shareholder of the corporation; ~~and~~ (iii) the grantor, the grantor's spouse, partner, member or shareholder is the ~~owner~~-occupier of the residential property and uses the property as the primary dwelling place of the ~~owner~~ grantor, the grantor's spouse, partner, member or shareholder as of January 1; and (iv) if applicable, the person holds at least a five percent (5%) ownership in the limited partnership, limited liability company or corporation.

The affidavit shall include the attaching of the copies of those portions of the trust or other document which set forth the grantor, the grantor or the grantor's spouse as beneficiary and the signature page of the trust or other document; those portions of the articles of organization or operating agreement of the limited liability company indicating the person's membership in the company and the ownership percentage held by such person; those portions of the limited partnership agreement or other records of the limited partnership indicating that the person has been admitted to the partnership and the ownership percentage held by such person; or those portions of the articles of incorporation indicating that the person is a shareholder of the corporation and the ownership percentage held by such person.

(e) Any owner may request in writing the return of all copies of any documents submitted with the affidavit set forth in paragraph (d) of this subsection that are held by a county assessor, and the copies shall be returned by the county assessor upon submission of the affidavit in proper form.

(f) For the purpose of this section, the definition of "primary

dwelling place" shall be the same definition set forth in section 63-701(~~9~~8), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(~~7~~6), Idaho Code.

(3) An owner need only make application for the exemption described in subsection (1) of this section once, as long as all of the following conditions are met:

(a) The owner has received the exemption during the previous year as a result of his making a valid application as defined in subsection (2)(c) of this section.

(b) The owner or beneficiary, partner, member or shareholder, as appropriate, still occupies the same residential improvements for which ~~he~~ the owner made application.

(c) The residential improvements described in subsection (3)(b) of this section are owner-occupied or occupied by a beneficiary, partner, member or shareholder, as appropriate, and used as the primary dwelling place of the owner or beneficiary, partner, member or shareholder, as appropriate, as of January 1.

(4) The exemption allowed by th~~is~~ section must be taken before the reduction in taxes provided by sections 63-701 through 63-710, Idaho Code, is applied.

(5) The legislature declares that this exemption is necessary and just.

(6) Residential improvements having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to the owner's, beneficiary's, partner's, member's or shareholder's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the ~~i~~Internal ~~r~~Revenue ~~c~~Code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone~~,~~ by the owner, beneficiary, partner, member or shareholder, as appropriate, as defined in section 112 of the ~~r~~Internal ~~r~~Revenue ~~c~~Code, and such improvements would have ~~otherwise qualified~~ under this section, ~~then~~ the board of county commissioners of the county in which the residential improvements are located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.

SECTION 2. 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 who is fatherless or motherless or who has been abandoned by any surviving parent or parents; 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 as described in this chapter and used as the primary dwelling place of the claimant and may be 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 claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (~~9~~8)(b) of this section.

(4) "Household income" means all income received by ~~all persons of a household~~ the claimant and, if applicable, the claimant's spouse, in a calendar year. ~~while members of the household.~~

(5) "Income" means the sum of federal adjusted gross income as defined in the ~~i~~Internal ~~r~~Revenue ~~c~~Code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income~~,~~:

(a) ~~A~~alimony~~,~~;

(b) ~~S~~support money~~, income from inheritances,~~;

(c) ~~N~~nontaxable strike benefits~~,~~;

(d) ~~T~~the nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding rollovers as provided in section 402 or 403 of the ~~i~~Internal ~~r~~Revenue ~~c~~Code)~~,~~;

(e) ~~N~~nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities~~,~~;

(f) ~~W~~worker's compensation; and

(g) ~~T~~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, the cost of medical care as defined in section 213(d) of the ~~I~~Internal ~~r~~Revenue ~~c~~Code, incurred or paid by the ~~household~~ claimant and/or, if applicable, the claimant's spouse, 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~~ if 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 in such form as the county assessor, board of equalization or state tax commission shall determine. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gr~~oss inc~~ome had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

~~(6) "Nonhousehold member" means any nonspouse who lives in the claimant's dwelling for the purpose of providing protective oversight, caregiving, or personal 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 assistance services provided by the claimant.~~

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

(~~8~~7) "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:

(a) ~~A~~as grantor, or whose spouse as grantor, created a revocable or irrevocable trust and was named ~~himself~~ as a beneficiary of that trust~~,~~; or ~~who~~

(b) ~~I~~s the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(c) ~~I~~rs a partner of a limited partnership, member of a limited liability company or shareholder of a corporation ~~which~~ if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or ~~who~~

(d) ~~H~~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 as ownership for determining initial 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 or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. 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 so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. 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 of the deceased person shall be the "owner~~,~~," provided that the time periods during which the deceased person held such title shall be attributed to the estate for the computation of any time periods under subsection (8)(a) or (8)(b) of this section.

(~~9~~8) (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~~ to be 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 for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

(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. Payment of utilities shall not be payment of 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, nursing 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 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 3. That Section 63-702, Idaho Code, be, and the same is hereby amended to read as follows:

63-702. CLAIM IS PERSONAL -- EXCEPTIONS. (1) The right to file a claim under the provisions of sections 63-701 through 63-710, Idaho Code, shall be personal to the claimant and shall not survive his death except as otherwise provided in this section. Such right may be exercised on behalf of a living claimant by an agent authorized in writing to so act, or by a guardian or other representative acting pursuant to judicial authority or by any person or entity described in section 63-711(3), Idaho Code. If a claimant dies after having filed a timely claim, the amount thereof shall be allowed to his personal representative, if one is appointed, or to surviving heirs or to the trust or other entity owning the property, as appropriate.

(2) In the case of property owned by an estate, revocable trust, irrevocable trust, limited partnership, limited liability company or corporation, where the deceased person's widow or widower succeeds to the interest of the deceased person in that entity and occupies the dwelling as required in this chapter, the deceased owner's widow or widower, or any person or entity described in section 63-711(3), Idaho Code, on behalf of that widow or widower:

(a) May file a claim on behalf of ~~his or her~~ the deceased spouse if the deceased spouse qualified or would have qualified as a claimant on January 1 of the year in which the claim is filed; or

(b) The widow or widower shall be deemed the owner of the property in any year after the year of the death of the spouse.

SECTION 4. That Section 63-703, Idaho Code, be, and the same is hereby amended to read as follows:

63-703. PROCEDURE FOR FILING CLAIMS. (1) Any claim filed shall be signed by the claimant or by any person or entity described in section 63-711(3), Idaho Code. By signing such claim, the claimant or other person or entity signing such claim shall attest to the truth of such claim, and shall be subject to the penalties provided by section 18-5401, Idaho Code, for stating as true any material fact known to be false. All claims shall be made on forms prescribed by the state tax commission and shall be in triplicate. One (1) copy of the form shall be provided to the claimant or the person or entity acting on behalf of the claimant, one (1) copy shall be kept for all county purposes, and one (1) copy shall be forwarded to the state tax commission with the property tax reduction roll. Except as provided in section 63-707, Idaho Code, the claim and its documentation shall not be deemed to be public records and may not be used for any commercial purpose; provided however, the state tax commission and the county assessor may use the con-

tents of such claims and documentation for general statistical analysis and may publish such analysis, or any part of such analysis, as appropriate.

(2) By filing a claim, a claimant does not relinquish any right he or any member of his household may have to apply for a cancellation of property taxes pursuant to section 63-711, Idaho Code. The county commissioners may grant any such claimant, or any member of his household, a cancellation of property taxes, late charges and interest under such section, if a claim has been filed under the provisions of sections 63-701 through 63-710, Idaho Code.

(3) If two (2) or more individuals of a household are able to meet the qualifications of a claimant, they may decide between themselves who may obtain a reduction in property taxes under the provisions of sections 63-701 through 63-710, Idaho Code, and shall certify such division in writing to the county assessor in such form as the county assessor shall require, but if they do not decide between themselves, then the reduction shall be divided equally among or between the claimants in the household ~~or sh~~all be divided as determined under section 63-701(7), Idaho Code, whichever is appropriate.

~~(4) A--claimant--who--requests--nonhousehold--member-status-for-any nonspouse-residing-in-the-dwelling-must-provide--a--statement--from--the attending--physician,--verifying--that-the-claimant-would-not-be-able-to maintain-residency-in-the-dwelling-in-the-absence--of--the--nonhousehold member.--To--establish--nonhousehold--member--status--for--any--disabled nonspouse-for-whom-the-claimant-provides-care,-the-claimant-must-provide proof-of-disability-from-the-recognizing-agency.~~

~~(5)~~ When an "owner" is any person who as grantor, or whose spouse as grantor, created a revocable or irrevocable trust and was named ~~himself--or--herself~~ as beneficiary ~~of that~~ trust, he or she, or any person or entity described in section 63-711(3), Idaho Code, may provide proof of the revocable or irrevocable trust with an affidavit stating: (i) the name of the grantor, (ii) a statement that the grantor, or the grantor's spouse, is the beneficiary of the trust~~,~~ and (iii) ~~the-trust-is-revocable-during--the--grantor's--lifetime,--and--(iv)~~ the grantor, or the grantor's spouse, is the ~~owner-~~occupier of the residential property and uses the property as the primary dwelling place of the ~~owner~~ occupier as of January 1.

The affidavit shall include the attaching of ~~the~~ copies of those portions of the trust which sets forth the name of the grantor, the status of the grantor or the grantor's spouse as beneficiary~~,-the-revocable character--of-the-trust~~ and which contain the signature page or pages of the trust. The county assessor may require such additional documentation as is necessary to carry out the provisions of this chapter including, but not limited to:

(a) Proof of the current status of the entity owning the property, including statements from the secretary of state as to such status if appropriate;

(b) Copies of any documents, or portions thereof, relating to the entity;

(c) Copies of any contracts or other agreements between the entity and the claimant or the claimant's spouse; and

(d) Any other documentation which the county assessor determines would aid the county assessor in carrying out the provisions of this chapter.

SECTION 5. That Section 63-704, Idaho Code, be, and the same is hereby amended to read as follows:

63-704. AMOUNT OF PROPERTY TAX REDUCTION. (1) Each claimant qualifying for and applying for a reduction in property taxes under the provisions of sections 63-701 through 63-710, Idaho Code, shall be allowed a reduction in property taxes on his homestead for the current year only, in the amounts provided by subsection (4) of this section.

(2) All property taxes continue to be the responsibility of the individual taxpayer, and all property taxes continue to be perpetual liens against the property against which assessed, and all property taxes may be collected and enforced in the usual manner, if the taxpayer does not receive any property tax reduction as provided under sections 63-701 through 63-710, Idaho Code, or if the taxpayer receives less property tax reduction than the whole amount of property taxes he is charged with.

(3) The claimant property owner's property tax reduction shall be based upon the current year's assessed value and the current year's levy.

(4) Property tax reductions qualified under sections 63-701 through 63-710, Idaho Code, shall be allowed as set out in section 2, chapter 59, laws of 1992, and adjusted for cost-of-living fluctuations as provided in section 63-705, Idaho Code.

SECTION 6. That Section 63-706, Idaho Code, be, and the same is hereby amended to read as follows:

63-706. TIME REQUIREMENTS FOR FILING CLAIM. (1) Any claim for property tax reduction to be granted under the provisions of sections 63-701 through 63-710, Idaho Code, shall be filed in the office of the county assessor between January 1 and April 15 of each year. The county assessor shall examine each claim and determine whether it is in conformity with section 63-701, Idaho Code, and shall accordingly approve, modify or disapprove the claim in total at the time the application is received. Additionally, the county assessor shall notify the claimant, or the person or entity acting on behalf of the claimant, in writing by May 1 if his claim has been modified or has been disapproved. The notice of modification or disapp~~roval sha~~ll declare that the claimant, or the person or entity acting on behalf of the claimant, may appeal the assessor's decision to the county board of equalization, and shall state the time and place that the county board of equalization shall meet for such purposes.

(2) All claims filed with the county assessor shall be completed by him and forwarded to the county commissioners, which shall convene as a board of equalization, any other provision of law notwithstanding, on or before May 15, and shall approve all claims approved by the county assessor, and shall approve the action of the county assessor in modifying or disapproving all other claims unless an appeal has been filed with the board of equalization prior to May 15. In considering any appeal of the assessor's decision in modifying or disapproving a claim, the board of equalization may affirm the assessor's decision, may modify the assessor's decision, or may reject the assessor's decision and proceed to approve all or any part of the claim as submitted to the assessor originally.

(3) No informality on the part of the board of equalization shall invalidate any action of the board. The decision of the board of equalization shall be final, except that within thirty (30) days the claimant, or any person or entity acting on behalf of the claimant, may appeal to the district court on matters of law, and may appeal the decision of the board of equalization when the board has acted arbitrarily. The claimant, or the person or entity acting on behalf of the claimant, shall be notified immediately, in writing, of the board of equalization's ~~s action~~ on his appeal to it.

SECTION 7. That Section 63-707, Idaho Code, be, and the same is hereby amended to read as follows:

63-707. PROCEDURE AFTER CLAIM APPROVAL. (1) Immediately after claims have been approved by the board of equalization, the county assessor shall prepare a property tax reduction roll, which shall be in addition to the property roll, the subsequent property roll and missed property rolls which property tax reduction roll shall show:

(a) The name of the taxpayer;

(b) The description of the property for which a reduction in property taxes is claimed, suitably detailed to meet the requirements of the individual county;

(c) The property's prior year's market value for assessment purposes or the assessor's best estimate of current market value for assessment purposes; and

(d) The amount of tax reduction for which the applicant is eligible as determined by the ~~applicant's household~~ income of the claimant and, if applicable, the claimant's spouse, pursuant to sections 63-704 and 63-705, Idaho Code.

(2) As soon as possible, but in any event by no later than the fourth Monday of June, the property tax reduction roll shall be certified to the county auditor and to the state tax commission in the manner prescribed by rules promulgated by the state tax commission. The property tax reduction roll shall be accompanied by a copy of the claim forms for disapproved claims, when requested by the state tax commission and a copy of the approved claims form. ~~signed by each claimant.~~

(3) (a) As soon as possible, but in any event by no later than the fourth Monday of October, the county auditor shall complete the property tax reduction roll by adding the following information:

(i) The current year's levy for the code area in which the property is situated;

(ii) The amount of property tax reduction claimed based on the current year's market value for assessment purposes and the current year's levy; and

(iii) The current year's market value for assessment purposes.

(b) As soon as possible, but in any event no later than the fourth Monday of October, the county auditor shall certify the completed property tax reduction roll to the state tax commission in the manner prescribed by rules promulgated by the state tax commission.

(4) The state tax commission shall calculate the total of all claims for reduction in property taxes from current year's property taxes, evidenced by the abstracts and claims forms from all the counties. Each county auditor shall be notified by the third Monday in November of the amount of property tax reduction to be granted.

(5) The state tax commission may audit each and every claim submitted to it, and, any other provision of law notwithstanding, may utilize income tax returns filed by the claimant or by ~~any member of his household~~ the claimant's spouse to determine ~~household~~ the income of the claimant or the claimant's spouse.

(6) If it is determined by the state tax commission that a claim is erroneous, the tax commission shall disapprove so much of the claim as necessary in order to conform with statutory standards. The tax commission shall provide the claimant, or the person or entity acting on behalf of the claimant, written notice of the tax commission's intent to disapprove all or a portion of the claim. The claimant, or the person or entity acting on behalf of the claimant, shall have fourteen (14) days to make written protest to the tax commission of the intended action. The claimant, or the person or entity acting on behalf of the claimant, may submit additional information and may request an informal hearing with the commission. If the claimant, or the person or entity acting on behalf of the claimant, fails to make written protest within fourteen (14) days, the tax commission shall provide written notice of disapproval to the claimant, or the person or entity acting on behalf of the claimant, by the fourth Monday of October and to the county auditor of the county from which the claim was received. Any claimant, or person or entity acting on behalf of the claimant, whose claim is disapproved in whole or in part by the state tax commission may:

(a) File a claim with the county commissioners for a special cancellation pursuant to section 63-711, Idaho Code;

(b) Appeal such disapproval by the state tax commission to the board of tax appeals or to the district court of the county of residence of the taxpayer within thirty (30) days.

SECTION 8. That Section 63-711, Idaho Code, be, and the same is hereby amended to read as follows:

63-711. CANCELLATION OF TAXES -- HARDSHIP AND CASUALTY LOSSES -- SPECIAL. (1) Property taxes may be ~~cancelled~~ canceled for reason of undue hardship. The commissioners may, at their discretion, grant such cancellation for a specified time period. The commissioners may, at their discretion, cancel taxes on property which has been damaged by an event causing casualty loss to all or a portion of the property when the event occurs after the fourth Monday of June or casualty losses for which the amount of loss cannot be determined until after the fourth Monday of June.

(2) Applicants seeking a cancellation pursuant to this section must apply to the county commissioners. Each applicant shall give a sworn statement containing full and complete information of his financial status to the county commissioners and shall make true answers to all questions put before him touching such person's right to the cancellation. The county commissioners shall decide and determine from each examination and from each written application for said cancellation whether or not such person is entitled to the cancellation claimed or any part thereof accordingly. In applying for a cancellation pursuant to this section, an applicant may submit an application at any time and the county commissioners may grant such application, either in whole or in part, at any regular meeting and the burden of proving the right of such cancellation shall rest upon the applicant.

(3) The county commissioners may, for good cause shown, allow an agent or some person or entity acting for and on behalf of the applicant to make the application for the cancellation provided in this section for any applicant, or where a person is entitled to cancellation shall be mentally incompetent or physically unable to make such sworn statement, his or her spouse, widow, widower, guardian, power of attorney, or personal representative, or other person having knowledge of the facts, may make the application for the cancellation.

(4) Any time within thirty (30) days after mailing of a decision of the county commissioners, or pronouncement of a decision announced at a meeting, or the failure of the county commissioners to act, an appeal may be taken to the district court for the county in which the property is located. Such appeal may only be filed by the property owner or by any person aggrieved, or by a person or entity acting on behalf of such person, when he deems any such action illegal or prejudicial to the public interest. Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

Notice of such appeal stating the grounds thereafter shall be filed with the county auditor, who shall forthwith transmit a copy of said notice to the county commissioners.

(5) The county commissioners shall order all necessary adjustments to be made in the property tax records of the various county officers and taxing districts.

(6) The cancellation of property taxes which have become delinquent shall affect only those property taxes granted a cancellation by order of the county commissioners and all interest and late charges on such taxes.

SECTION 9. This act shall be in full force and effect on and after January 1, 2002.

Approved March 20, 2001.

CHAPTER 70
(H.B. No. 71, As Amended in the Senate)

AN ACT

RELATING TO MINIMUM WAGE LAW; AMENDING SECTION 44-1503, IDAHO CODE, TO DEFINE "AGRICULTURE" AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 44-1504, IDAHO CODE, TO PROVIDE FOR THE APPLICATION OF MINIMUM WAGE LAW TO AGRICULTURAL LABOR AND TO PROVIDE EXEMPTIONS FROM MINIMUM WAGE LAW; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 44-1503, Idaho Code, be, and the same is hereby amended to read as follows:

44-1503. DEFINITIONS. "Agriculture" includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural, aquacultural or horticultural commodities; the

raising of livestock, bees, fur-bearing animals or poultry; and any practices, including any forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with such farming operation, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

"Wages" paid to any employee includes compensation paid to such employee in the form of legal tender of the United States, checks on banks convertible into cash on demand, and also includes the reasonable cost as determined by the employment security agency to the employer of furnishing such employee with board, lodging or other facilities if such board, lodging or other facilities are customarily furnished by such employer to his employee and used by employees, and commissions of every kind, and tips or gratuities as provided by section 44-1502, Idaho Code.

"Employ" includes to suffer or permit to work. "Employee" includes any individual employed by an employer. "Employer" includes any person employing an employee or acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any state or political subdivision of a state, or any labor organization (other than when acting as an employer) or ~~any--one~~ anyone acting in the capacity of officer or agent of such labor organization.

"Person" means any individual, partnership, association, corporation, business, trust, legal representative, or any organized group of persons.

"Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars ($30.00) a month in tips.

SECTION 2. That Section 44-1504, Idaho Code, be, and the same is hereby amended to read as follows:

44-1504. EMPLOYEES EXCEPTED FROM PROVISIONS OF ACT. The provisions of this act shall not apply to:

(1) ~~A~~any employee employed in a bona fide executive, administrative~~,~~ or professional capacity;~~,-to-agricultural-labor-as-that term-is-defined-in-section-72-1304,-Idaho-Code,-to~~ or

(2) ~~A~~anyone engaged in domestic service;~~,-to~~ or

(3) ~~A~~any individual employed as an outside salesman;~~,-to~~ or

(4) ~~S~~seasonal employees of a nonprofit camping program~~,~~; ~~or to~~

(5) ~~A~~any child under the age of sixteen (16) years working part time or at odd jobs not exceeding a total of four (4) hours per day with any one (1) employer; or

(6) Any individual employed in agriculture if:

(a) Such employee is the parent, spouse, child or other member of his employer's immediate family; or

(b) Such employee is older than sixteen (16) years of age and:

(i) Is employed as a harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, and

(ii) Commutes daily from his permanent residence to the farm on which he is so employed, and

(iii) Has been employed in agriculture less than thirteen (13) weeks during the preceding calendar year; or

(c) Such employee is sixteen (16) years of age or under and:
(i) Is employed as a harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, and
(ii) Is employed on the same farm as his parent or person standing in the place of his parent, and
(iii) Is paid at the same piece-rate basis as employees over the age of sixteen (16) years are paid on the same farm; or
(d) Such employee is principally engaged in the range production of livestock.

SECTION 3. This act shall be in full force and effect on and after January 1, 2002.

Approved March 21, 2001.

CHAPTER 71
(S.B. No. 1039)

AN ACT

RELATING TO PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS; AMENDING THE CHAPTER HEADING FOR CHAPTER 34, TITLE 54, IDAHO CODE; AMENDING SECTION 54-3401, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 54-3402, IDAHO CODE, TO PROVIDE FOR LICENSURE OF MARRIAGE AND FAMILY THERAPISTS AND TO PROVIDE EXEMPTIONS; AMENDING SECTION 54-3403, IDAHO CODE, TO PROVIDE FOR THE IDAHO STATE LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS, TO PROVIDE MEMBERSHIP AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-3404, IDAHO CODE, TO PROVIDE POWERS OF THE IDAHO STATE LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 34, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-3405C, IDAHO CODE, TO PROVIDE QUALIFICATIONS FOR LICENSURE AS A LICENSED MARRIAGE AND FAMILY THERAPIST; AMENDING SECTION 54-3406, IDAHO CODE, TO PROVIDE FOR ENDORSEMENT; AMENDING SECTION 54-3408, IDAHO CODE, TO PROVIDE PROHIBITED ACTS REGARDING A LICENSED MARRIAGE AND FAMILY THERAPIST OR PRACTICING OR ATTEMPTING TO OFFER TO PRACTICE MARRIAGE AND FAMILY THERAPY; REPEALING SECTION 54-3410, IDAHO CODE; AMENDING SECTION 54-3410A, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR PRIVILEGE FROM DISCLOSURE OF CONFIDENTIAL COMMUNICATIONS BETWEEN PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND CLIENTS; AMENDING SECTION 54-3410B, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO PROVIDE FOR INFORMATION DISCLOSURE TO CLIENTS BY MARRIAGE AND FAMILY THERAPISTS; AMENDING SECTION 54-3411, IDAHO CODE, TO PROVIDE A FEE FOR ENDORSEMENT; AMENDING SECTION 54-3414, IDAHO CODE, TO PROVIDE POWERS AND DUTIES OF THE BUREAU OF OCCUPATIONAL LICENSES; AND DECLARING AN EMERGENCY.

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

SECTION 1. That the Heading for Chapter 34, Title 54, Idaho Code,

be, and the same is hereby amended to read as follows:

CHAPTER 34

~~PROFESSIONAL~~ COUNSELORS ~~FOR INDEPENDENT PRACTICE~~ AND THERAPISTS

SECTION 2. That Section 54-3401, Idaho Code, be, and the same is hereby amended to read as follows:

54-3401. DEFINITIONS. As used in this chapter:

(1) "Board" means the Idaho state ~~counselor~~ licensing board of professional counselors and marriage and family therapists.

(2) "Bureau chief" means the chief of the bureau of occupational licenses of the state of Idaho.

(3) "Department" means the department of self-governing agencies of the state of Idaho.

(4) "Licensed marriage and family therapist" means any person licensed under this chapter to practice marriage and family therapy as defined in this chapter.

(5) "Licensed professional counselor" means any person licensed under this chapter to practice professional counseling as defined in this chapter.

(6) "Marriage and family therapy" means the evaluation and treatment of mental and emotional disorders, whether cognitive, affective or behavioral, within the context of marriage and family systems. Marriage and family therapy includes the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples and families for the purpose of treating nervous and mental disorders.

(7) "Practice of marriage and family therapy" means the rendering of professional marriage and family therapy services to individuals, couples and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private.

(~~5~~8) "Practice of professional counseling" means the application of mental health, psychological, and human development principles in order to facilitate human development and adjustment throughout the life span; prevent, assess, and treat mental, emotional or behavioral disorders and associated distresses which interfere with mental health; conduct assessments for the purpose of establishing treatment goals and objectives; and plan, implement and evaluate treatment plans using counseling treatment interventions. "Counseling treatment interventions" means the application of cognitive, affective, behavioral, and systemic counseling strategies, which include principles of development, wellness and pathology that reflect a pluralistic society. Such interventions are specifically implemented in the context of a professional counseling relationship.

The practice of professional counseling includes, but is not limited to:

(a) Individual, group, marriage and family counseling and therapy;

(b) Assessment;

(c) Crisis intervention;

(d) Treatment of persons with mental and emotional disorders;

(e) Guidance and consulting to facilitate normal growth and development, including educational and career development;

(f) Utilization of functional assessment and counseling for persons requesting assistance in adjustment to a disability or handicapping condition;
(g) Consulting;
(h) Research; and
(i) Referral.

The use of specific methods, techniques, or modalities within the practice of professional counseling is restricted to professional counselors appropriately trained in the use of such methods, techniques or modalities.

SECTION 3. That Section 54-3402, Idaho Code, be, and the same is hereby amended to read as follows:

54-3402. LICENSE REQUIRED -- EXEMPTIONS. It shall be unlawful for any person to engage in any of the following acts:

(1) To practice professional counseling or marriage and family therapy for compensation without first having complied with the provisions of this chapter and without a valid license as required by this chapter.

(2) To represent himself/herself to be a licensed professional counselor or licensed counselor or licensed marriage and family therapist unless he/she shall first obtain a license pursuant to this chapter.

(3) To make use of any title, words, letters or abbreviations which may reasonably be confused with a designation provided by this chapter.

(4) To materially refuse to furnish the board information or records required or requested pursuant to this chapter or pursuant to an investigation commenced pursuant to this chapter.

Nothing in this chapter shall be construed to apply to the activities and services of licensed or credentialed members of other professions, such as physicians, psychologists, registered nurses, social workers, drug and alcohol counselors, or attorneys performing duties consistent with the laws of this state, their training, and any code of ethics of their professions, provided they do not represent themselves by any title or practice description in the manner prescribed in section 54-3401, Idaho Code.

Nothing in this chapter shall be construed to apply to the activities, services and use of an official title on the part of a person certified by the state to render counseling or marriage and family therapy or counseling-related services, provided such persons are performing these activities within the scope of their employment, including school and vocational counselors.

Nothing in this chapter shall be construed to apply to the activities and services of a student, intern or trainee pursuing a course of study in counseling or in marriage and family therapy in a regionally accredited institution of higher education or training institution, if these activities are performed under supervision and constitute a part of the supervised course of study provided, that such person be designated, for example, a "counselor intern" or "marriage and family therapy intern."

Nothing in this chapter shall be construed to apply to the activities and services of a person obtaining their postgraduate marriage and family therapy clinical experience, provided these activities are pro-

vided under supervision, and provided they have registered according to procedures to be established by the board.

Nothing in this chapter shall be construed to apply to a nonresident whose counseling or marriage and family therapy activities and services are rendered not more than ten (10) days during any calendar year, provided that such a person is duly authorized to perform such activities and services under the laws of the state or country of that person's residence.

Nothing in this chapter shall be construed to apply to the activities and services of any religious denomination or sect or faith-based counseling of any kind.

Nothing in this chapter shall be construed to apply to the activities and descriptions of persons offering volunteer or professional services for public and private nonprofit organizations or agencies for ~~whom~~ which the services are rendered.

SECTION 4. That Section 54-3403, Idaho Code, be, and the same is hereby amended to read as follows:

54-3403. BOARD -- ORGANIZATION AND MEETINGS. There is hereby created in the department of self-governing agencies an Idaho ~~counselor~~ state licensing board of professional counselors and marriage and family therapists as follows:

(1) The board shall consist of ~~four (4)~~ six (6) members, residents of the state of Idaho, who shall be appointed by the governor. In making appointments, the governor shall give consideration to recommendations submitted by the Idaho ~~personnel and guidance~~ counseling association in consultation with other state counselor organizations, and the Idaho association for marriage and family therapy in consultation with other state marriage and family therapy organizations. If recommendations are not made within sixty (60) days of notification and request, the governor may make appointments of any qualified individual.

(2) Beginning July 1, 1982, initial appointments to the board shall be for the following terms: one (1) member for a term ending in one (1) year; one (1) member for a term ending in two (2) years; one (1) member for a term ending in three (3) years; and one (1) member for a term ending in four (4) years. Upon the effective date of this act, the governor shall also initially appoint to the board one (1) person eligible for licensure as a marriage and family therapist for a term of four (4) years, and one (1) person eligible for licensure as both a professional counselor and a marriage and family therapist for a term of four (4) years.

(3) When the initial term of each member ends, the governor shall appoint the successor for a term of four (4) years from qualified candidates. Any vacancy occurring on the board shall be filled by the governor by appointment for the unexpired term. The governor may remove any board member for misconduct, incompetency, or neglect of duty after giving the board member written notice of the charges and an opportunity to be heard thereon.

(4) At all times, the board shall have two (2) members who are licensed as professional counselors and who are engaged primarily in rendering counseling service; one (1) member who is engaged or has been engaged primarily in teaching, training or research in higher education in counseling or marriage and family therapy; one (1) member who is

licensed or is eligible for licensure as both a professional counselor and a marriage and family therapist and who is engaged primarily in rendering marriage and family therapy or marriage and family counseling; one (1) member who is licensed as a marriage and family therapist and who is engaged primarily in rendering marriage and family therapy; and one (1) member from the general public. Except for the initial appointment, all members of the board except the member from the general public shall be licensed under this chapter.

(5) The first appointees, other than the member from the general public, must meet the qualifications for licensure and shall become licensed ~~professional counselors~~ under the provisions of this act immediately upon their appointment as members of the board.

(6) No board member shall serve more ~~than two~~ (2) full consecutive terms.

(7) The members of the board shall be compensated as provided in section 59-509(m), Idaho Code.

(8) The board shall within sixty (60) days after the effective date of this chapter, and annually thereafter hold a meeting and elect a chairman, ~~vice-chairman~~ vice chairman and secretary from among its members. The board shall meet at such other times as deemed necessary and advisable by the chairman, or by a majority of its members, or by the governor. Notice of all meetings shall be given in the manner prescribed by law. A majority of the board shall constitute a quorum at any meeting or hearing.

(9) The secretary of the board shall take and maintain the minutes of the board proceedings.

SECTION 5. That Section 54-3404, Idaho Code, be, and the same is hereby amended to read as follows:

54-3404. ~~COUNSELOR~~ IDAHO STATE LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS -- POWERS. The board shall have the following powers:

(1) To regulate the practice of licensed counselors and licensed professional counselors and licensed marriage and family therapists in the state of Idaho.

(2) To pass upon the qualifications and fitness of applicants for licenses.

(3) To adopt and from time to time revise such rules ~~and regulations~~ as may be necessary to carry into effect the provisions of this chapter. Such rules ~~and regulations~~ shall include, but not be limited to, a code of ethics for licensed counselors and a code of ethics for marriage and family therapists in the state, which shall be adopted in compliance with chapter 52, title 67, Idaho Code.

(4) To review the practice of counselors and marriage and family therapists licensed under this chapter and charged with a violation of the provisions of this chapter. This review may include the ~~notes of the counselor~~ license holder and other materials related to the practice. The review will remain subject to disclosure according to chapter 3, title 9, ~~Idaho~~ Code, unless the written consent of the client is received by the board.

(5) To establish a peer review system whereby each ~~licensed counselor's~~ license holder's practice may be reviewed to ensure continuing practice in an appropriate and ethical manner.

(6) To examine for, deny, approve, issue, revoke, suspend and renew the licenses of ~~counselor~~ applicants pursuant to this chapter, and to conduct hearings in connection therewith.

(7) To conduct hearings to suspend or revoke licenses for violations of the law and rules ~~and regulations~~ adopted pursuant to this chapter and cause the prosecution and enjoinder of all such violations.

(8) In any proceeding before the board authorized by this chapter, the board or its designee may administer oaths or affirmations to witnesses appearing before it.

(9) To authorize, by written agreement, the chief of the bureau of occupational licenses as agent to act in its interest.

(10) To provide, by rule, licensed professional counselor and licensed marriage and family therapist specialty standards.

SECTION 6. That Chapter 34, 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 54-3405C, Idaho Code, and to read as follows:

54-3405C. QUALIFICATIONS FOR LICENSURE. Licensure as a "licensed marriage and family therapist" shall be restricted to persons who have successfully completed each of the following requirements:

(1) A graduate degree which consists of at least sixty (60) semester hours or ninety (90) quarter credits in marriage and family therapy from a program accredited by the commission on accreditation for marriage and family therapy education, or a marriage and family counseling or therapy program which is accredited by the council for accreditation of counseling and related educational programs, or a graduate degree from a regionally accredited educational institution and an equivalent course of study as approved by the board. The course of study for any graduate degree shall include a minimum of thirty-nine (39) semester credits in the following areas:

(a) Marriage and family studies -- nine (9) semester credit minimum. Studies in this area shall include:

(i) Theoretical foundations, history, philosophy, etiology and contemporary conceptual directions of marriage and family therapy or marriage and family counseling;

(ii) Family systems theories and other relevant theories and their application in working with a wide variety of family structures, including families in transition, nontraditional families and blended families, and a diverse range of presenting issues; and

(iii) Preventative approaches, including premarital counseling, parent skill training and relationship enhancement, for working with couples, families, individuals, subsystems and other systems.

(b) Marriage and family therapy -- nine (9) semester credit minimum. Studies in this area shall include:

(i) The practice of marriage and family therapy related to theory, and a comprehensive survey and substantive understanding of the major models of marriage and family therapy or marriage and family counseling; and

(ii) Interviewing and assessment skills for working with couples, families, individuals, subsystems and other systems, and skills in the appropriate implementation of systematic

interventions across a variety of presenting clinical issues including, but not limited to, socioeconomic disadvantage, abuse and addiction.

(c) Human development -- nine (9) semester credit minimum. Studies in this area shall include:

(i) Individual development and transitions across the life span;

(ii) Family, marital and couple life cycle development and family relationships, family of origin and intergenerational influences, cultural influences, ethnicity, race, socioeconomic status, religious beliefs, gender, sexual orientation, social and equity issues and disability;

(iii) Human sexual development, function and dysfunction, impacts on individuals, couples and families, and strategies for intervention and resolution; and

(iv) Issues of violence, abuse and substance use in a relational context, and strategies for intervention and resolution.

(d) Psychological and mental health competency -- six (6) semester credit minimum. Studies in this area shall include:

(i) Psychopathology, including etiology, assessment, evaluation and treatment of mental disorders, use of the current diagnostic and statistical manual of mental disorders, differential diagnosis and multiaxial diagnosis;

(ii) Standard mental health diagnostic assessment methods and instruments, including standardized tests; and

(iii) Psychotropic medications and the role of referral to and cooperation with other mental health practitioners in treatment planning, and case management skills for working with individuals, couples and families.

(e) Professional ethics and identity -- three (3) semester credit minimum. Studies in this area shall include:

(i) Professional identity, including professional socialization, professional organizations, training standards, credentialing bodies, licensure, certification, practice settings and collaboration with other disciplines;

(ii) Ethical and legal issues related to the practice of marriage and family therapy, legal responsibilities of marriage and family therapy and marriage and family counseling practice and research, business aspects, reimbursement, recordkeeping, family law, confidentiality issues and the relevant codes of ethics, including the code of ethics specified by the board; and

(iii) The interface between therapist responsibility and the professional, social and political context of treatment.

(f) Research -- three (3) semester credit minimum. Studies in this area shall include:

(i) Research in marriage and family therapy or marriage and family counseling and its application to working with couples and families; and

(ii) Research methodology, quantitative and qualitative methods, statistics, data analysis, ethics and legal considerations of conducting research, and evaluation of research.

(2) Completion of a one (1) year practicum of supervised marriage

and family therapy experience, consisting of a minimum of three hundred (300) direct client contact hours, of which one hundred fifty (150) hours shall be with couples or families, as part of the graduate program.

(3) Supervised experience in marriage and family therapy of three thousand (3,000) hours, acceptable to the board as defined by rule. A minimum of two hundred (200) hours of supervision of the postgraduate experience. Supervision may be provided by a clinical member of the American association for marriage and family therapy, by a licensed marriage and family therapist, or another qualified licensed professional as determined by the board who has a minimum of five (5) years experience providing marriage and family therapy, including: a licensed professional counselor, private practice; psychologist; certified social worker, private and independent practice; or psychiatrist.

(4) Successful completion of a written examination as approved by the board and defined by rule.

(5) Once licensed, a licensed marriage and family therapist shall obtain twenty (20) hours of continuing education per year as approved by the board.

(6) From the effective date of this section until June 30, 2003, any person who meets the educational qualifications for an appropriate graduate degree, as defined by the board, from an accredited educational institution so recognized at the time of granting such degree, and who demonstrates three thousand (3,000) hours of postgraduate experience providing marriage and family therapy may upon application, finding of fitness, and payment of fees, be issued a marriage and family therapist license. In determining if the education and experience qualifications have been met, the board may consider a current clinical membership in the American association of marriage and family therapy or the national association of certified family therapy, or membership in or certification by another appropriate professional organization, as defined by the board, to be sufficient demonstration of the qualifications, and may issue a marriage and family therapy license.

(7) A license or conditional license will not be allowed an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field. Such an individual may not be licensed under this chapter unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that an acceptable degree of rehabilitation has been accomplished.

SECTION 7. That Section 54-3406, Idaho Code, be, and the same is hereby amended to read as follows:

54-3406. ~~RECIPROCITY~~ ENDORSEMENT. Upon payment of the fee enumerated in this chapter, the board may grant a license to any person who, at the time of application, is licensed or certified as a professional counselor or marriage and family therapist by an agency located in another state and which is similar to the ~~counselor~~ state licensing board, provided th~~at the~~ requirements of such certification or licensure are substantially similar to the requirements of this chapter.

SECTION 8. That Section 54-3408, Idaho Code, be, and the same is hereby amended to read as follows:

54-3408. CERTAIN ACTS PROHIBITED. The following acts shall be unlawful and punishable as a misdemeanor:

(1) The violation of any of the provisions of this chapter and any rules promulgated pursuant thereto;

(2) A person representing himself to be a licensed counselor or licensed professional counselor or licensed marriage and family therapist without having first complied with the provisions of this chapter;

(3) A person who shall practice or attempt to offer to practice professional counseling or marriage and family therapy, as defined in this chapter, without having at the time of so doing, a valid, unexpired, unrevoked and unsuspended license or conditional license issued under this chapter or the laws of Idaho or any other state governing mental health professionals.

SECTION 9. That Section 54-3410, Idaho Code, be, and the same is hereby repealed.

SECTION 10. That Section 54-3410A, Idaho Code, be, and the same is hereby amended to read as follows:

54-3410~~A~~. CONFIDENTIAL COMMUNICATION. Confidentiality of communication between any person licensed ~~counselor~~ under this chapter and client shall be privileged from disclosure as provided in section 9-203, Idaho Code, with the exception of the board of review provided in section 54-3404, Idaho Code.

SECTION 11. That Section 54-3410B, Idaho Code, be, and the same is hereby amended to read as follows:

54-3410~~B~~A. INFORMATION DISCLOSURE TO CLIENTS. Persons licensed under this chapter shall provide clients at the beginning of treatment with accurate disclosure information concerning their practice, including the right of clients to refuse treatment, the responsibility of clients for choosing the provider and treatment modality, and the extent of confidentiality. The disclosure information provided by the counselor or the marriage and family therapist, the receipt of which shall be acknowledged in writing by the counselor and client, or the marriage and family therapist and client, shall include any relevant education and training, the therapeutic orientation of the practice, modalities or treatment utilized, and all financial requirements. The disclosure information shall include a statement that licensure of an individual under this chapter does not imply endorsement by the ~~counselor~~ licensing board nor effectiveness of treatment.

SECTION 12. That Section 54-3411, Idaho Code, be, and the same is hereby amended to read as follows:

54-3411. FEES ON LICENSURE. The board shall establish fees for licensure under the provisions of this chapter as follows:

(1) The fee for applications not to exceed one hundred dollars ($100).

(2) The fee for examination, when required, equal to that charged by the national examining entity.

(3) The fee for ~~reciprocity~~ endorsement not to exceed one hundred

dollars ($100).

(4) The fee for the original license not to exceed one hundred dollars ($100).

(5) The fee for annual renewal not to exceed sixty dollars ($60.00).

(6) Fees under subsections (2) or (3) of this section shall be in addition to the application fee.

(7) All fees paid pursuant to this section shall be nonrefundable.

SECTION 13. That Section 54-3414, Idaho Code, be, and the same is hereby amended to read as follows:

54-3414. POWERS AND DUTIES OF BUREAU OF OCCUPATIONAL LICENSES. The bureau of occupational licenses shall have the following powers and duties:

(1) To accept applications for and issue licenses to counselors and marriage and family therapists pursuant to requirements of this chapter.

(2) To maintain in a registry appropriate for that purpose a public record of all applications for licenses, the action of the department thereon, of all licenses issued and of all licenses revoked or forfeited with the reasons for such revocation or forfeiture and of all renewals.

(3) To forward complaints against a licensed professional counselor or a marriage and family therapist to the state ~~counselor~~ licensing board for review and investigation.

(4) To assist in the investigation and prosecution of complaints filed against a counselor or a marriage and family therapist under section 54-3408, Idaho Code.

(5) At the discretion of the chief of the bureau and upon apparent failure or refusal of the state ~~counselor~~ licensing board to investigate or prosecute a complaint against a counselor or a marriage and family therapist, to investigate the complaint and forward the report of investigation to the state ~~counselor~~ licensing board ~~and upon~~ apparent failure or refusal of the state ~~counselor~~ licensing board to take further action, to file an action in the district court under section 54-3408, Idaho Code, against a counselor or a marriage and family therapist violating the terms of this chapter.

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 March 22, 2001.

CHAPTER 72
(S.B. No. 1090)

AN ACT

RELATING TO LICENSE TO CONDUCT HORSE RACES; AMENDING SECTION 54-2508, IDAHO CODE, TO INCREASE THE NUMBER OF RACES WHICH SHALL BE CONDUCTED IN A RACE DAY; AND AMENDING SECTION 54-2512, IDAHO CODE, TO REVISE THE FORMULA GOVERNING THE MINIMUM REQUIREMENTS FOR LICENSURE FOR SIMULCAST PARI-MUTUEL WAGERING 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 54-2508, Idaho Code, be, and the same is hereby amended to read as follows:

54-2508. LICENSE -- APPLICATION THEREFOR -- TYPE AND NUMBER OF RACES -- FEE PER DAY -- REFUND -- CANCELLATION -- HEARING. It shall be unlawful for any person to hold any race meet in this state without having first obtained and having in force and effect a license issued by the commission as in this act provided. Every person making application for a license to hold a race meet, under the provisions of this act, shall file an application with the commission which shall set forth the time, place and number of days such will continue, an agreement with a horsemen's group as the term "horsemen's group" is defined in section 54-2502, Idaho Code, and such other information as the commission may require. The agreement shall be reached voluntarily or pursuant to binding arbitration in conformance with chapter 9, title 7, Idaho Code, and 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.

No person who has been convicted of any crime involving moral turpitude shall be issued a license of any kind, nor shall any license be issued to any person who has violated the terms or provisions of this act, or any of the rules of the commission, or who has failed to pay any of the fees, taxes or moneys required under the provisions of this act.

All applications to hold race meets shall be submitted to the commission which shall act upon such applications within thirty (30) days. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue.

The license issued shall specify the kind and character of the race meets to be held, the number of days the race meet shall continue and the number of races per day, which, in the event of live races, shall not be less than ~~six~~ eight (~~6~~8). The licensee shall pay in advance of the scheduled race meet to the state treasurer a fee of not less than twenty-five dollars ($25.00) for each day of racing, which fees shall be placed in the public school income fund of the state of Idaho. Provided, that if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee held may be refunded the licensee, if the commission deems the reason for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this act, pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this act, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three (3) days' notice in writing shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

SECTION 2. 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 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 race days 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~~ bookmaking, 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 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 22, 2001.

CHAPTER 73
(S.B. No. 1016)

AN ACT

RELATING TO MOTOR VEHICLES AND VESSELS; AMENDING SECTION 49-114, IDAHO CODE, TO REVISE THE DEFINITION OF "MOPED" TO PROVIDE THAT THE CYCLE SHALL HAVE BOTH MOTORIZED AND PEDAL PROPULSION; AMENDING SECTION 49-407, IDAHO CODE, TO LIMIT USE OF YEAR OF MANUFACTURE MOTOR VEHICLE LICENSE PLATES TO MODEL YEARS UP TO AND THROUGH 1974 AND TO PROVIDE FOR DISTRIBUTION OF REVENUES; AMENDING SECTIONS 49-408 AND 49-409, IDAHO CODE, TO PROVIDE FOR DISTRIBUTION OF REVENUES; AMENDING SECTION 49-411, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTIONS 49-414, 49-417B, 49-418B AND 49-419A, IDAHO CODE, TO PROVIDE FOR DISTRIBUTION OF REVENUES; AMENDING SECTION 49-420B, IDAHO CODE, TO PROVIDE THAT LEWIS AND CLARK COMMEMORATIVE LICENSE PLATES MAY NOT BE ISSUED TO ANY VEHICLE WITH A REGISTERED MAXIMUM GROSS WEIGHT OVER TWENTY-SIX THOUSAND POUNDS; AMENDING SECTION 49-434, IDAHO CODE, TO CLARIFY THAT WRECKERS SHALL BE REGISTERED AT THEIR UNLADEN WEIGHT; AMENDING SECTION 49-443, IDAHO CODE, TO PROVIDE THAT COUNTY ASSESSORS SHALL FURNISH UNIQUELY-NUMBERED REGISTRATION STICKERS TO VALIDATE DUPLICATE OR SUBSTITUTE LICENSE PLATES; AMENDING SECTION 49-501A, IDAHO CODE, TO CLARIFY THAT TITLING OF VEHICLES INCLUDES TITLING OF VESSELS UNLESS OTHERWISE PROVIDED; AMENDING SECTION 49-506, IDAHO CODE, TO PROVIDE THAT RECORDS PERTAINING TO CERTIFICATES OF TITLE MAY BE DESTROYED AFTER TWENTY YEARS; AMENDING SECTION 49-510, IDAHO CODE, TO PROVIDE THAT AN AGENT OF A LIENHOLDER MAY ACT ON BEHALF OF A LIENHOLDER WHEN FILING DOCUMENTS REQUIRED BY THE IDAHO TRANSPORTATION DEPARTMENT; AMENDING SECTION 49-524, IDAHO CODE, TO PROVIDE THAT SALVAGE CERTIFICATES SHALL NOT BE ISSUED FOR VESSELS; AMENDING SECTION 67-7039, IDAHO CODE, TO PROVIDE THAT THE TERM "VESSEL" SHALL BE INTERCHANGEABLE WITH THE TERM "VEHICLE" UNLESS OTHERWISE PROVIDED; AMENDING SECTION 67-7040, IDAHO CODE, TO PROVIDE THAT DRIFTBOATS ARE EXEMPT FROM VESSEL TITLING; AND AMENDING SECTION 67-7041, IDAHO CODE, TO PROVIDE THAT AN AGENT OF A LIENHOLDER MAY ACT ON BEHALF OF A LIENHOLDER WHEN FILING DOCUMENTS REQUIRED BY THE IDAHO TRANSPORTATION DEPARTMENT AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 49-114, Idaho Code, be, and the same is hereby amended to read as follows:

49-114. DEFINITIONS -- M.

(1) "Major component part" means a rear clip, cowl, frame or inner structure forward of the cowl, body, cab, front end assembly, front clip or such other part which is critical to the safety of the vehicle.

(2) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste or material identification code and destination of hazardous material or hazardous waste during any transportation within, through, or to any destination in this state.

(3) "Manufactured home." (See section 39-4105, Idaho Code)

(4) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered at an established place of business in this state. The term, for purposes of sections 49-1613 through 49-1615, 49-1617, 49-1622 and 49-1623, Idaho Code, shall include a distributor and other factory representatives.

(5) "Manufacturer's year designation" means the model year designated by the vehicle manufacturer, and not the year in which the vehicle is, in fact, manufactured.

(6) "Maximum gross weight" means the scale weight of a vehicle, equipped for operation, to which shall be added the maximum load to be carried as declared by the owner in making application for registration. When a vehicle against which a registration fee is assessed is a combination of vehicles, the term "maximum gross weight" means the combined maximum gross weights of all vehicles in the combination.

(7) "Metal tire." (See "Tires," section 49-121, Idaho Code)

(8) "Moped" means a limited-speed motor-driven cycle ~~which~~ having both motorized and pedal propulsion that is not capable of propelling the vehicle at a speed in excess of thirty (30) miles per hour on level ~~ground, wh~~ether two (2) or three (3) wheels are in contact with the ground during operation. If an internal combustion engine is used, the displacement shall not exceed fifty (50) cubic centimeters and the moped shall have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

(9) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor and moped.

(10) "Motor carrier" means an individual, partnership, corporation or other legal entity engaged in the transportation by motor vehicle of persons or property in the furtherance of a business or for hire.

(11) "Motor home" means a vehicular unit designed to provide temporary living quarters, built into an integral part or permanently attached to a self-propelled motor vehicle chassis. The vehicle must contain permanently installed independent life support systems which meet the American National Standards Institute (ANSI) A119.7 Standard for Recreational Vehicles, and provide at least four (4) of the following facilities: cooking, refrigeration or ice box, self-contained toilet, heating and/or air conditioning, a potable water supply system, including a faucet and sink, separate 110-125 volt electrical power supply and/or LP-gas supply.

(12) "Motorized wheelchair" means a motor vehicle with a speed not in excess of eight (8) miles per hour, designed for and used by a handicapped person.

(13) "Motor number." (See "Identifying number," section 49-110, Idaho Code)

(14) "Motor vehicle." (See "Vehicle," section 49-123, Idaho Code)

(15) "Motor vehicle liability policy" means an owner's or operator's policy of liability insurance, certified as provided in section 49-1210, Idaho Code, as proof of financial responsibility, and issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(16) "Motor vehicle record" means any record that pertains to a motor vehicle registration, motor vehicle title or identification documents or other similar credentials issued by the department or other state or local agency.

SECTION 2. 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~~ with any model year up to and through 1974 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~~ with a painted or embossed year matching the model year of the vehicle. The provisions of this section shall not apply to any vehicle with a registered maximum gross weight over twenty-six thousand (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. All revenues from the initial program fee and the annual program fee shall be deposited in the state highway account.

SECTION 3. 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 twenty-six thousand (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. All revenues from the initial program fee and the annual program fee shall be deposited in the state highway account.

(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 4. 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 twenty-six thousand (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. All revenues from the initial program fee and the annual program fee shall be deposited in the state highway account. 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 5. That Section 49-411, Idaho Code, be, and the same is hereby amended to read as follows:

49-411. DEALER AND MANUFACTURER PLATE -- FEES. (1) Any person conducting the business of manufacturing, buying, selling or dealing in vehicles, and licensed as a manufacturer of or a dealer in vehicles, and owning and operating any such vehicle upon any highway may, in lieu of registering each vehicle obtain from the department upon application on the proper form and payment of the required fee, and attach to each vehicle, one (1) number plate as required for different classes of vehi-

cles in section 49-434, Idaho Code. The special number plate shall bear a distinctive number assigned to the manufacturer or dealer, the name of this state, which may be abbreviated, and the year for which the plate is issued, together with words which may be abbreviated or a distinguishing symbol indicating that the plate is issued to a manufacturer or dealer.

(2) The fee ~~for~~ to validate a dealer or manufacturer number plate ~~or registration sticker~~ shall be twelve dollars ($12.00) for each ~~plate or~~ validation sticker.

(3) All such fees shall be paid to the state treasurer and deposited to the state highway account.

SECTION 6. 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 twenty-six thousand (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. All revenues from the initial program fee and the annual program fee shall be deposited in the state highway account.

SECTION 7. 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 twenty-six thousand (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. 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 the 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 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~~ ten dollars ($1~~2~~0.00) of which shall be deposited in the state highway account and ~~eighteen~~ twenty dollars ($~~1~~8~~2~~0.00) of which shall be transferred to the ag in the classroom account.

SECTION 8. 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. 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 the 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 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~~ ten dollars ($1~~2~~0.00) of which shall be deposited in the state highway account and ~~eighteen~~ twenty dollars ($~~1~~8~~2~~0.00) 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 9. 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 twenty-six thousand (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. 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 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 fea-

tures 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~~ ten dollars ($1~~2~~0.00) of which shall be deposited in the state highway account and ~~eighteen~~ twenty dollars ($~~18~~20.00) 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 10. That Section 49-420B, Idaho Code, be, and the same is hereby amended 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~~ twenty-six thousand (~~16~~26,000) 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 pur-

chased 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 11. That Section 49-434, Idaho Code, be, and the same is hereby amended to read as follows:

49-434. OPERATING FEES. (1) There shall be paid on all commercial vehicles, noncommercial vehicles, and on all farm vehicles having a maximum gross weight not in excess of sixty thousand (60,000) pounds, an annual registration fee in accordance with the following schedule.

Unladen Weight for Wreckers / Maximum Gross Weight For Other Vehicles (Pounds)	Annual Registration Fee: Noncommercial and Farm Vehicles	Annual Registration Fee: Commercial Vehicles and Wreckers
8,001-16,000 inc.	$ 48.00	$ 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 prescribed by subsection (8) of this section, as applicable.

(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. Refunds may be given for any unexpired portion of the vehicle registration fee if the plate is not transferred by the owner to another vehicle. Any request for refund shall include surrender of the license plate, validation sticker and registration document. Owners of vehicles registered under the international registration plan may request a refund of the unexpired portion of the Idaho vehicle registration fee by presenting evidence from the base jurisdiction that the license plate, validation sticker and registration document have been surrendered. 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 illegible.

(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 subsection (1) or (8)(a) of this section. Vehicles registered under subsection (8)(b) of this section shall pay the fee provided in section 49-435(2), Idaho Code.

(8) There shall be paid on all commercial and farm vehicles having a maximum gross weight in excess of sixty thousand (60,000) pounds, a registration fee based upon the maximum gross weight of a vehicle as declared by the owner and the total number of miles driven on roads and highways in the state, county, city and highway district systems in Idaho, and if registered under the international registration plan (IRP), in all other jurisdictions. The appropriate registration fee shall be determined as follows:

(a) If the owner registers vehicles under the international registration plan (IRP), the appropriate mileage column shall be determined by the total miles an owner operated a fleet of vehicles on roads and highways in the state, county, city and highway district systems in Idaho and in all other jurisdictions in the preceding year, as defined in section 49-117, Idaho Code, and by the maximum gross weight of each vehicle within a fleet.

(b) If the owner registers vehicles under the international registration plan and determines that the average international registration plan fleet miles, calculated by dividing the total IRP fleet

miles in all jurisdictions by the number of registered vehicles, is less than fifty thousand one (50,001) miles, the owner may apply to the department for refund of a portion of the registration fees paid, consistent with the fee schedules set forth in this section. The department shall provide an application for the refund. An owner making application for refund under this section shall be subject to auditing as provided in section 49-439, Idaho Code.

(c) If the owner is not registering vehicles under the international registration plan, the appropriate mileage column shall be determined by the total miles the owner operated each of the vehicles to be registered on roads and highways in the state, county, city and highway district systems in Idaho in the preceding year and by the maximum gross weight of each vehicle.

Maximum Gross Weight of Vehicle (Pounds)	Total Miles Driven		
	1-7,500	7,501-50,000	Over 50,000
60,001-62,000	$210	$ 840	$1,400
62,001-64,000	240	960	1,600
64,001-66,000	270	1,080	1,800
66,001-68,000	300	1,200	2,000
68,001-70,000	330	1,320	2,200
70,001-72,000	360	1,440	2,400
72,001-74,000	390	1,560	2,600
74,001-76,000	420	1,680	2,800
76,001-78,000	450	1,800	3,000
78,001-80,000	480	1,920	3,200
80,001-82,000	495	1,980	3,300
82,001-84,000	510	2,040	3,400
84,001-86,000	525	2,100	3,500
86,001-88,000	540	2,160	3,600
88,001-90,000	555	2,220	3,700
90,001-92,000	570	2,280	3,800
92,001-94,000	585	2,340	3,900
94,001-96,000	600	2,400	4,000
96,001-98,000	615	2,460	4,100
98,001-100,000	630	2,520	4,200
100,001-102,000	645	2,580	4,300
102,001-104,000	660	2,640	4,400
104,001-106,000	675	2,700	4,500
106,001-108,000	690	2,760	4,600
108,001-110,000	705	2,820	4,700
110,001-112,000	720	2,880	4,800
112,001-114,000	735	2,940	4,900
114,001-116,000	750	3,000	5,000
116,001-118,000	765	3,060	5,100
118,001-120,000	780	3,120	5,200
120,001-122,000	795	3,180	5,300
122,001-124,000	810	3,240	5,400
124,001-126,000	825	3,300	5,500
126,001-128,000	840	3,360	5,600
128,001-129,000	855	3,420	5,700

(d) Any commercial or farm vehicle registered for more than sixty thousand (60,000) pounds up to one hundred six thousand (106,000)

pounds traveling fewer than two thousand five hundred (2,500) miles annually on roads and highways in the state, county, city and highway district systems in Idaho shall pay an annual registration fee of two hundred fifty-five dollars ($255). The provisions of section 49-437(2), Idaho Code, shall not apply to vehicles registered under this subsection (8)(d).

(9) (a) During the first registration year that the fee schedule in subsection (8)(c) of this section is in use, an owner shall use the mileage data from the records used to report the mileage use fee in the immediately preceding year as the basis for determining the appropriate registration fee schedule.

(b) Any owner who registers a motor vehicle for the first time and who has no mileage history for the vehicle shall estimate the miles to determine the appropriate fee schedule in subsection (8)(c) of this section. When estimating the miles, the owner shall provide a statement on the application of the method used to arrive at the estimated miles.

(c) Any owner using any fee schedule other than the highest fee schedule under subsection (8)(c) of this section, shall certify at the time of registration that the miles operated in the preceding year do not exceed the schedule applied for. Any owner using a fee schedule under subsection (8)(c) of this section that is less than the highest schedule shall maintain records to substantiate the use of the schedule as required by section 49-439, Idaho Code.

(10) 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.

SECTION 12. That Section 49-443, Idaho Code, be, and the same is hereby amended to read as follows:

49-443. LICENSE PLATES TO BE FURNISHED BY DEPARTMENT -- FORM AND CONTENTS. (1) The assessor or the department shall furnish to every owner whose vehicle is registered by that office, pursuant to sections 49-402 and 49-402A, Idaho Code, one (1) license plate for vehicles registered under the provisions of section 49-406, 49-406A or 49-408, Idaho Code, or a motorcycle, trailer, truck-tractor, or semitrailer, and two (2) license plates for every other motor vehicle. If a vehicle is issued one (1) plate only, that plate shall be displayed in accordance with the provisions of section 49-428, Idaho Code. For vehicles registered under the provisions of section 49-407, Idaho Code, the applicant shall provide one (1) plate to be displayed on the rear of the vehicle.

Commencing January 1, 1992, the color and design of the plates shall be comparable to the color and design of the statehood centennial issue of license plates with blue numerals and letters on a multicolored red, white and blue background. Each license plate must bear upon its face the inscriptions "Famous Potatoes" and "Scenic Idaho."

Every license plate shall have displayed upon it the registration

number assigned to the vehicle and its owner and the name "Idaho" which may be abbreviated. The plates issued under the provisions of section 49-402(1), Idaho Code, and the required letters and numerals, including an identification of the county in which the motor vehicle to which the plates will be affixed is registered, shall be of sufficient size to be plainly readable from a distance of seventy-five (75) feet during daylight, and each license plate and registration sticker shall be treated with a fully reflectorized material according to specifications prescribed by the board.

(2) License plates shall be valid for a period of seven (7) years beginning with the date of issuance of new plates. At the end of the sixth year, the registered owner shall receive notice of the date upon which the plates will expire. The department shall implement a plate-number reservation program beginning prior to the 1999 plate issue and following once every seven (7) years thereafter, for a limited plate-number sequence in each county which chooses to offer a reservation program. Requests for license plate number reservations shall be submitted to the county during the open reservation period established by the department. The department may charge a minimal fee as determined by the board to recover costs to the department for reservation of license plate numbers.

(3) If a license plate number has expired as provided in subsection (2) of this section and the number was not reserved, or if the vehicle registration is not renewed within sixty (60) days of its expiration, the plate number shall be available for use by another registrant. To obtain a specific number in the recycled license plate number file, the owner of a registered vehicle shall pay a one (1) time fee as determined by rule of the board.

The provisions of this subsection shall apply only to vehicles registered under the provisions of section 49-402(1), Idaho Code, and section 49-434(1), Idaho Code, as it applies to noncommercial vehicles.

(4) License plates issued for vehicles required to be registered in accordance with the provisions of sections 49-402 and 49-402A, Idaho Code, shall be issued color coded registration validation stickers showing the year of registration. Each registration validation sticker shall bear a number from 1 through 12, which number shall correspond to the month of the calendar year in which the registration of the vehicle expires and shall be affixed to the lower right-hand corner of the plates within the outlined rectangular area.

(5) License plates for utility trailers registered under the provisions of section 49-402A, Idaho Code, which are issued for five (5) or ten (10) years and license plates for trailers, rental utility trailers and semitrailers registered under the provisions of section 49-434, Idaho Code, which are issued for five (5) years shall use the design in effect on the date of manufacture. If a design change occurs, plates from the effective date of the design change shall be manufactured using the new design. Unexpired plates need not be reissued to conform to a design change.

(6) For license plates which are lost, stolen, mutilated, or illegible, the owner shall apply for a duplicate or substitute. The assessor shall also furnish for each registration, and to validate the license plate, a pressure-sensitive, ~~serially~~ uniquely-numbered registration sticker, except for trailers and semitrailers registered under the optional seven (7) year trailer provisions in section 49-434, Idaho

Code. License plates issued for state, county and city motor vehicles shall be permanent and remain on the vehicle for which issued from year to year, and need no renewal or validation sticker.

(7) Whenever a vehicle is completely destroyed by fire or accident and the operator submits satisfactory proof of that destruction to the department or appropriate assessor's office, the registration use increment and fees shall be transferred to the replacement vehicle for a service transfer fee of five dollars ($5.00), which fee shall be retained by the registering authority. None of the original fees shall be subject to refund.

(8) The department shall furnish to every owner whose vehicle is registered under sections 49-434 and 49-435, Idaho Code, a pressure-sensitive, ~~serially~~ uniquely-numbered registration sticker to validate the license plate.

(9) The board shall have authority to require the return to the department of all license plates and registration stickers upon termination of the lawful use of them by the owner.

(10) The board may promulgate such rules as are necessary to implement the provisions of this section.

SECTION 13. That Section 49-501A, Idaho Code, be, and the same is hereby amended to read as follows:

49-501A. APPLICATION TO VESSEL TITLING. The procedures provided in this chapter shall apply to all vessel titling programs referenced in chapter 70, title 67, Idaho Code. Unless otherwise provided, a~~A~~ny reference to "vehicle" in this chapter shall also mean "vessel."

SECTION 14. That Section 49-506, Idaho Code, be, and the same is hereby amended to read as follows:

49-506. DESTRUCTION OF RECORDS. Records~~, created after January 1, 1981,~~ pertaining to certificates of title ~~shall be retained until all appropriate records~~ used to record each title transaction ~~have been placed on miniaturized permanent records, including title records, title files, alphabetical and vehicle identification number index files. The miniaturized files~~ shall be retained a minimum of twenty (20) years, after which time they may be destroyed. The records shall be maintained so as to permit the tracing of title of the vehicles designated.

SECTION 15. That Section 49-510, Idaho Code, be, and the same is hereby amended to read as follows:

49-510. LIENS AND ENCUMBRANCES -- FILING — FEE -- NOTATION ON CERTIFICATE -- CONSTRUCTIVE NOTICE. (1) No lien or encumbrance on any vehicle registered under the laws of this state created subsequent to December 31, 1986, irrespective of whether such registration was effected prior or subsequent to the creation of the lien or encumbrance, shall be perfected as against creditors or subsequent purchasers or encumbrancers without notice until the holder of the lien or encumbrance, or his successor, agent or assignee, has complied with the requirements of section 49-504, Idaho Code, and has filed the properly completed title application and all required supporting documents with the department or an agent of the department.

When the holder of a lien or encumbrance, his successor, agent or assignee, has filed with the department or agent of the department a properly completed title application and supporting documents as required by section 49-504, Idaho Code, it shall be the duty of the department or agent of the department to file the same, indorsing on the title application the date of the creation of the lien or encumbrance. A lien is perfected as of the time of its creation if the transaction is notarized and if the filing is completed with the department or an agent of the department within twenty (20) calendar days thereafter; otherwise, as of the date of the filing with the department or an agent of the department. If the title application is incomplete or if the supporting documents are incomplete or missing, the title application and supporting documents as submitted will be returned to the lienholder or his successor, agent or assignee for correction and, if the application is not resubmitted in a complete form, including completed supporting documents, to the department or to the agent of the department within twenty (20) days of their having been returned to the lienholder or his successor, agent or assignee, the original date of receipt by the department or agent of the department shall be void.

When the department is satisfied as to the genuineness and regularity of the documents submitted, it shall issue a new certificate of title or create a paperless electronic record of the title and lien filing when substantiated by a written agreement as provided in section 49-505, Idaho Code. The title shall contain the name of the owner of the vehicle, the name and address of each holder of a lien or encumbrance, and a statement of all liens or encumbrances which have been filed with the department, together with the date of each lien or encumbrance and the date received by the department or agent of the department. The filing of a lien or encumbrance and the notation of it shall be a condition of perfection and shall constitute constructive notice of the lien or encumbrance and its contents to creditors and subsequent purchasers and encumbrancers. All liens or encumbrances so filed with the department shall be perfected and take priority according to the order in which the same are noted upon the certificate of title or entered into the electronic records of the department.

(2) The notarization requirement set out in the second paragraph of subsection (1) of this section shall not apply to transactions involving a lien in favor of a regulated lender, as defined in section 28-41-301(37), Idaho Code, or a motor vehicle dealer licensed by the Idaho transportation department.

SECTION 16. That Section 49-524, Idaho Code, be, and the same is hereby amended to read as follows:

49-524. SALVAGE CERTIFICATE OF OWNERSHIP TO REPLACE CERTIFICATE OF TITLE OR ORIGIN ON CERTAIN VEHICLES -- VESSELS NOT INCLUDED. (1) Every person acquiring a vehicle which is five (5) years old or less or which has a known market value in excess of six thousand do~~llars~~ ($6,000) which has been determined to be a salvage vehicle, shall obtain a salvage certificate of ownership on that vehicle.

(2) The salvage certificate shall replace the certificate of origin, certificate of title or other comparable ownership document and shall indicate ownership only; it shall not be valid for registration purposes.

(3) A salvage certificate of ownership shall be issued by the department, the insurer, or a salvage pool, and shall be on a form prescribed by the department. The form shall provide for assignments of the salvage certificate.

(4) The fee for a salvage certificate shall be the same as for issuance of any regular Idaho certificate of title. The fee shall be deposited in the state highway account.

(5) Every insurer making payment for a vehicle which is five (5) years old or less or which has a known market value in excess of six thousand dollars ($6,000) which has been determined to be a salvage vehicle, shall within thirty (30) days from receipt of the properly released certificate of origin or certificate of title, issue a salvage certificate to the purchaser and surrender to the department the ownership documents, a copy of the salvage certificate, the salvage certificate fee and other documents as required by the department for processing. The department shall mark its records appropriately.

(6) If a salvage pool receives a certificate of title for a vehicle which is five (5) years old or less or which has a known market value in excess of six thousand dollars ($6,000) which has been determined to be a salvage vehicle, he shall within thirty (30) days and upon receipt of the properly released certificate of origin or certificate of title, issue a salvage certificate to the purchaser and surrender to the department the ownership documents, a copy of the salvage certificate, the salvage certificate fee and other documents as required by the department for processing. The department shall mark its records appropriately.

(7) It is a misdemeanor, punishable by up to six (6) months in jail, a fine of one thousand dollars ($1,000) or both, if the owner of a retained salvage vehicle fails to surrender the title and be issued a salvage certificate, or to sell the vehicle and not tell the buyer that the vehicle is totaled.

(8) If an insurer has allowed the owner to retain ownership of the salvage vehicle, the owner must surrender the certificate of title for such vehicle to the department or the insurance company not later than fifteen (15) days from the date that the claim was satisfied. The insurer must notify the department of a total loss payoff. The insurer or department shall issue a salvage certificate to the owner prior to any sale or disposition of the salvage vehicle.

(9) If an insurer acquires the certificate of title of a vehicle in a settlement of a theft claim, the insurer shall immediately, upon receipt of the properly released certificate of origin or certificate of title, issue a salvage certificate in the name of the insurer and surrender to the department the ownership documents, a copy of the salvage certificate, the salvage certificate fee and other documents as required by the department for processing.

(10) If an insurer has acquired a vehicle in a settlement of a theft claim, has made application to and has been issued a new salvage certificate in the name of the insurer and the vehicle is subsequently recovered and is not a salvage vehicle, the insurer may complete an affidavit indemnifying the department stating the facts of acquisition and disposition of the vehicle in a form prescribed by the department and deliver the salvage certificate of ownership, affidavit and any other documents required by the department to the transferee at the time of delivery of the vehicle.

(11) Any person acquiring ownership of a salvage vehicle purchased in a state or jurisdiction which does not require surrender of the certificate of title or comparable ownership document shall, within thirty (30) days following delivery of the certificate of title or ownership document, surrender such title or document to the department and apply for a salvage certificate.

(12) An owner of a salvage vehicle who sells or transfers said vehicle shall provide a properly executed assignment of the salvage certificate of ownership to the transferee.

(13) A purchaser of a salvage vehicle shall not possess or retain a salvage vehicle without a salvage certificate unless the salvage vehicle is six (6) years old or older with a fair market value of six thousand dollars ($6,000) or less. The salvage vehicle purchaser shall display the salvage certificate upon the request of any peace officer or agent of the department.

(14) The provisions of this section shall not apply to vessels.

SECTION 17. That Section 67-7039, Idaho Code, be, and the same is hereby amended to read as follows:

67-7039. VESSEL TITLING ACT. (1) Sections 67-7039 through 67-7041, Idaho Code, shall be known and cited as the "Vessel Titling Act."

(2) The Idaho transportation department is hereby granted authority to carry out the administration of the provisions of this act and to promulgate rules to effectuate that purpose.

(3) All titling procedures for vessels shall be governed by title 49, Idaho Code. Unless otherwise provided, t~~T~~he term "vessel" shall be interchangeable with the term "vehicle" throughout title 49, Idaho Code, for the purposes of vessel titling and vessel dealers and salesmen licensing requirements.

(4) All vessel dealers, wholesalers, manufacturers, salesmen, distributors and representatives shall be required to be licensed as required by chapter 16, title 49, Idaho Code.

(5) All vessel dealers shall be required to procure and file a bond in the amount required in section 49-1608, Idaho Code.

SECTION 18. That Section 67-7040, Idaho Code, be, and the same is hereby amended to read as follows:

67-7040. APPLICATION TO CERTAIN VESSELS. (1) The provisions of the vessel titling act shall apply to every 2000 and newer model year vessel upon transfer of ownership, and optionally to all other vessels of a model year prior to 2000, effective on and after January 1, 2000, even though vessels need not be registered under the provisions of chapter 4, title 49, Idaho Code. Vessels shall be issued a certificate of registration as provided in section 67-7008, Idaho Code.

(2) The provisions of the vessel titling act shall apply exclusively to vessels with a permanently attached mode of propulsion, such as: an inboard motor, sail, personal watercraft, or other propelling machinery, and all vessels over twelve (12) feet regardless of mode of propulsion, except: rowboats, driftboats, canoes, kayaks, inflatable vessels, rafts, barges, nonmotorized paddle vessels, sailboards, tenders, seaplanes, documented vessels, and vessels owned by the United States or a foreign state or political subdivision.

(3) Once titled, the vessel remains a titled vessel, and is subject to the requirements of chapter 5, title 49, Idaho Code.

SECTION 19. That Section 67-7041, Idaho Code, be, and the same is hereby amended to read as follows:

67-7041. LIENS AND ENCUMBRANCES -- FILING -- NOTATION ON CERTIFICATE -- CONSTRUCTIVE NOTICE. No lien or encumbrance created on or after January 1, 2000, on any vessel titled under the laws of this state, shall be perfected as against creditors or subsequent purchasers or encumbrancers without notice until the holder of the lien or encumbrance, or his successor, agent or assignee, has complied with the requirements of section 49-504, Idaho Code, and has filed the title application and all required supporting documents with the Idaho transportation department or an agent of that department.

Approved March 22, 2001.

CHAPTER 74
(S.B. No. 1017)

AN ACT

RELATING TO DRIVERS LICENSES, IDENTIFICATION CARDS AND PROOF OF FINANCIAL RESPONSIBILITY; AMENDING SECTION 49-306, IDAHO CODE, TO SPECIFY TYPES OF BUSINESSES WHOSE DRIVERS MAY BE ISSUED SEASONAL CLASS B OR C DRIVERS LICENSES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-315, IDAHO CODE, TO PROVIDE THAT NO DRIVER'S LICENSE SHALL CONTAIN A STATEMENT OR INDICATION OF A PERSON'S MEDICAL CONDITION UNLESS REQUESTED BY THE APPLICANT; AMENDING SECTION 49-1208, IDAHO CODE, TO SPECIFY THE PERIOD OF TIME FOR WHICH PROOF OF FINANCIAL RESPONSIBILITY IS REQUIRED; REPEALING SECTION 49-1209, IDAHO CODE; AMENDING SECTION 49-1210, IDAHO CODE, TO REQUIRE THAT PROOF OF FINANCIAL RESPONSIBILITY SHALL BE FURNISHED TO THE DEPARTMENT FOR EACH VEHICLE REGISTERED BY ANY PERSON REQUIRED TO PROVIDE SUCH PROOF; REPEALING SECTIONS 49-1215, 49-1216, 49-1218 AND 49-1219, IDAHO CODE; AMENDING SECTION 49-1220, IDAHO CODE, TO DELETE REFERENCES TO REPEALED PROVISIONS OF LAW AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-1430, IDAHO CODE, TO DELETE REFERENCE TO A REPEALED SECTION OF LAW; AND AMENDING SECTION 49-2444, IDAHO CODE, TO SPECIFY INFORMATION THAT SHALL BE PRINTED ON IDENTIFICATION CARDS ISSUED BY THE TRANSPORTATION DEPARTMENT AND TO PROVIDE THAT NO IDENTIFICATION CARD SHALL CONTAIN A STATEMENT OR INDICATION OF A PERSON'S MEDICAL CONDITION UNLESS REQUESTED BY THE APPLICANT AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 49-306, Idaho Code, be, and the same is hereby amended to read as follows:

49-306. APPLICATION FOR DRIVER'S LICENSE OR INSTRUCTION PERMIT. (1) Every application for 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 (4-year) license with endorsements - age 21 years and older $28.50

(b) Class A, B, C (3-year) license with endorsements - 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

(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

(g) Four-year Class D license - age 21 years and older $24.50

(h~~f~~) Eight-year Class D license - ages 21 to 63 years $41.00

(i~~g~~) Class A, B, C instruction permit $19.50

(j~~h~~) Class D instruction permit or supervised instruction permit $11.50

(k~~i~~) Duplicate driver's license or permit issued under section 49-318, Idaho Code $11.50

(l~~j~~) Driver's license extension issued under section 49-319, Idaho Code ..... $ 6.50

(m~~k~~) License classification change (upgrade) $15.50

(n~~l~~) Endorsement addition $11.50

(o~~m~~) Class A, B, C skills tests ..... not more than $55.00

(p~~n~~) Class D skills test $15.00

(q~~o~~) Motorcycle endorsement skills test .....$ 5.00

(r~~p~~) Knowledge test ..... $ 3.00

(s~~q~~) Seasonal driver's license $27.50

(t~~r~~) One time motorcycle "M" endorsement $11.50

(u~~s~~) Motorcycle endorsement instruction permit $11.50

(v~~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 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 any 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 driver's license except an eight-year class D license, or any class D 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), (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 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)(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)(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 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), (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 to drivers who are employees of agri-chemical businesses, custom harvesters, farm retail outlets and suppliers, and livestock feeders 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 49-315, Idaho Code, be, and the same is hereby amended to read as follows:

49-315. LICENSES ISSUED TO DRIVERS. (1) The department shall issue to every qualifying applicant a distinguishing driver's license as applied for, which shall bear a distinguishing number assigned to the licensee, the full name, date of birth, Idaho residence address, sex, weight, height, eye color, hair color, color photograph, name of this state, date of issuance, date of expiration, license class, endorsements, restrictions, and the applicant's signature. Driver's licenses for persons under eighteen (18) years of age shall include a notation "under 18 until (month, day, year)," and driver's licenses for persons eighteen (18) years of age to twenty-one (21) years of age shall include a notation "under 21 until (month, day, year)." No driver's license shall be valid until it has been signed on the signature line of the license by the licensee.

(2) Every driver's license shall bear a color photograph of the licensee, which shall be taken by the examiner at the time the application is made. The photograph shall 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. At the request of the applicant, a driver's license may contain a statement or indication of the medical condition of the licensee.

(3) The department shall notify the commercial driver license information system that a class A, B or C driver's license has been issued as required by 49 CFR part 383.

(4) A licensee desiring to donate any or all organs or tissue in the event of death, pursuant to the provisions for donation of anatomical gifts as set forth in chapter 34, title 39, Idaho Code, at the option of the donor may indicate this desire on the driver's license by the imprinting of the word "donor" on the license.

SECTION 3. That Section 49-1208, Idaho Code, be, and the same is hereby amended to read as follows:

49-1208. PROOF REQUIRED UPON CERTAIN CONVICTIONS. (1) If a person is not licensed, but by final order or judgment is convicted of, or forfeits any bail or collateral deposited to secure an appearance for trial, or has entered a plea of guilty for, any offense requiring the suspension or revocation of the driver's license, or for operating a motor vehicle upon the highways without being licensed to do so, no driver's license shall be issued to that person and his driving privilege shall remain suspended or revoked until he gives and maintains proof of financial responsibility. Such person shall be required to verify proof of financial responsibility for a three (3) year period commencing with the last day of the suspension or revocation.

(2) Whenever the department or a court suspends, or the department revokes a resident's driver's license or nonresident's driving privilege

by reason of a conviction, forfeiture of bail, or upon a plea or finding of guilty, the license or privilege shall remain suspended or revoked unless the person shall have previously given or shall immediately give and maintain proof of financial responsibility. Such person shall be required to verify proof of financial responsibility for a three (3) year period commencing with the last day of the suspension or revocation.

(3) Any person who is convicted of violating the provisions of either section 49-1229, 49-1232 or 49-1428, Idaho Code, for the first time shall give and maintain proof of financial responsibility throughout the one (1) year period following the conviction. Any person convicted for a second or any subsequent time of violating the provisions of section 49-1229, 49-1232 or 49-1428, Idaho Code, within a five (5) year period, shall give and maintain proof of financial responsibility throughout the three (3) year period following such conviction. The department shall notify any person subject to this subsection of the requirements for maintaining proof of financial responsibility for a second and any subsequent conviction. The driver's license and driving privileges shall remain suspended unless the person gives and maintains proof of financial responsibility throughout either the one (1) year or the three (3) year period following such conviction.

(4) Whenever a person is required to maintain proof of financial responsibility, and who is not a resident of Idaho, files and maintains proof of financial responsibility in his home state the department shall reinstate the person's driving privileges as long as proof of financial responsibility is maintained in the person's home state.

SECTION 4. That Section 49-1209, Idaho Code, be, and the same is hereby repealed.

SECTION 5. That Section 49-1210, Idaho Code, be, and the same is hereby amended to read as follows:

49-1210. CERTIFICATE OF INSURANCE AS PROOF. (1) Proof of financial responsibility ~~may~~ shall be furnished for each motor vehicle registered by any person required to provide proof by filing with the department the written certificate of any insurance carrier duly authorized to do business in this state on a form approved by the department certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate shall give the effective date of the motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered by that policy, unless the policy is issued to a person who is not the owner of a motor vehicle.

(2) No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless the motor vehicle is so designated in such a certificate.

SECTION 6. That Sections 49-1215, 49-1216, 49-1218 and 49-1219, Idaho Code, be, and the same are hereby repealed.

SECTION 7. That Section 49-1220, Idaho Code, be, and the same is hereby amended to read as follows:

49-1220. DURATION OF PROOF -- WHEN PROOF MAY BE ~~CANCELLED~~ CANCELED OR RETURNED. (1) The department shall upon request consent to the immediate cancellation of any ~~bond--or~~ certificate of insurance, ~~or--the department shall direct and the state treasurer shall return to the person--entitled thereto any money or securities deposited pursuant to this chapter,~~ or the department shall waive the requirement of filing proof, in any of the following events:

(a) At any time after one (1) year or three (3) years from the date the proof was required, as provided in section 49-1208, Idaho Code, when, during the one (1) year or three (3) year period preceding the request, the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the driver's license or nonresident's operating privilege of the person by or for whom the proof was furnished; or

(b) In the event of the death of the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle; or

(c) In the event the person who has given proof surrenders his driver's license to the department.

(2) ~~The--department--shall--not--consent--to--the--cancellation--of--any bond--or--the--return--of--any--money--or--securities--in--the--event--any--action for--damages--upon--a--liability--covered--by--the--proof--is--then--pending,--or any--judgment--upon--any--liability--is--then--unsatisfied,--or--in--the--event--the person--who--has--filed--the--bond--or--deposited--the--money--or--securities--has, within--one--(1)--year--immediately--preceding--the--request,--been--involved--as an--operator--or--owner--in--any--motor--vehicle--accident--resulting--in--injury or--damage--to--the--person--or--property--of--others.--An--affidavit--of--the applicant--as--to--the--nonexistence--of--the--facts,--or--that--he--has--been released--from--all--of--his--liability,--or--has--been--finally--adjudicated--not to--be--liable--for--the--injury--or--damage,--shall--be--sufficient--evidence--in the--absence--of--evidence--to--the--contrary--in--the--records--of--the--department.~~

~~(3)~~ Whenever any person whose proof has been ~~cancelled~~ canceled or returned applies for a driver's license within a period of one (1) year or within a period of three (3) years from the date proof was originally required, as provided in section 49-1208, Idaho Code, the application shall be refused unless the applicant shall reestablish proof for the remainder of the one (1) year or three (3) year period.

SECTION 8. That Section 49-1430, Idaho Code, be, and the same is hereby amended to read as follows:

49-1430. FORGED CERTIFICATE. Any person who shall forge or, without authority, sign any ~~notice provided for in section 49-1209, Idaho Code,~~ declaration that a policy or bond is in effect, or any evidence of proof of financial responsibility, or who files or offers for filing any ~~notice or~~ evidence of proof knowing or having reason to believe it is forged or signed without authority, shall be deemed guilty of a misdemeanor and be fined not more than one thousand dollars ($1,000) or imprisoned not more than one (1) year, or both.

SECTION 9. That Section 49-2444, Idaho Code, 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 have printed on it the applicant's full name, date of birth, Idaho residence address, sex, weight, height, eye color, hair color, and shall be issued a distinguishing number ~~and~~ assigned to the applicant. Each card shall al~~so have~~ printed on it the name of this state, the date of issuance, and the date of expiration. An identification card shall not be valid until it has been signed on the signature line by the applicant. Each card 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. At the request of the applicant, an identification card may contain a statement or indication of the medical condition of the applicant.

No person shall receive an identification card unless and until he surrenders to the department a~~ll identificat~~ion 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 five (5) days after 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 five (5) days after 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~~ canceled and voluntarily surrendered as provided in section 49-322(4), Idaho Code. The identification card may be renewed at no cost to the ~~appli~~cant as long as the driver's license remains ~~cancelled~~ canceled.

(10) It is an infraction for any person to fail to notify the department of a change of address as required by the provisions of subsection (6) of this section.

Approved March 22, 2001.

CHAPTER 75
(S.B. No. 1142, As Amended)

AN ACT

RELATING TO ORGANIC FOOD PRODUCTS; REPEALING CHAPTER 314, LAWS OF 1992; AMENDING SECTION 22-1102, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-1103, IDAHO CODE, TO REVISE RULES RELATING TO EDUCATION, TO PROVIDE FOR RULES RELATING TO STANDARDS FOR CERTAIN LIVESTOCK HEALTH CARE AND MEDICAL TREATMENT, TO PROVIDE FOR RULES FOR THE PREVENTION AND CONTROL OF INFECTIONS OR COMMUNICABLE DISEASES AMONG CERTAIN LIVESTOCK, TO PROVIDE FOR RULES RELATING TO STANDARDS FOR PROHIBITIONS AGAINST DENIAL OF HEALTH CARE FOR OR MEDICAL TREATMENT OF LIVESTOCK IN ORDER TO OBTAIN OR RETAIN ORGANIC CERTIFICATION, TO PROVIDE FOR THE DISTRIBUTION OF AN ANNUAL LIST OF ALL CERTIFIED ORGANIC PRODUCERS, HANDLERS AND VENDORS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-1105, IDAHO CODE, TO INCLUDE CERTAIN RESALES OF FOOD PRODUCTS WITHIN PROHIBITED REPRESENTATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-1106, IDAHO CODE, TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 22-1107, IDAHO CODE, TO REVISE THE MEMBERSHIP OF THE ORGANIC FOOD ADVISORY COUNCIL.

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

SECTION 1. That Chapter 314, Laws of 1992, be, and same is hereby repealed.

SECTION 2. That Section 22-1102, Idaho Code, be, and the same is hereby amended to read as follows:

22-1102. DEFINITIONS. In this chapter:

(1) "Director" means the director of the department of agriculture or the director's designee.

(2) "Food products" shall include all agricultural, horticultural, viticultural and vegetable products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, milk and dairy products ~~or~~ and aquaculture products.

(3) "Handler" means any person or organization who processes, packages, resells, transports or stores organic food products or nonorganic food products.

(4) "Livestock" means cattle, swine, sheep, goats, ratites, domestic cervidae and bison.

(5) "Organic certification seal" means the design approved by the director and which when imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and ~~regulations~~ rules developed in accordance with the provisions of this chapter and all other conditions of the provisions of this chapter have been met.

(6) "Organic food product" means any food product that is marketed using the term organic, or any derivative of the term organic in its labeling or advertising. Organic foods are those processed, packaged, transported and stored to retain maximum nutri~~tional~~ value, without the use of artificial preservatives, coloring or other additives,

irradiation, or synthetic pesticides.

(7) "Organically grown food products" means food products ~~grown--in Idaho~~ which are produced without the use of synthetically compounded fertilizers, pesticides, or growth regulators for a period not less than thirty-six (36) months prior to harvest. Organically grown foods products are produced under the standards and ~~regulations~~ rules established in accordance with the provisions of this chapter and by other qualified agencies.

(8) "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(9) "Producer" means any person or organization who:

(a) Grows, raises or produces a food product; and

(b) Sells the food product as, or offers it for sale as, an organic food.

(10) "Vendor" means any person who sells organic food products to the consumer or another vendor.

SECTION 3. 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~~ -- ANNUAL LIST DISTRIBUTION. (1) 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~~a) Standards for agricultural crops and livestock produced for sale as organically grown food products.

(~~2~~b) Records required of organically ~~crop and livestock~~ grown food products producers.

(~~3~~c) The number of on-site inspections, announced and unannounced.

(~~4~~d) Chemical residue analysis of organically grown ~~agricultural~~ food products and fees for conducting such analysis.

(~~5~~e) Certification of private laboratories to conduct chemical residue analyses.

(~~6~~f) Standards that ~~an agricultural~~ producer must meet to be recognized as a producer under the provisions of this chapter.

(~~7~~g) Development and distribution of the organic certification seal and standards for its application for use on Idaho ~~agricultural~~ organically grown food products.

(~~8~~h) Development and implementation of labeling standards.

(~~9~~i) Rules establishing organic standards for poultry and poultry products, livestock and livestock products, milk and dairy products or aquaculture products, which 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~~j) Education. The director may not issue a certificate under the provisions of this ~~act~~ chapter 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~~ to comply with the requirements of this chapter.

(k) Standards for health care and medical treatment for livestock qualifying as organically grown food products and for the prevention and control of infections or communicable diseases among such livestock.

(l) Standards for prohibitions against denial of health care for or medical treatment of livestock in order to obtain or retain organic certification.

(2) An annual list of all certified organic producers, handlers and vendors shall be distributed to state regulatory authorities, and to other persons upon request.

SECTION 4. That Section 22-1105, Idaho Code, be, and the same is hereby amended to read as follows:

22-1105. PROHIBITED REPRESENTATIONS. A producer, vendor or handler shall not sell or resell or offer for sale or resale any food product with the representation that the product is an organically grown food product if the producer, vendor or handler knows, or has reason to know, that the food product has not been grown, raised or produced as an ~~organic~~ally grown food product as defined in this chapter. Violations of this section shall be punishable as provided in section 22-1104, Idaho Code.

SECTION 5. That Section 22-1106, Idaho Code, be, and the same is hereby amended to read as follows:

22-1106. FEES -- ORGANIC FOOD PRODUCTS ADMINISTRATION ACCOUNT. The director may adopt rules ~~and regulations~~ establishing a fee schedule that will provide for the recovery of the full cost of the certification program. Fees collected pursuant to this section shall be deposited in the organic food products administration account which is hereby created in the dedicated fund of the state treasury. Moneys in the account shall be used solely for carrying out the provisions of this chapter and may be expended only pursuant to appropriation. The director may employ as many personnel as are necessary to carry out the provisions of this chapter.

SECTION 6. That Section 22-1107, Idaho Code, be, and the same is hereby amended to read as follows:

22-1107. ORGANIC FOOD ADVISORY COUNCIL. (1) There is hereby created in the department of agriculture, the organic food advisory council which shall consist of ~~six~~ seven (~~6~~7) members who shall be appointed by the director. ~~Four (4) of the council members shall be nominated from the Idaho organic industry and two (2) members shall be chosen at large by the director. One~~ Organizations representing Idaho's organic food products industry shall nominate to the director one (1) member and one (1) alternate for each vacancy on the advisory council to represent the following categories of organic food products:

(a) Cereals, grains and legumes;

(b) Dairy and livestock;

(c) Forage and feed;

(d) Herbs; and

(e) Vegetables and row crops.

At least one (1) ~~of the at-large~~ members shall be a purchaser, vendor or consumer of organic food products, and one (1) ~~at-large~~ member shall represent conventional agriculture. Three (3) members of the council shall be originally appointed for a term of two (2) years and ~~three~~ four (~~3~~4) members of the council shall be appointed for a term of three (3) years. Thereafter all terms shall be for a period of three (3) years. If a vacancy occurs, the director may appoint a replacement for the remainder of the term.

(2) The organic food advisory council shall advise the director on matters relating to administration of the provisions of this chapter. A majority of the members of the council shall represent a quorum. The council shall meet no less frequently than quarterly. ~~If a vacancy occurs, the director may appoint a replacement for the remainder of the term.~~

(3) Members of the council shall be compensated as provided in section 59-509(b), Idaho Code.

Approved March 22, 2001.

CHAPTER 76
(H.B. No. 4)

AN ACT

RELATING TO THE IDAHO BOARD OF NURSING; AMENDING SECTION 54-1404, IDAHO CODE, TO AUTHORIZE THE BOARD TO ENTER INTO MULTISTATE AGREEMENTS OR COMPACTS; AMENDING SECTION 54-1413, IDAHO CODE, TO CLARIFY AUTHORITY OF THE BOARD TO SUBMIT SIGNIFICANT INVESTIGATIVE INFORMATION TO THE COORDINATED LICENSURE INFORMATION SYSTEM FOR USE BY PARTIES TO AGREEMENTS OR COMPACTS; AND AMENDING CHAPTER 14, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1418, IDAHO CODE, TO PROVIDE ADOPTION OF THE NURSE LICENSURE COMPACT.

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

SECTION 1. That Section 54-1404, Idaho Code, be, and the same is hereby amended to read as follows:

54-1404. BOARD OF NURSING -- POWERS AND DUTIES. The board shall have all powers and duties necessary and incident to regulation of nursing and to enforcement of this act, including but not limited to, the power and duty:

(1) To license qualified persons for practice of nursing in Idaho; to renew licenses; to limit, restrict, amend, deny, suspend or revoke licenses; and to accept the voluntary surrender of a license;

(2) To establish standards, criteria, conditions and requirements for licensure and to investigate and determine eligibility and qualifications for licensure, and to administer examinations for licensure;

(3) To establish standards of conduct and practice and to regulate the use of titles, abbreviations and designations for the practice of nursing;

(4) To establish standards, criteria, and requirements for curricula for nursing education programs and to evaluate, survey, review and

approve nursing education programs subject to the provisions of section 54-1406, Idaho Code;

(5) To evaluate continuing competency of persons licensed pursuant to this act and to develop standards which will advance the competency of licensees in accordance with developing scientific understanding and methods relating to the practice of nursing;

(6) To receive and collect license and renewal fees assessed pursuant to this act and to assess, receive and collect additional reasonable fees for the administration of examinations, investigations and evaluations of applicants, issuance of temporary licenses, duplication and verification of records, surveying and evaluating nursing education programs, and administrative fines not to exceed one hundred dollars ($100) for each count or separate offense of practicing nursing without current licensure, to be deposited in the state board of nursing account in the manner provided by this act;

(7) To employ personnel necessary to administer this act and rules promulgated pursuant to this act and perform such other duties as the board may require. Such personnel shall include an executive director, who shall be currently licensed to practice professional nursing in Idaho and who shall not be a member of the board;

(8) To maintain a record of board proceedings, annually report to the governor and maintain a public register of names and addresses of licensed nurses;

(9) To enter into interstate compacts, contracts or agreements to facilitate the practice and regulation of nursing in this state;

(10) To make, adopt and publish rules pursuant to chapter 52, title 67, Idaho Code, as may be necessary or appropriate to carry out the provisions and purposes of this act.

SECTION 2. That Section 54-1413, Idaho Code, be, and the same is hereby amended to read as follows:

54-1413. DISCIPLINARY ACTION. (1) Grounds for discipline. The board shall have the power to deny any application for or renewal of license, to revoke, suspend or amend any license issued pursuant to this act and to limit or restrict the practice of any licensee, upon a determination by the board that the person:

(a) Made, or caused to be made, a false, fraudulent or forged statement or representation in procuring or attempting to procure a license to practice nursing; or

(b) Practiced nursing under a false or assumed name; or

(c) Is convicted of a felony or of any offense involving moral turpitude; or

(d) Is or has been grossly negligent or reckless in performing nursing functions; or

(e) Habitually uses alcoholic beverages or narcotic, hypnotic or hallucinogenic drugs; or

(f) Is physically or mentally unfit to practice nursing; or

(g) Violates the provisions of this act or rules and standards of conduct and practice as may be adopted by the board; or

(h) Otherwise engages in conduct of a character likely to deceive, defraud or endanger patients or the public; or

(i) Has had a license to practice nursing suspended or revoked in any jurisdiction. A certified copy of the order of suspension or

revocation shall be prima facie evidence of such suspension or revocation.

(2) (a) Proceedings. The executive director shall conduct such investigations and initiate such proceedings as necessary to insure compliance with this section. The board may accept the voluntary surrender of a license from any nurse under investigation and accordingly enter an order revoking or suspending such license and/or imposing such conditions, limitations, or restrictions on the practice of any such nurse as may be appropriate in the discretion of the board. Otherwise, every person subject to disciplinary proceedings shall be afforded an opportunity for hearing after reasonable notice. All proceedings hereunder shall be in accordance with chapter 52, title 67, Idaho Code.

(b) Hearings shall be conducted by the board or by persons appointed by the board to conduct hearings and receive evidence. The board and any person duly appointed by the board to conduct hearings shall have all powers as are necessary and incident to orderly and effective receipt of evidence including, but not limited to, the power to administer oaths, and to compel by subpoena attendance of witnesses and production of books, records and things at the hearing or at a deposition taken by a party in accordance with the Idaho rules of civil procedure. Any party shall be entitled to the use of subpoena upon application therefor.

(c) In the event any person fails to comply with a subpoena personally served upon him or refuses to testify to any matter regarding which he may be lawfully interrogated, the board shall petition the district court in the county where such failure or refusal occurred or where such person resides, to enforce such subpoena or compel such testimony. Proceedings before the district court shall be for contempt in the same nature as contempt of court for failure or refusal to comply with an order of the court and the court shall have the same powers to secure compliance with subpoena and testimony or to impose penalties as in contempt of court proceedings.

(3) Probation/Subsequent review. Any order of the board entered under this section may be withheld or suspended for a probationary period to be fixed by the board upon such terms and conditions as may be appropriate in order to regulate, monitor and/or supervise the practice of nursing by the licensee subject to such order for the prescribed probationary period. Any order of the board entered under this section may be withdrawn, reversed, modified or amended upon a showing by the person subject to the order that the grounds for discipline no longer exist or that he is rehabilitated, qualified and competent to practice nursing and that he is not likely to violate this act or rules adopted hereunder in the future. The board may, as a condition to withdrawal, reversal, modification or amendment of the order, require the person to pay all or part of the costs incurred by the board in proceedings upon which the order was entered.

(4) Reporting investigative information. Nothing in section 9-340C(8) and (9), Idaho Code, shall be construed as limiting the authority of the board to report current significant investigative information to the coordinated licensure information system for transmission to states that are parties to any multistate agreements or compacts regarding nurse licensure.

SECTION 3. That Chapter 14, Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1418, Idaho Code, and to read as follows:

54-1418. NURSE LICENSURE COMPACT. The terms and conditions of the nurse licensure compact are hereby enacted in substantially the following form:

NURSE LICENSURE COMPACT

ARTICLE I

FINDINGS AND DECLARATION OF PURPOSE

(1) The party states find that:

(a) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(b) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(c) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(d) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

(e) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(2) The general purposes of this compact are to:

(a) Facilitate the states' responsibility to protect the public's health and safety;

(b) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(c) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

(d) Promote compliance with the laws governing the practice of nursing in each jurisdiction; and

(e) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

DEFINITIONS

As used in this compact:

(1) "Adverse action" means a home or remote state action.

(2) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(3) "Coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(4) "Current significant investigative information" means:

(a) Investigative information that a licensing board, after a pre-

liminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(b) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(5) "Home state" means the party state which is the nurse's primary state of residence.

(6) "Home state action" means any administrative, civil, equitable or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(7) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(8) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.

(9) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

(10) "Party state" means any state that has adopted this compact.

(11) "Remote state" means a party state, other than the home state:

(a) Where the patient is located at the time nursing care is provided; or

(b) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(12) "Remote state action" means:

(a) Any administrative, civil, equitable or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state; and

(b) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "State practice laws" means those individual party's state laws and rules or regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III
GENERAL PROVISIONS AND JURISDICTION

(1) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(2) Party states, in accordance with state due process laws, may limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(3) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(4) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(5) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV
APPLICATIONS FOR LICENSURE IN A PARTY STATE

(1) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other party state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(2) A nurse in a party state shall hold licensure in only one (1) party state at a time, issued by the home state.

(3) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satis-

factory to the new home state's licensing board.

(4) When a nurse changes primary state of residence by:

(a) Moving between two (2) party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(b) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(c) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V
ADVERSE ACTIONS

In addition to the general provisions described in article III, the following provisions apply:

(1) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(2) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action(s), and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(3) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(4) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(5) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(6) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE NURSE LICENSING BOARDS

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(1) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(2) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

(3) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state; and

(4) Promulgate uniform rules and regulations as provided for in article VIII(3).

ARTICLE VII

COORDINATED LICENSURE INFORMATION SYSTEM

(1) All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(2) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(3) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party states' licensing boards.

(4) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(5) Any personally indentifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(6) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(7) The compact administrators, acting jointly with each other and

in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE VIII
COMPACT ADMINISTRATION AND INTERCHANGE OF INFORMATION

(1) The head of the nurse licensing board, or his/her designee, of each party state shall be the administrator of this compact for his/her state.

(2) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(3) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states under the authority invested under article VI(4).

ARTICLE IX
IMMUNITY

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE X
ENTRY INTO FORCE, WITHDRAWAL AND AMENDMENT

(1) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(2) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(3) Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(4) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI
CONSTRUCTION AND SEVERABILITY

(1) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is

declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to a severable matter.

(2) In the event party states find a need for settling disputes arising under this compact:

(a) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state(s) involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(b) The decision of a majority of the arbitrators shall be final and binding.

Approved March 22, 2001.

CHAPTER 77
(H.B. No. 5, As Amended)

AN ACT

RELATING TO THE BOARD OF NURSING HOME ADMINISTRATORS; AMENDING SECTION 54-1601, IDAHO CODE, TO DEFINE "TEMPORARY PERMIT" AND "ADMINISTRATOR DESIGNEE" AND TO ALPHABETIZE THE TERMS; AMENDING SECTION 54-1602, IDAHO CODE, TO PROVIDE THAT NURSING HOMES MAY OPERATE UNDER THE SUPERVISION OF A QUALIFIED ADMINISTRATOR DESIGNEE FOR UP TO EIGHT CONTINUOUS WEEKS AND TO PROVIDE THAT A CONSULTING AGREEMENT ENTERED INTO BETWEEN THE ADMINISTRATOR DESIGNEE AND AN IDAHO LICENSED ADMINISTRATOR SHALL BE SUBMITTED TO THE BOARD; AMENDING SECTION 54-1604, IDAHO CODE, TO INCREASE THE MAXIMUM FEE THE BOARD MAY CHARGE FOR AN APPLICATION, LICENSE OR RENEWAL OF A LICENSE, PERMIT OR REGISTRATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1607, IDAHO CODE, TO REMOVE THE BOARD'S AUTHORITY TO ISSUE TEMPORARY LICENSES ON AN EMERGENCY BASIS; AMENDING SECTION 54-1608, IDAHO CODE, TO INCREASE THE MAXIMUM FEE THE BOARD MAY CHARGE FOR REINSTATEMENT OF A LICENSE; AMENDING SECTION 54-1609, IDAHO CODE, TO PROVIDE THAT THE BOARD MAY ISSUE A TEMPORARY PERMIT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-1610, IDAHO CODE, TO DELETE REFERENCE TO TEMPORARY PERMITS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. 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 hereinaf-

ter set forth or indicated:

(1) "Administrator designee" means a qualified individual filling a vacant nursing home administrator position pursuant to a signed agreement.

(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) "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 or assisted living facilities, whether proprietary or nonprofit, 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.

(6) "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.

(67) "Nursing home administrator-in-training" means an individual registered as such under and pursuant to the provisions of this act.

(78) "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 or assisted living facilities, whether proprietary or nonprofit, 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.~~

(9) "Temporary permit" means a privilege granted by the board to an individual who has submitted an endorsement application evidencing a license in good standing in another state allowing their temporary practice as a nursing home administrator until their application is acted upon by the board.

SECTION 2. That Section 54-1602, Idaho Code, be, and the same is hereby amended to read as follows:

54-1602. SUPERVISION BY LICENSED ADMINISTRATOR REQUIRED -- EXCEPTION FOR ADMINISTRATOR DESIGNEE -- PRACTICE BY UNLICENSED PERSON PROHIBITED. No nursing home in the state shall be operated unless it is under the supervision of an administrator who holds a currently valid nursing home administrator's license issued pursuant to this act, except that after an administrator's position becomes vacant, a nursing home may operate under a responsible person authorized by signed agreement to act as an administrator designee. The administrator designee shall be qualified by documented experience to assume delegated duties, and shall not act for more than eight (8) continuous weeks unless an exception is granted by the board. An Idaho licensed administrator shall enter into

an agreement, which shall be submitted to the board, to consult with the administrator designee. No person shall practice or offer to practice nursing home administration in this state or use any title, sign, card, or device to indicate that he is a nursing home administrator unless such person shall have been duly licensed as a nursing home administrator as required by this act.

SECTION 3. That Section 54-1604, Idaho Code, be, and the same is hereby amended to read as follows:

54-1604. FUNCTIONS AND DUTIES OF BOARD -- FEE FOR LICENSE APPLICANTS -- RULES. (1) It shall be the functions and duties of such board to:

(a) Develop, impose, and enforce standards consistent with this act which shall be met by individuals in order to receive and retain a license as a nursing home administrator which standard shall be designed to insure that nursing home 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 nursing home administrators;

(b) Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(c) Issue licenses to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(d) Establish and carry out procedures designated to insure that individuals licensed as nursing home 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 nursing home administrator has failed to comply with the requirements of such standards;

(f) Conduct a continuing study and investigation of administrators of nursing homes 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 nursing homes who have been licensed as such;

(g) The fee to be paid ~~by applicants~~ for any application, licenses, renewal, ~~of licenses and applicants seeking a reciprocal endorsement of a license issued by the proper authorities in another state,~~ permit or registration shall be set by board rule in an amount not to exceed ~~eighty-five~~ two hundred dollars (~~$85.~~$200).

(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, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in section 1908 of the "Social Security Act," the federal rules promulgated thereunder, and other pertinent federal requirements.

(4) The board shall have the authority to collect from the state association representing nursing homes in Idaho an amount as is necessary to fully reimburse the board for all expenses relating to prelitigation panels conducted pursuant to chapter 23, title 6, Idaho Code. Funds collected by the board pursuant to this subsection shall be deposited into the occupational licenses fund.

SECTION 4. That Section 54-1607, Idaho Code, be, and the same is hereby amended to read as follows:

54-1607. ISSUANCE OF LICENSE -- EXEMPTION -- EDUCATIONAL PROGRAMS -- ADMINISTRATION OF FEDERAL FUNDS BY BOARD. (1) An applicant for a license as a nursing home administrator who has successfully complied with the requirements of section 54-1605, Idaho Code, and the standards provided for therein, has passed the examination provided for in section 54-1606, Idaho Code, and, where applicable, has complied with the requirements of section 54-1610, 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 nursing home administrator; provided, however, nothing in this act or the rules thereunder shall be construed to require an applicant for a license as a nursing home administrator, who is certified by a recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teachings, to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions.

(2) 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.

(3) 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 nursing home administrators' licenses and nursing home administrators to meet requirements established pursuant to this act, 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 act. For purposes of this subsection, the board shall have the authority to receive and disburse federal funds received pursuant to requirements of the "social security act."

~~(4) Pending issuance of a license, the board may issue a temporary license for a period not exceeding one (1) year, without examination to an applicant who files a written application, who is otherwise qualified, and who is applying to fill a vacancy on an emergency basis.~~

SECTION 5. That Section 54-1608, Idaho Code, be, and the same is hereby amended to read as follows:

54-1608. ATTENDANCE AT CONTINUING EDUCATION PROGRAM -- REVOCATION OR SUSPENSION -- RENEWAL OF LAPSED LICENSES. (1) Every individual who holds a valid license as a nursing home administrator issued by the board under section 54-1607(1), Idaho Code, shall annually be required to apply to the board for a renewal of license and report any facts requested by the board on forms provided for such purpose. A license not timely renewed shall be canceled immediately.

(2) Upon making an application for a renewal of license, such individual shall pay an annual license 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 renewal of license 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 renewal of license, the license fee, and the evidence required with respect to continuing education, the board shall issue a renewal of license to such nursing home administrator.

(4) The licensed nursing home administrator who fails to comply with the provisions of this section, and who continues to act as a nursing home administrator, shall be subject to discipline by the board, in accordance with the provisions of this act.

(5) A nursing home administrator who has been duly licensed in this state and whose license shall not have been revoked or suspended, and whose license has expired for a period of not longer than five (5) years, may renew his license within the state upon complying with the provisions of this section for renewal of license and also filing with the board an affidavit in accordance with the rules of the board, and payment of a ~~twenty-five~~ one hundred dollar (~~$25.~~$100) reinstatement fee together with fees for back years.

(6) A nursing home administrator whose license has been expired for five (5) or more years, must reapply for licensure under the provisions of section 54-1605, Idaho Code.

SECTION 6. That Section 54-1609, Idaho Code, be, and the same is hereby amended to read as follows:

54-1609. ~~INTERSTATE-RECIPROCAL-I~~ENDORSEMENT OF LICENSES. The board, in its discretion, and otherwise subject to the provisions of this act, and the rules of the board promulgated thereunder prescribing the qualifications for a nursing home administrator license, may ~~i~~endorse a nursing home 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 nursing home administrator license which were substantially equivalent to those required in this state at the time such other license was issued by such other state. On receipt of a completed application and fee, the board may issue a temporary permit as defined in this chapter and by board rule.

SECTION 7. That Section 54-1610, Idaho Code, be, and the same is hereby amended to read as follows:

54-1610. ADMINISTRATORS-IN-TRAINING -- ~~TEMPORARY PERMITS~~ -- EXAMINATION AFTER ONE YEAR -- QUARTERLY REPORTS -- EXCEPTIONS. (1) Every applicant for a nursing home administrator license who shall have otherwise qualified under the provisions of section 54-1605, Idaho Code, shall serve for a one (1) year period under the direct supervision of a duly licensed nursing home administrator in accordance with the rules of the board. At the expiration of the one-year-in-training period said applicant shall be eligible to take the examination.

(2) The nursing home administrator-in-training shall submit quarterly reports on forms provided therefor by the board.

(3) This section shall not apply to any individual who has successfully completed a course of study for a master's degree in health administration related to long-term care, or who has successfully completed a course of study for a master's degree in health administration and has one (1) year management experience in long-term care and who has been awarded such degree from an accredited institution of higher learning.

(4) Every nursing home administrator-in-training shall register the fact of such training with the board in accordance with the rules and on forms provided ~~therefor~~ by the board.

Approved March 22, 2001.

CHAPTER 78
(H.B. No. 7, As Amended)

AN ACT

RELATING TO THE BOARD OF SOCIAL WORK EXAMINERS; AMENDING SECTION 54-3209, IDAHO CODE, TO INCREASE THE MAXIMUM FEE FOR SOCIAL WORK LICENSES; AND AMENDING SECTION 54-3211, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 54-3209, Idaho Code, be, and the same is hereby amended to read as follows:

54-3209. FEES -- LICENSING -- DURATION OF LICENSES. Each person licensed to practice social work shall pay to the treasurer of the state of Idaho a license fee, not to exceed ~~fifty~~ seventy-five dollars ($750.00) as determined by the board, on July 1 of each year for the following fiscal year. Licenses shall expire on ~~the~~ last day of the month of June following their issuance and shall become invalid after that date. Renewal may be effected in accordance with the requirements of section 67-2614, Idaho Code.

SECTION 2. That Section 54-3211, Idaho Code, be, and the same is hereby amended to read as follows:

54-3211. REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF LICENSE -- UNPROFESSIONAL CONDUCT. The ~~department~~ board may refuse to renew, may suspend, or may revoke any license issued under this act upon proof, after a hearing, that the person has engaged in "unprofessional con-

duct." The words "unprofessional conduct" as relating to persons licensed under this act are defined to include but are not limited to:

(1) Conviction of a felony, or of any offense involving moral turpitude.

(2) Habitual drunkenness or addiction to habit-forming drugs, either of which impair the ability to perform his work without danger to himself or the public he serves.

(3) Conviction of fraud or deceit in connection with services rendered as a certified social worker or social worker, or in establishing qualifications under this act.

(4) Aiding or abetting a person not licensed under this act or a person representing himself as licensed in the practice of social work in the state of Idaho.

(5) Failing to be licensed or continuing to represent himself as licensed after the expiration of his license.

(6) Being found guilty of unprofessional conduct by the rules established by the board.

Approved March 22, 2001.

CHAPTER 79
(H.B. No. 8)

AN ACT

RELATING TO THE ADULT ABUSE, NEGLECT AND EXPLOITATION ACT; AMENDING SECTION 39-5304, IDAHO CODE, TO PROVIDE AN EXCEPTION FROM THE PROHIBITION AGAINST DISCLOSURE OF NAMES ASSOCIATED WITH INVESTIGATIVE REPORTS; AND AMENDING SECTION 39-5310, IDAHO CODE, TO PROVIDE THAT NAMES OF PERSONS ASSOCIATED WITH CERTAIN INVESTIGATIVE REPORTS OF THE COMMISSION SHALL BE PROVIDED TO LAW ENFORCEMENT WHEN THE COMMISSION HAS A DUTY TO REPORT THE RESULTS OF AN INVESTIGATION TO LAW ENFORCEMENT AND TO MAKE TECHNICAL CHANGES.

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

SECTION 1. 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 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) 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. 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 the commission's duty to notify law enforcement as required in section 39-5310, Idaho Code, 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 2. That Section 39-5310, Idaho Code, be, and the same is hereby amended to read as follows:

39-5310. REPORT TO LAW ENFORCEMENT -- PROSECUTION. (1) If, as the result of any investigation initiated under the provisions of this chapter, it appears that the abuse, neglect, or exploitation has caused injury or a serious imposition on the rights of the vulnerable adult, the commission shall immediately notify the appropriate law enforcement agency which shall initiate an investigation and shall determine whether criminal proceedings should be initiated against the caretaker or other persons in accordance with applicable state law. Notwithstanding the prohibition against disclosure of names of persons associated with the written report of an investigation as provided in section 39-5304, Idaho Code, the commission shall disclose names associated with the written report when notification is made as required in this section.

(2) The abuse, neglect, or exploitation of a vulnerable adult is a misdemeanor under section 18-1505, Idaho Code, and is subject to punishments provided in section 18-113, Idaho Code, and other applicable state law.

Approved March 22, 2001.

CHAPTER 80
(H.B. No. 9, As Amended)

AN ACT

RELATING TO CHIROPRACTIC PHYSICIANS; AMENDING SECTION 54-705, IDAHO CODE, TO PROVIDE FOR REGISTRATION OF CHIROPRACTIC INTERNS UNDER THE SUPERVISION OF LICENSED CHIROPRACTIC PHYSICIANS, TO PROVIDE A CORRECT REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-711, IDAHO CODE, TO PROVIDE FOR REGISTRATION AND ISSUANCE OF TEMPORARY PERMITS.

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

SECTION 1. That Section 54-705, Idaho Code, be, and the same is hereby amended to read as follows:

54-705. EXCEPTIONS -- PROHIBITED PRACTICES -- NEGLIGENCE ESTABLISHED. (1) Under the circumstances described and, subject in each case to the limitations stated, the following persons, though not holding a license to practice chiropractic in this state, may engage in activities included in the practice of chiropractic:

(a) A person licensed by this state pursuant to chapter 18, title 54, Idaho Code;

(b) A chiropractic assistant as shall be defined and regulated by the board, administering a procedure set forth in section 54-704, Idaho Code, but not including the adjustment or manipulation of articulations of the body, as specifically directed by a chiropractic physician as long as such directions are within the scope of chiropractic practice;

(c) A person rendering aid in an emergency, for which no fee for the services is contemplated, charged or received;

(d) A person residing in another state or country and authorized to practice chiropractic there, who is called in consultation by a person licensed in this state to practice chiropractic, or who for the purpose of furthering chiropractic education is invited into this state to conduct a lecture, clinic, or demonstration, while engaged in activities in connection with the consultation, lecture, clinic, or demonstration, so long as he does not open an office or appoint a place to meet patients or receive calls in this state;

(e) A person authorized to practice chiropractic in another state or country rendering chiropractic care in a time of disaster or while caring for an ill or injured person while at the scene of an emergency and while continuing to care for such person;

(f) Nothing in this chapter shall be construed as preventing or restricting the practice, services or activities or requiring licen-

sure pursuant to the provisions of this chapter, of any person licensed or registered in this state by any other law, from engaging in any health care profession or occupation for which such person is licensed or registered~~.~~;

(g) Any person exempted under the provisions of section 54-1804, Idaho Code~~.~~;

(h) Any person who practices massage therapy as defined in section 54-704(1)(c), Idaho Code;

(i) A chiropractic intern, as defined and regulated by the board, who is registered with the board to practice chiropractic under the direct supervision of a licensed chiropractic physician pursuant to a preceptor program adopted and developed by the rules of the board.

(2) Except as provided in subsection (1) of this section, it is unlawful for any person to practice chiropractic in this state without a license and, upon conviction thereof, shall be fined not less than one thousand dollars ($1,000) nor more than three thousand dollars ($3,000), or imprisoned for not less than six (6) months nor more than one (1) year, or by both such fine and imprisonment.

(3) It is unlawful for any person to assume or use the title or designation "chiropractor," "chiropractic physician," "doctor of chiropractic," the initials "D.C.," or any word or title or abbreviation thereof calculated to induce the belief that he is engaged in the practice of chiropractic or to indicate to the public that such person is licensed to practice chiropractic pursuant to this act unless such person is so licensed, and upon conviction thereof, such person shall be fined not less than five hundred dollars ($500) nor more than three thousand dollars ($3,000), or imprisoned for not less than six (6) months nor more than one (1) year, or by both such fine and imprisonment.

(4) When a person has been a recipient of services constituting the unlawful practice of chiropractic, whether or not he knew the rendition of the services was unlawful, proof of the rendition of unlawful services to the recipient, in an action against the provider of such services for damages allegedly caused by the services, constitutes prima facie evidence of negligence, shifting the burden of proof to such provider of unlawful services. The following damages in addition to any other remedies provided by law may be recovered in such an action:

(a) Amount of any fees paid for the unlawful services; and

(b) Reasonable attorney's fees and court costs.

(5) The board shall refer all violations made known to it to an appropriate prosecuting attorney. The board shall render assistance to a prosecuting attorney in the prosecution of a case pursuant to this section.

SECTION 2. That Section 54-711, Idaho Code, be, and the same is hereby amended to read as follows:

54-711. TEMPORARY PRACTICE, REGISTRATION AND PERMIT. (1) Any person who has submitted an application to the board for licensure by examination to practice chiropractic in the state of Idaho, may ~~be--permitted~~ register with the board and be granted a permit to practice chiropractic prior to examination and licensure in accordance with board rules upon the following conditions:

(~~1~~a) The applicant must ~~request-permission-of-the-board-in--writing~~

~~to engage in such temporary practice~~ submit a completed registration application to the board on forms furnished by the board together with a fee of not more than fifty dollars ($50.00), and must affirmatively show that the applicant will take the next scheduled ~~examination~~ for licensure ~~given~~ approved by the board, and that the applicant has not failed two (2) previous examinations ~~conducted~~ for licensure approved by the board; and

~~(2)~~b) A licensed physician certifies to the board that such applicant will practice chiropractic only under the direct and immediate supervision of such physician and only in the office of such physician.

(2) Any person who has completed the required course of study from an acceptable school of chiropractic, but has not yet graduated, may register with the board and be granted a permit to serve a chiropractic internship in accordance with board rules and upon the following conditions:

(a) The applicant must submit a completed registration application to the board on forms furnished by the board and submit a fee of not more than fifty dollars ($50.00); and

(b) A licensed physician certifies to the board that such applicant will practice chiropractic only under the direct and immediate supervision of such physician and only in the office of such physician.

Approved March 22, 2001.

CHAPTER 81
(H.B. No. 11, As Amended)

AN ACT

RELATING TO THE BOARD OF PSYCHOLOGIST EXAMINERS; AMENDING SECTION 54-2312, IDAHO CODE, TO PROVIDE FOR QUALIFICATIONS FOR THE ENDORSEMENT OF LICENSES; AND AMENDING CHAPTER 23, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-2312A, IDAHO CODE, TO PROVIDE FOR SENIOR PSYCHOLOGIST LICENSURE.

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

SECTION 1. That Section 54-2312, Idaho Code, be, and the same is hereby amended to read as follows:

54-2312. QUALIFICATIONS FOR LICENSE -- ~~RECIPROCITY~~ ENDORSEMENT. The board may recommend the granting of a license ~~without examination~~ to any person who~~,--at--the time of application,~~ is licensed or certified by a regulatory board of psychologists ~~examiners of another--state,--provided the--requirements for such certification or licensure were substantially the equivalent of the requirements of this act,-and-upon--payment--of--a one--hundred-dollar-($100)-fee~~ in the United States or Canada where such certification or licensure was based on a doctoral degree and who:

(1) Submits a complete application, including the application fee and a license fee not to exceed two hundred dollars ($200) as established by board rule;

(2) Is of good moral character;

(3) Has not had a certification or license revoked, suspended or otherwise sanctioned; and

(4) Has certified under oath that they have reviewed and will abide by the laws and rules governing the practice of psychology in Idaho and the code of ethics of the American psychological association and either:

(a) Holds a current certificate of professional qualification in psychology; or

(b) Meets the requirements of section 54-2307(b), Idaho Code, and board rules relating to endorsement and educational and credentialing requirements for licensure.

SECTION 2. That Chapter 23, 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 54-2312A, Idaho Code, and to read as follows:

54-2312A. SENIOR PSYCHOLOGIST. The board may grant a license to any person who submits a completed application, including the application fee and a license fee not to exceed two hundred dollars ($200) as established by board rule, and who:

(1) Is of good moral character;

(2) Has maintained a valid psychology license based on a doctoral degree in the United States or Canada for a period of not less than twenty (20) years;

(3) Has a documented record of psychology practice for five (5) of the last seven (7) years immediately prior to the date of application;

(4) Has met the continuing education requirement of the board for not less than five (5) calendar years immediately prior to the date of application;

(5) Has not been the subject of any disciplinary action within the last seven (7) years prior to application or has never voluntarily surrendered a license to practice psychology in any jurisdiction; and

(6) Has certified under oath that he has reviewed and will abide by the laws and rules governing the practice of psychology in Idaho and the code of ethics of the American psychological association.

Approved March 22, 2001.

CHAPTER 82
(H.B. No. 13, As Amended)

AN ACT

RELATING TO THE BOARD OF HEARING AID DEALERS AND FITTERS; AMENDING SECTION 54-2915, IDAHO CODE, TO PROVIDE THAT MEMBERS WILL BE PAID AN HONORARIUM AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 54-2915, Idaho Code, be, and the same is hereby amended to read as follows:

54-2915. BOARD OF HEARING AID DEALERS AND FITTERS. (a) There shall

be established in the department of self-governing agencies a board of hearing aid dealers and fitters which shall exercise such functions as may be required under the act.

(b) Members of the board shall be residents of the state. The board shall consist of two (2) hearing aid dealers and fitters, one (1) otolaryngologist or otologist, one (1) audiologist holding the certificate of clinical competence, and one (1) consumer of hearing aids or advocate for consumers of hearing aids, who cannot be formerly or currently licensed as a hearing aid dealer and fitter. Each hearing aid dealer and fitter on the board shall have held a license under this chapter for at least two (2) years and hold a valid current license as a hearing aid dealer and fitter, as provided under this chapter.

(c) Within thirty (30) days after July 1, 1992, the governor shall select one (1) person who is a consumer or who represents consumers of hearing aids from a list of persons recommended by any senior citizen group, advocacy group for the handicapped, or social service agency. The consumer will be appointed to and replace the first hearing aid dealer and fitter vacancy on the board.

The members of the board shall be appointed to serve the following terms: ~~one (1) member who is a hearing aid dealer and fitter~~ one (1) member who is a hearing aid dealer and fitter shall serve for a term ending July 30, 1973; one (1) member who is a hearing aid dealer and fitter shall serve for a term ending July 30, 1974; one (1) member who is an otolaryngologist or otologist shall serve for a term ending July 30, 1973; one (1) member who is an audiologist shall serve for a term ending July 30, 1974, and one (1) member who is a consumer of hearing aids shall serve for a term ending July 30, 1995. Upon the expiration of the term of any member, the governor shall appoint a successor for a term of three (3) years. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

The members of the board shall annually designate one (1) member to serve as chairman, another to serve as vice chairman and another to serve as secretary. No member of the board who has served two (2) consecutive terms may be reappointed to the board for at least three (3) years following the expiration of his term of office.

(d) Members of the board shall be compensated as provided by section 59-509(~~h~~n), Idaho Code.

Approved March 22, 2001.

CHAPTER 83
(H.B. No. 14, As Amended)

AN ACT

RELATING TO PROFESSIONAL COUNSELORS FOR INDEPENDENT PRACTICE; AMENDING SECTION 54-3402, IDAHO CODE, TO PROVIDE THAT THE CHAPTER DOES NOT APPLY TO INTERNS IN COUNSELING ACTING UNDER THE DIRECT SUPERVISION OF A LICENSED PROFESSIONAL COUNSELOR; AMENDING SECTION 54-3405, IDAHO CODE, TO REQUIRE THAT AN APPLICANT FOR LICENSURE AS A PROFESSIONAL COUNSELOR MUST BE OF GOOD MORAL CHARACTER; AMENDING SECTION 54-3405A, IDAHO CODE, TO REQUIRE THAT AN APPLICANT FOR LICENSURE AS A PASTORAL COUNSELOR MUST BE OF GOOD MORAL CHARACTER; AMENDING SEC-

TION 54-3405B, IDAHO CODE, TO REQUIRE THAT AN APPLICANT FOR A CONDITIONAL LICENSE MUST BE OF GOOD MORAL CHARACTER; AMENDING SECTION 54-3406, IDAHO CODE, TO DELETE A REFERENCE TO RECIPROCITY, TO PROVIDE FOR ENDORSEMENT AND TO PROVIDE THAT PERSONS SEEKING ENDORSEMENT MUST MEET THE QUALIFICATIONS ESTABLISHED BY BOARD RULE; AND AMENDING SECTION 54-3411, IDAHO CODE, TO PROVIDE A LICENSURE FEE FOR ENDORSEMENT.

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

SECTION 1. That Section 54-3402, Idaho Code, be, and the same is hereby amended to read as follows:

54-3402. LICENSE REQUIRED -- EXEMPTIONS. It shall be unlawful for any person to engage in any of the following acts:

(1) To practice professional counseling for compensation without first having complied with the provisions of this chapter and without a valid license as required by this chapter.

(2) To represent himself/herself to be a licensed professional counselor or licensed counselor unless he/she shall first obtain a license pursuant to this chapter.

(3) To make use of any title, words, letters or abbreviations which may reasonably be confused with a designation provided by this chapter.

(4) To materially refuse to furnish the board information or records required or requested pursuant to this chapter or pursuant to an investigation commenced pursuant to this chapter.

Nothing in this chapter shall be construed to apply to the activities and services of licensed or credentialed members of other professions, such as physicians, psychologists, registered nurses, social workers, drug and alcohol counselors, or attorneys performing duties consistent with the laws of this state, their training, and any code of ethics of their professions, provided they do not represent themselves by any title or practice description in the manner prescribed in section 54-3401, Idaho Code.

Nothing in this chapter shall be construed to apply to the activities, services and use of an official title on the part of a person certified by the state to render counseling or counseling-related services, provided such persons are performing these activities within the scope of their employment, including school and vocational counselors.

Nothing in this chapter shall be construed to apply to the activities and services of a student~~, intern~~ or trainee pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution, if these activities are performed under supervision and constitute a part of the supervised course of study, or of an intern in counseling acting under the direct supervision of a licensed professional counselor in private practice as established and limited by rules of the board, provided, that such person be designated, for example, a "counselor intern."

Nothing in this ch~~apter shal~~l be construed to apply to a nonresident whose counseling activities and services are rendered not more than ten (10) days during any calendar year, provided that such a person is duly authorized to perform such activities and services under the laws of the state or country of that person's residence.

Nothing in this chapter shall be construed to apply to the activi-

ties and services of any religious denomination or sect or faith-based counseling of any kind.

Nothing in this chapter shall be construed to apply to the activities and descriptions of persons offering volunteer or professional services for public and private nonprofit organizations or agencies for whom the services are rendered.

SECTION 2. That Section 54-3405, Idaho Code, be, and the same is hereby amended to read as follows:

54-3405. QUALIFICATIONS FOR LICENSURE. Licensure as a "licensed professional counselor" shall be restricted to persons of good moral character who have successfully completed each of the following requirements:

(1) A planned graduate program of sixty (60) semester hours which is primarily counseling in nature, six (6) semester hours of which are earned in an advanced counseling practicum, and including a graduate degree in a counseling field from an accredited university or college offering a graduate program in counseling.

(2) An examination if required by the board's rules.

(3) One thousand (1,000) hours of supervised experience in counseling acceptable to the board.

(4) A license or conditional license will not be allowed an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field. Such an individual may not be licensed under this chapter unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that an acceptable degree of rehabilitation has been accomplished.

SECTION 3. That Section 54-3405A, Idaho Code, be, and the same is hereby amended to read as follows:

54-3405A. QUALIFICATIONS FOR LICENSURE FOR LICENSED PASTORAL COUNSELORS. Licensure as a "licensed pastoral counselor" shall be restricted to persons of good moral character who have successfully completed the following requirements who have applied for licensed pastoral counselors (L.Pas.C.) and:

(1) Holds a master of divinity (M.Div.) degree or doctoral degree with a major in pastoral counseling from an accredited university or religious institution with a requirement of sixty (60) semester credit hours of counseling related courses in a minimum of eight (8) of the following eleven (11) areas with the areas of study being specified by the American association of pastoral counselors (AAPC):

(a) Theories of personality and personality development;
(b) Theories of counseling and psychotherapy;
(c) Marriage and family dynamics and counseling;
(d) Group dynamics and counseling;
(e) Personality, culture and ethics;
(f) Psychology of religious experience;
(g) Pastoral assessment and treatment;
(h) Psychopathology;
(i) Theories of pastoral care;
(j) Research methods;

(k) Orientation to the helping professions.

(2) Completion of a practicum of supervised counseling experience of four hundred (400) contact hours, supervised at a ratio of one (1) hour of supervision for each ten (10) contact hours.

(3) Graduate studies shall have been at a university or institution which has been accredited by one (1) of the following: The middle states association of colleges and secondary schools, the New England state association of colleges and secondary schools, the north central association of colleges and secondary schools, the northwest association of colleges and secondary schools, the southern association of colleges and secondary schools or the western colleges association. The pastoral counselor program may also be accredited by the association of theological schools (ATS).

(4) Completion of two thousand (2,000) contact hours of postgraduate supervised counseling experience, with an approved supervisor. Approved supervisors include an American association of pastoral counselors approved supervisor, a licensed pastoral counselor, a licensed psychiatrist, a licensed psychologist, or a licensed professional counselor. The ratio of supervision to contact hours shall be one (1) to twenty (20).

(5) Successful completion of the national counselor examination as required by the board.

(6) Each licensed pastoral counselor must obtain twenty (20) contact hours of continuing education in an area that is approved by the board per year.

(7) Each licensed pastoral counselor shall adhere to the code of ethics of the American counseling association.

(8) The board shall have the option of employing a consultant to assist in the review of applications and in disciplinary actions. The cost of the consultation shall be included in the fee for the pastoral counselor license.

(9) The board may issue licenses to those persons meeting the qualifications for licensure as a licensed pastoral counselor (L.Pas.C) and the licensed pastoral counselor license shall be a separate and distinct license from the licensed professional counselor license.

(10) For the purposes of this chapter, fees and disciplinary actions, the terms "licensed pastoral counselor" and "licensed professional counselor" shall have the same meaning. The board may promulgate rules to implement the provisions of this section in compliance with chapter 52, title 67, Idaho Code.

SECTION 4. That Section 54-3405B, Idaho Code, be, and the same is hereby amended to read as follows:

54-3405B. CONDITIONAL LICENSE. Any individual of good moral character who engages in the practice of counseling as described in this chapter and who can demonstrate an established practice of three (3) or more years may make application for a conditional counseling license provided they do not violate the prohibitions of section 54-3408, Idaho Code. The applicant shall have until the year 2002 to complete the requirements of a licensed professional counselor. The application shall be on a form prescribed by the board and shall be accompanied by a fee to be determined by the board by rule. An applicant for a conditional license shall:

(1) Possess a bachelor's degree in a counseling field from an accredited university or college offering an undergraduate program in counseling; and

(2) Follow the ethical standards of a licensed professional counselor.

A renewal fee to be determined by the board by rule shall be required annually.

SECTION 5. That Section 54-3406, Idaho Code, be, and the same is hereby amended to read as follows:

54-3406. ~~RECIPROCITY~~ ENDORSEMENT. Upon payment of the fee enumerated in this chapter, the board may grant a license to any person who, at the time of application, is licensed or certified by an agency located in another state ~~and which is similar to the counselor licensing board, provided that the requirements of such certification or licensure are substantially similar to the requirements of this chapter~~ and who meets the qualifications established by board rule.

SECTION 6. That Section 54-3411, Idaho Code, be, and the same is hereby amended to read as follows:

54-3411. FEES ON LICENSURE. The board shall establish fees for licensure under the provisions of this chapter as follows:

(1) The fee for applications not to exceed one hundred dollars ($100).

(2) The fee for examination, when required, equal to that charged by the national examining entity.

(3) The fee for ~~reciprocity~~ endorsement not to exceed one hundred dollars ($100).

(4) The fee for the original license not to exceed one hundred dollars ($100).

(5) The fee for annual renewal not to exceed sixty dollars ($60.00).

(6) Fees under subsections (2) or (3) of this section shall be in addition to the application fee.

(7) All fees paid pursuant to this section shall be nonrefundable.

Approved March 22, 2001.

CHAPTER 84
(H.B. No. 22)

AN ACT

RELATING TO THE IDAHO SECURITIES ACT; AMENDING SECTION 30-1413, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR MAY DENY, SUSPEND OR REVOKE REGISTRATIONS OF BROKER-DEALERS OR INVESTMENT ADVISERS BASED ON THE ACTIONS OF CONTROL PERSONS, TO PROVIDE THAT ORDERS OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS OR THE NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC., DENYING, SUSPENDING OR REVOKING REGISTRATIONS MAY ACT AS A BASIS FOR DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION BY THE DIRECTOR AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 30-1413, Idaho Code, be, and the same is hereby amended to read as follows:

30-1413. DENIAL, SUSPENSION, REVOCATION OF REGISTRATION -- GROUNDS. The director may by order deny, suspend or revoke registration of any broker-dealer, salesman, investment adviser or investment adviser representative or may impose an administrative penalty in an amount not to exceed ten thousand dollars ($10,000) for each violation if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, control person, officer or director:

(1) ~~h~~Has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact~~,~~;

(2) ~~h~~Has ~~wilfully~~ willfully violated or ~~wilfully~~ willfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act~~,~~;

(3) ~~h~~Has been convicted of any misdemeanor involving a security or any aspect of the securities business or of any felony~~,~~;

(4) ~~i~~Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business~~,~~;

(5) ~~i~~Is the subject of an order of the director denying, suspending or revoking registration as a broker-dealer, salesman, investment adviser or investment adviser representative~~,~~;

(6) ~~i~~Is the subject of an order entered within the past five (5) years by the securities administrator of any other state, the United States securities and exchange commission, the national association of securities dealers or the national association of securities dealers regulation, inc., or any foreign governmental agency or self-regulatory organization, denying, suspending or revoking registration as a broker-dealer or salesman, investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the United States securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post-office fraud order, but

(a) The director may not institute a revocation or suspension proceeding under this subsection more than one (1) year from the date of the order relied on, and

(b) He may not enter any order under this subsection on the basis of any order unless that order was based on facts which would currently constitute a ground for an order under this section~~,~~;

(7) ~~h~~Has engaged in dishonest or unethical practices in the securities business~~,~~;

(8) ~~i~~Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the director may not enter an order against a broker-dealer

or investment adviser under this subsection without a finding of insolvency as to the broker-dealer or investment adviser~~,~~;

(9) ~~h~~Has not complied with a condition imposed by the director under section 30-1412, Idaho Code, or is not qualified on the basis of such factors as training, experience or knowledge of the securities business~~,~~; or

(10) ~~h~~Has failed to pay the proper filing fee, but the director may enter only a denial order under this subsection and he shall vacate any such order when the deficiency has been corrected.

The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

Approved March 22, 2001.

CHAPTER 85
(H.B. No. 25)

AN ACT

RELATING TO THE DEPARTMENT OF INSURANCE; AMENDING SECTION 41-228, IDAHO CODE, TO REVISE INSURER EXAMINATION EXPENSES; AMENDING SECTION 41-268, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR MAY USE A PORTION OF THE ANNUAL CONTINUATION FEE TO FUND THE ARSON, FIRE AND FRAUD ACCOUNT AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 41-319, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1105, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1416, IDAHO CODE, TO PROVIDE THAT PROPERTY AND CASUALTY RATING ORGANIZATION LICENSES SHALL BE EFFECTIVE FOR ONE YEAR AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-1620, IDAHO CODE, TO PROVIDE THAT WORKER'S COMPENSATION RATING ORGANIZATION LICENSES SHALL BE EFFECTIVE FOR ONE YEAR AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-2805, IDAHO CODE, TO PROVIDE THAT CORPORATIONS SHALL FILE APPROVED ARTICLES OF INCORPORATION WITH THE SECRETARY OF STATE, TO DELETE REFERENCE TO REFUNDS OF UNEARNED FILING FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-2810, IDAHO CODE, TO DELETE REFERENCE TO REFUNDS OF APPLICATION FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-3410, IDAHO CODE, TO DELETE REFERENCE TO REFUNDS OF APPLICATION FEES; AMENDING SECTION 41-3716, IDAHO CODE, TO REVISE HOSPITAL TRUST EXAMINATION EXPENSES; AMENDING SECTION 41-3911, IDAHO CODE, TO REVISE MANAGED CARE ORGANIZATION EXAMINATION EXPENSES; AMENDING SECTION 41-4013, IDAHO CODE, TO REVISE SELF-FUNDED PLAN EXAMINATION EXPENSES; AMENDING SECTION 41-4935, IDAHO CODE, TO REVISE PETROLEUM CLEAN WATER TRUST FUND EXAMINATION EXPENSES; AND AMENDING SECTION 72-914, IDAHO CODE, TO REVISE STATE INSURANCE FUND EXAMINATION EXPENSES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-228, Idaho Code, be, and the same is hereby amended to read as follows:

41-228. EXAMINATION EXPENSE. (1) Every insurer or corporation so

examined shall, at the direction of the director, pay ~~to--the--examiners and-other-persons-assisting-in-making-the-examination,~~ the actual travel expenses, reasonable living expense allowance, and compensation, at reasonable rates customary for such examination and as approved by the director, necessarily incurred on account of the examination, upon presentation of a detailed account of such charges and expenses. ~~A-consolidated-account-of-all-such-charges-and-expenses-for-the-examination-shall be-certified-to-in-duplicate-by-the-insurer-or-corporation-examined,-one (1)--copy--of-which-shall-be-retained-by-such-insurer-or-corporation-and the-other-copy-filed-in-the-department-as-a-public-record.~~

(2) No person shall pay and no examiner shall accept any additional emolument on account of any examination.

(3) An ~~domestic~~ insurer shall be entitled to offset against its premium taxes payable to the department of insurance of the state of Idaho the examination expense paid by it to or for the account of an examiner, actuary, or other assistant designated by the director for the purpose of the examination, inclusive of such personnel as may be so designated on behalf of other states participating in any such examination. The offset, or any remaining portion thereof, will be allowed for any of the five (5) calendar years following the year in which such examination expense was paid.

~~(4)--The--offset-provided-in-subsection-(3)-of-this-section-shall-be applicable-to-all-examination--expenses--paid--in--1983--and--successive years.~~

SECTION 2. That Section 41-268, Idaho Code, be, and the same is hereby amended to read as follows:

41-268. ARSON, FIRE AND FRAUD PREVENTION ACCOUNT. (1) There is hereby created an account in the agency asset fund in the state treasury, to be designated the "arson, fire and fraud prevention account." The account shall be used by the director~~,~~ of the department of insurance~~,~~ for enforcement of this act, investigation of alleged cases of arson, fraud and related alleged violations of the laws of this state, and prevention of fire, explosions and other conditions necessary for the public safety, health, peace and welfare.

(2) In addition to moneys, if any, appropriated to the account by the legislature, the director shall deposit with the state treasurer for credit to the arson, fire and fraud prevention account:

(a) Penalties collected under the provisions of sections 41-261 and 41-263, Idaho Code;

(b) ~~Assessments-and,-in-the-case-of-surplus-lines--insurers,--fees, collected--from--insurers--as--defined-by-section-41-103,-Idaho-Code~~ That portion of the annual continuation fee as determined by the director pursuant to subsection (3) of this section;

(c) Other moneys now or hereinafter in the state fire prevention account;

(d) Other moneys or revenues derived from whatever source for arson or fraud investigation or fire prevention.

(3) ~~Not-more-often-than-annually,--assessments--against--authorized insurers-and-fees-from-surplus-lines-insurers,-as-a-prerequisite-to-eligibility-under-section-41-1217,-Idaho-Code,-will-be-levied-by-the-director,--and--insurers-will-pay-the-assessments-or-fees-levied-within-sixty (60)-days-but-not-later-than-March-1-of-each-year-or,--in--the--case--of~~

~~newly--applying-insurers,-upon-notification-of-authorization,-or-of-surplus-lines-eligibility.-Assessments-and-fees-from-surplus--lines--insurers,-will-be-as-follows:~~

~~(a)--Insurers--writing-coverages-as-defined-in-section-41-504,-Idaho Code,-"property-insurance,"-section-41-505,-Idaho-Code,-"marine--and transportation,"--section--41-506,-Idaho-Code,-"casualty-insurance," and-section-41-3101,-Idaho-Code,-"domestic-county-mutual-fire-insurers,-associations-or-organizations,"-not-less-than-one-hundred--dollars-($100)-nor-more-than-five-hundred-dollars-($500)-annually;-and~~

~~(b)--Insurers--including,--but-not-limited-to,-those-defined-in-sections-41-3201,-41-3403-and-41-3903,-Idaho-Code,-not--writing--coverages,--as--defined--above--in--subsection-(3)(a),-shall-pay-one-half (1/2)-the-assessment-made-under-the--preceding--subsection--but--not less--than--fifty--dollars--($50.00)-nor-more-than-two-hundred-fifty dollars-($250)-annually~~ A portion of the annual continuation fee, as determined by the director, will be used to fund the arson, fire and fraud account.

~~(4)~~ All claims against the account shall be examined, audited and allowed in the manner now or hereafter provided by law.

(5) All moneys placed in the account are hereby perpetually appropriated to the department of insurance for the purposes of the provisions of this section.

(6) Pending use for purposes of the provisions of this section, moneys in the account shall be invested by the state treasurer in the same manner as provided under section 67-1210, Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the account.

SECTION 3. That Section 41-319, Idaho Code, be, and the same is hereby amended to read as follows:

41-319. APPLICATION FOR CERTIFICATE OF AUTHORITY. To apply for an original certificate of authority an insurer shall file with the director its application therefor, accompanied by the applicable fees ~~as specified--in~~ set forth by rule pursuant to section 41-401, Idaho Code, showing its name, location of its home office or principal office in the United States (if an alien insurer), the kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the director may reasonably require, together with the following documents, as applicable:

(1) If a corporation, two (2) copies (photostatic copies or similar form of reproduction) of its corporate charter, articles of incorporation or other charter documents, with all amendments thereto, currently certified by the public official with whom the originals are on file in the state or country of domicile.

(2) If a domestic insurer or mutual insurer, one (1) copy (photostatic copy or similar form of reproduction) of its bylaws as amended, certified by the insurer's corporate secretary.

(3) If a reciprocal insurer, a copy of the power of attorney of its attorney in fact, and a copy of its subscribers' agreement, if any, both certified by the attorney in fact; and if a domestic reciprocal insurer, the declaration provided for in section 41-2908, Idaho Code.

(4) A complete copy of its financial statement as of not earlier

than the December 31 next preceding in form as customarily used in the United States by like insurers, sworn to by at least two (2) executive officers of the insurer, or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States.

(5) Copy of report of last examination, if any, made of the insurer within not more than three (3) years next preceding, certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States; or, in the case of newly formed insurers, copy of the report of the "qualifying" examination of the insurer, similarly certified. Provided, however, that if the law of the applicant's state of domicile requires that examinations shall be completed in a period of more than three (3) years or does not specify any period of time for examinations, then the applicant shall provide a copy of a report within not more than the five (5) years next preceding.

(6) Appointment of the director pursuant to section 41-333, Idaho Code, as its attorney to receive service of legal process.

(7) If a foreign insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized to transact in such state or country the kind or kinds of insurance proposed to be transacted in this state.

(8) If a ~~workmen's~~ worker's compensation insurer, tender of the special deposit required under section 41-317, Idaho Code.

(9) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.

(10) If a foreign insurer, certificate as to deposit if to be tendered pursuant to section 41-316, Idaho Code.

(11) If a life or disability insurer, one (1) copy of the insurer's rate book and of each form of policy proposed to be issued in this state.

(12) A certificate of the insurer granting authority to an officer or authorized representative of the insurer to appoint and remove agents.

SECTION 4. That Section 41-1105, Idaho Code, be, and the same is hereby amended to read as follows:

41-1105. APPLICATION FOR LICENSE. The individual desiring to be licensed as an adjuster shall make written application therefor to the director, on forms as prescribed and furnished by the director. The application shall be accompanied by payment of the fee for the license as ~~specified in~~ set forth by rule pursuant to section 41-401, ~~(fee schedule)~~ Idaho Code.

SECTION 5. That Section 41-1416, Idaho Code, be, and the same is hereby amended to read as follows:

41-1416. PERIOD LICENSE EFFECTIVE -- RENEWAL -- FEE -- SUSPENSION OR REVOCATION. (1) Licenses issued to rating organizations under section 41-1415, Idaho Code, shall remain in effect for ~~three~~ one (~~3~~1) year~~s~~, unless sooner suspended or revoked by the director, and may be renewed for successive periods of ~~three~~ one (~~3~~1) year~~s~~ each upon application of the rating organization and payment in advance of the license fee.

(2) The fee for the license shall be in the amount ~~specified in~~ set forth by rule pursuant to section 41-401, Idaho Code. ~~(fee schedule) for each three year period or part thereof the license is in force.~~

(3) The director may suspend or revoke the license if he finds, after a hearing thereon of which notice was duly given to the rating organization, that the rating organization no longer meets the requirements of section 41-1415, Idaho Code, or for failure to comply with the director's order as provided in section 41-1432, Idaho Code.

SECTION 6. That Section 41-1620, Idaho Code, be, and the same is hereby amended to read as follows:

41-1620. RATING ORGANIZATIONS. (1) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the director for license as a rating organization for such kinds of insurance or subdivisions thereof which are subject to this chapter as are specified in its application, and shall file therewith: (a) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its ~~by-laws~~ bylaws, rules and regulations governing the conduct of its business~~;~~; (b) a list of its members and subscribers~~;~~; (c) the name and address of a resident of this state upon whom notices or orders of the director or process affecting such rating organization may be served; and (d) a statement of its qualifications as a rating organization. If the director finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its ~~by-laws~~ bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license sp~~ecifying the kind~~s of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the director within sixty (60) days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for ~~three~~ one (31) years unless sooner suspended or revoked by the director. The fee for the license shall be as provided ~~in~~ by rule pursuant to section 41-401, ~~(fee schedule)~~ Idaho Code. Licenses issued pursuant to this section may be suspended or revoked by the director, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the director promptly of every change in: (a) its constitution, its articles of agreement or association or its certificate of incorporation, and its ~~by-laws~~ bylaws, rules and regulations governing the conduct of its business~~;~~; (b) its list of members and subscribers; and (c) the name and address of the resident of this state designated by it upon whom notices or orders of the director or process affecting such rating organization may be served.

(2) Subject to rules and regulations which have been approved by the director as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members

and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the director at a hearing held upon at least ten (10) days' written notice to such rating organization and to such subscriber or insurer. If the director finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty (30) days after it was made, the insurer may request a review by the director as if the application had been rejected. If the director finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

(3) Every member of or subscriber to a rating organization shall adhere to the rating organization's manuals of classifications, rules, rates, rating plans and any modifications of any of the foregoing, except to the extent that the rules of such rating organizations permit departures therefrom.

(4) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their ~~policy-holders~~ policyholders, members or subscribers.

SECTION 7. That Section 41-2805, Idaho Code, be, and the same is hereby amended to read as follows:

41-2805. FILING OF ARTICLES. (1) The incorporators shall submit the executed articles of incorporation of a proposed stock or mutual insurer in triplicate to the director for review. If the director finds the articles to be in compliance with this code he shall deliver an original thereof to the attorney general for examination. After examining the articles, the attorney general shall return them to the director accompanied by his opinion certifying as to whether or not he has found the articles to be in accordance with the laws of this state and not inconsistent with the constitution of this state. If the attorney general has found the articles to be in accordance with law, the director shall, upon payment of the fees prescribed by law therefor, and except as provided in subsection (2) ~~below~~ of this section, certify his approval upon each of the three (3) originals of the articles, file one (1) of such originals in his office~~, file one (1) of such originals with the secretary of state,~~ and deliver ~~one~~ two (~~1~~2) of such originals to the incorporators, one (1) to be retained by the corporation as part of its corporate records, and one (1) to be filed with the secretary of state.

(2) If a permit as to the offer of securities or receipt of funds is to be required with respect ~~to the pro~~posed insurer, as provided for in section 41-2806, Idaho Code, the director shall not in any event approve the articles of incorporation until the permit has been issued.

(3) If upon reviewing or examining the articles of incorporation as hereinabove provided, the director or the attorney general finds that the articles do not comply with this code or are not in accordance with

the laws of this state, or are inconsistent with the constitution of this state, as the case may be, or that the permit referred to in subsection (2) ~~above~~ of this section will not be issued, the director shall refuse to approve the articles and shall return all originals of the articles to the incorporators accompanied by a written statement of the defects in the articles or reasons upon which his refusal is based. ~~The director shall at the same time refund any unearned filing fees.~~

(4) The secretary of state shall not permit the filing with him or in his office of any such articles of incorporation unless the same bear the director's approval endorsed thereon as hereinabove provided. The director's approval, when so endorsed, shall be deemed to relate only to the form of the articles of incorporation, and shall not be deemed to constitute an approval or ~~committment~~ commitment by the director as to any other aspect or operation of the proposed insurer.

(5) The director and the attorney general shall perform all duties required of them under this section within a reasonable time after the articles of incorporation have been submitted to the director as in subsection (1) above provided.

SECTION 8. That Section 41-2810, Idaho Code, be, and the same is hereby amended to read as follows:

41-2810. GRANTING OR DENIAL OF PERMIT. (1) The director and the director of the department of finance, where applicable, shall expeditiously examine an application for a solicitation permit as soon as it is completed, and make such further investigation of the proposals as may be required or deemed necessary. Subject to subsection (2) ~~below~~ of this section, if it is found on such examination and investigation that:

(a) The application is complete~~,~~; and

(b) The documents therewith filed are proper in form~~,~~; and

(c) The proposed financial structure is adequate.

The director shall give notice to the applicant that he will approve and file the articles of incorporation (if a proposed corporation) and that a solicitation permit will be issued, stating the terms to be contained therein, upon the filing of any bond required by section 41-2814 or ~~section~~ 41-2821, Idaho Code.

(2) If the director or director of the department of finance does not so find, or finds that:

(a) Any corporation, syndicate, association, firm, partnership, or organization the shares, memberships (other than membership in a mutual insurer by virtue of being a ~~policy-holder~~ policyholder therein), interests, or ownership equities, by whatever name called, of which are proposed to be offered or sold has existing or prospective more than one (1) class of shares, memberships, interests, or ownership equities~~,~~; or

(b) Any proposed sale of securities would be or tend to be fraudulent or inequitable as to present or proposed security holders or investors~~,~~; or

(c) Any of the individuals associated or to be associated in the insurer, corporation, syndicate, association, partnership, firm, organization, or financing are not of good character~~,~~; or that

(d) The proposed insurer if formed, or if an applicant for a certificate of authority would not be able to qualify for a certificate of authority by virtue of the provisions of section 41-308(2), ~~of~~

~~this code,~~ Idaho Code;

He shall give notice to the applicant that a solicitation permit will not be granted, stating the particulars of the grounds therefor, and return any proposed articles of incorporation to the applicant. ~~and refund to the applicant all sums deposited in connection with the application except the fee for filing the application for the permit.~~

SECTION 9. That Section 41-3410, Idaho Code, be, and the same is hereby amended to read as follows:

41-3410. ISSUANCE OR REFUSAL OF CERTIFICATE OF AUTHORITY. (1) If after the application for certificate of authority is completed the director finds that the applicant is fully qualified for a certificate of authority in accordance with the provisions of this chapter, and that the service agreements, subscriber's contracts, and schedule of rates are in compliance with the applicable provisions of this chapter, he shall issue to the applicant a certificate of authority as a professional service corporation.

(2) If the director does not so find, he shall refuse to issue a certificate of authority and shall give the applicant written notice thereof setting forth the particulars of the reasons for such refusal~~, accompanied by return of the fee theretofore tendered--for--issuance--of the certificate of authority~~.

(3) The director shall either issue or refuse to issue the certificate of authority within a reasonable time after the filing and completion of application therefor.

SECTION 10. That Section 41-3716, Idaho Code, be, and the same is hereby amended to read as follows:

41-3716. EXAMINATION OF BOOKS, RECORDS AND ACCOUNTS. (1) The books, records, accounts and affairs of a hospital trust shall be subject to examination by the director, by competent examiners duly authorized by him in writing, at such times or intervals as the director deems advisable. The purposes of the examination shall be to determine compliance of the trust with applicable laws, financial condition and actuarial adequacy of the trust fund, and as to other factors materially related to the trust's management and operation.

(2) The trustee shall make the books, records and accounts of the trust and trust fund available to the examiner and otherwise facilitate the examination.

(3) The examiner shall conduct the examination expeditiously, make his report of the examination in writing, and deliver a copy thereof to the trustee and the director. The trustee shall have two (2) weeks after receipt of the report within which to recommend to the director such corrections or changes therein as the trustee may deem appropriate. After making such corrections or changes, if any, as he deems proper, the director shall file the report in his office as a document open to public inspection, and deliver to the trustee a copy of the report as so corrected or changed.

(4) At the direction of the director, t~~T~~he costs of the examination shall be borne by the trust fund of the hospital trust~~.--The--trustee shall--pay--to--the--examiner--and other persons assisting in making the examination,-the--actual--travel--expenses,--reasonable--living--expense~~

~~allowance;--and--compensation;--at--reasonable--rates-customary-for-such examination-and-as-approved-by-the--director;--necessarily--incurred--on account--of--the-examination;-upon-presentation-of-a-detailed-account-of all-such-charges-and--expenses.--A--consolidated--account--of--all--such charges-and-expenses-for-the-examination-shall-be-certified-to-in-duplicate--by--the--trustee--of--the-hospital-trust-examined;-one-(1)-copy-of which-shall-be-retained-by-the-trust-and-the-other--copy--filed--in--the department--as--a-public-record~~ in accordance with section 41-228, Idaho Code.

SECTION 11. That Section 41-3911, Idaho Code, be, and the same is hereby amended to read as follows:

41-3911. EXAMINATIONS. (1) The director shall make an examination of the affairs and operations of any organization offering a managed care plan for which a certificate of authority is required as often as he deems necessary but not less frequently than once every five (5) years.

(2) Every such organization shall upon the director's request submit its books and records relating to its affairs and operations to such examination and shall facilitate the examination.

(3) Health records of individuals and records of providers providing services under a contract with the managed care organization shall not be subject to such examination, except as provided in section 41-3909(3), Idaho Code.

(4) At the direction of the director, t~~T~~he expenses of examination shall be borne by the organization being examined ~~and-remitted-by-it--to the--director-upon-submission-of-an-itemized-written-statement~~ in accordance with section 41-228, Idaho Code.

SECTION 12. That Section 41-4013, Idaho Code, be, and the same is hereby amended to read as follows:

41-4013. EXAMINATION OF BOOKS, RECORDS AND ACCOUNTS. (1) The books, records, accounts and affairs of a self-funded plan shall be subject to examination by the director, by competent examiners duly authorized by him in writing, at such times or intervals as the director deems advisable. The purposes of the examination shall be to determine compliance of the plan with applicable laws, financial condition and actuarial adequacy of its trust fund, treatment accorded beneficiaries, and as to other factors materially related to the plan's management and operation.

(2) The trustee shall make the books, records and accounts of the plan and trust fund available to the examiner and otherwise facilitate the examination.

(3) The examiner shall conduct the examination expeditiously, make his report of the examination in writing, and deliver a copy thereof to the trustee and the director. The trustee shall have two (2) weeks after receipt of the report within which to recommend to the director such corrections or changes therein as the trustee may deem appropriate. After making such corrections or changes, if any, as he deems proper, the director shall file the report in his office as a document open to public inspection, and deliver to the trustee a copy of the report as so corrected or changed.

(4) At the direction of the director, t~~T~~he costs of the examination

shall be borne by the trust fund of the plan, and shall be paid by the trustee ~~upon receipt from the director of an itemized written statement thereof. The costs shall include only travel expense actually and reasonably incurred by the examiner and compensation (other than salary, if any) received or to be received by the examiner for time actually spent in the examination and preparation of the examination report~~ in accordance with section 41-228, Idaho Code.

SECTION 13. That Section 41-4935, Idaho Code, be, and the same is hereby amended to read as follows:

41-4935. EXAMINATION OF BOOKS, RECORDS AND ACCOUNTS. (1) The books, records, accounts and affairs of the trust fund shall be subject to examination by the director by competent examiners duly authorized by him in writing, at such times or intervals as the director deems advisable. The purposes of the examination shall be to determine compliance of the trust fund with applicable laws, the financial condition and actuarial adequacy of the trust fund, and other factors materially related to the trust fund's management and operation.

(2) The manager, as trustee, shall make the books, records and accounts of the trust fund available to the examiner and otherwise facilitate the examination.

(3) The examiner shall conduct the examination expeditiously, make his report of the examination in writing, and deliver a copy thereof to the trustee and the director. The manager, as trustee, shall have two (2) weeks after receipt of the report within which to recommend to the director such corrections or changes therein as the manager, as trustee, may deem appropriate. After making such corrections or changes, if any, as he deems proper, the director shall file the report in his office as a document open to public inspection, and deliver to the manager, as trustee, a copy of the report as so corrected or changed.

(4) At the direction of the director, t~~The~~ costs of the examination shall be borne by the trust fund~~. The manager, as trustee, shall pay to the examiner and other persons assisting in making the examination, the actual travel expenses, reasonable living expense allowance, and compensation, at reasonable rates customary for such examination and as approved by the director, necessarily incurred on account of the examination, upon presentation of a detailed account of all such charges and expenses. A consolidated account of all such charges and expenses for the examination shall be certified to in duplicate by the manager, as trustee, one (1) copy of which shall be retained by the trust fund and the other copy filed in the department as a public record~~ in accordance with section 41-228, Idaho Code.

SECTION 14. That Section 72-914, Idaho Code, be, and the same is hereby amended to read as follows:

72-914. ACCOUNTS. The manager shall keep an account of the money paid in premiums by each of the several classes of employments, and the expense of administering the state insurance fund, and the disbursements on account of injuries and deaths of employees in each of said classes, including the setting up of reserves adequate to meet anticipated and unexpected losses and to carry the claims to maturity; and also an account of the money received from each individual employer; and of the

amount disbursed from the state insurance fund for expenses, and on account of injuries and disablement and death of the employees of such employer, including the reserves so set up.

Examination of Fund: The state insurance fund shall be examined by the department of insurance at least once in three (3) years. For such purpose the ~~commissioner~~ director of the department of insurance shall appoint as examiner one (1) or more competent persons not officers of or connected with any insurance corporation other than as policyholders. The examiner or ex~~aminers so~~ appointed shall make a full and true report of such examination, verified under oath, and such report when completed shall be included in and made a part of any report required by law to be made by the fund to the governor of this state. At the direction of the director of the department of insurance, t~~T~~he costs of such examination shall be paid by the fund ~~and shall include the reasonable expenses of the department of insurance and the compensation and reasonable expenses of the person or persons making the examination~~ in accordance with section 41-228, Idaho Code.

The ~~commissioner~~ director of the department of insurance shall transmit to the governor a copy of the official examination of the state insurance fund immediately upon its com~~pletion~~ by the examiner or examiners, and a copy of such examination report shall be filed in the department of insurance and be open to public inspection.

Approved March 22, 2001.

CHAPTER 86
(H.B. No. 26)

AN ACT

RELATING TO THE BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION ACT; AMENDING SECTION 26-2706, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF FINANCE MAY REQUIRE A BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION TO FILE AN AUDIT REPORT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 26-2715, IDAHO CODE, TO PROVIDE THAT A BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION MAY MAINTAIN AN OFFICE OUTSIDE IDAHO WITH THE APPROVAL OF THE DIRECTOR.

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

SECTION 1. That Section 26-2706, Idaho Code, be, and the same is hereby amended to read as follows:

26-2706. REQUIRED ~~RECORD-KEEPING~~ RECORDKEEPING -- INDEPENDENT AUDIT -- APPLICATION TO OUTSIDE ~~RECORD--KEEPERS~~ RECORDKEEPERS -- REPORT REQUIRED. (1) A licensee shall make and keep books, accounts, and other records in such a form and manner as the director may require. These records shall be kept at such a place and shall be preserved for such a length of time as the director may specify.

(2) The director may require by order that a licensee write down any asset on its books and records to a valuation which represents its then value. In addition, the director may require an appraisal of any assets of a licensee by an independent appraiser approved by the director.

(3) The director may require a licensee to file with the director, nNot more than ninety (90) days after the close of each calendar year or a longer period if specified by the director, ~~a licensee shall file with the director~~ an audit report containing all of the following:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, for a licensee that is an Idaho nonprofit corporation, comparable financial statements for, or as of the end of, the calendar year, prepared with an audit by an independent certified public accountant or an independent public accountant subject to approval by the director in accordance with generally accepted accounting principles.

(b) An unqualified report, certificate, or opinion of the independent certified public accountant or independent public accountant subject to approval by the director who performs the audit, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Other information that the director may require.

(4) If a person other than a licensee makes or keeps the books, accounts, or other records of that licensee, this chapter applies to that person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if that person were the licensee.

(5) If a person other than an affiliate or subsidiary of a licensee makes or keeps any of the books, accounts, or other records of that affiliate or subsidiary, this chapter applies to that person with respect to those books, accounts, and other records to the same extent as if that person were the affiliate or subsidiary.

(6) If the director considers it expedient, the director may require any particular licensee to obtain the approval of the director before permitting another person to make or keep any of the books, accounts, or other records of the licensee.

(7) Each licensee, each affiliate of a licensee, and each subsidiary of a licensee shall file with the director such reports as and when the director may require. A report shall be in such a form and shall contain such information as the director may require.

SECTION 2. That Section 26-2715, Idaho Code, be, and the same is hereby amended to read as follows:

26-2715. OFFICES -- LOCATION. (1) A licensee shall maintain not less than one (1) office in this state.

(2) A licensee, ~~shall not~~ with the approval of the director, may maintain an office at any place outside this state.

(3) Each office of a licensee shall be located in a place which is reasonably accessible to the public.

(4) A licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate name of the licensee.

(5) A licensee shall maintain at each of its offices personnel who are competent to conduct the business of such an office.

(6) Upon written notice to the director, a licensee may establish, relocate, or close an office.

Approved March 22, 2001.

CHAPTER 87
(H.B. No. 31)

AN ACT

RELATING TO THE COMMISSION ON AGING; AMENDING SECTION 67-5004, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY BY REFERRING TO THE EXECUTIVE OFFICER OF THE COMMISSION ON AGING AS AN ADMINISTRATOR RATHER THAN A DIRECTOR; AND AMENDING SECTION 67-5009, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY BY REFERRING TO THE EXECUTIVE OFFICER OF THE COMMISSION ON AGING AS AN ADMINISTRATOR RATHER THAN A DIRECTOR AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-5004, Idaho Code, be, and the same is hereby amended to read as follows:

67-5004. ~~DIRECTOR~~ ADMINISTRATOR -- APPOINTMENT AND TERM. An administrator ~~of the commission, known as the director~~ of the Idaho commission on aging~~,~~ shall be appointed by the governor after considering recommendations from the commission. The appointment shall be subject to confirmation by the senate. The ~~director~~ administrator may be removed by the governor at will. His compensation shall be fixed by the governor within the limits of appropriations available to the office and based upon an annual performance evaluation of the commission.

SECTION 2. That Section 67-5009, Idaho Code, be, and the same is hereby amended to read as follows:

67-5009. OFFICE OF OMBUDSMAN FOR THE ELDERLY. The office of ombudsman for the elderly is hereby created within the commission. The ombudsman shall be responsible for receiving, investigating and resolving or closing complaints made by or ~~in~~ on behalf of residents of long-term care facilities or persons aged sixty (60) years or older living in the community. No representative of the office shall be liable for the good faith performance of official duties, and willful interference with representatives of the office is unlawful. Long-term care facilities are prohibited from reprisals or retaliation against a resident or employee filing a complaint with, or furnishing information to, the office.

For the purposes of implementing the provisions of this section, the commission is hereby authorized as follows:

The ~~director~~ administrator shall hire the state ombudsman for the elderly who shall be a person with the necessary educational background commensurate with the duties and responsibilities of the office of ombudsman and shall be a classified employee subject to the provisions of chapter 53, title 67, Idaho Code.

The ombudsman may delegate to designated local ombudsmen any duties deemed necessary to carry out the purposes of the provisions of this section.

The ombudsman shall establish procedures for receiving and processing complaints, conducting investigations and reporting his findings. He shall have jurisdiction to investigate administrative acts or omissions of long-term care facilities or state or county departments or agencies

providing services to older people. An administrative act of a long-term care facility or state or county department or agency may become an appropriate subject for the ombudsman to investigate under certain circumstances. For example, the ombudsman may investigate such an act if it might be contrary to law, unreasonable, unfair, oppressive, capricious or discriminatory. The ombudsman may make a finding for an appropriate resolution to the subject matter of the investigation.

The ombudsman shall investigate any complaint which he determines to be an appropriate subject for investigation under this section.

When the ombudsman investigates a complaint, he shall notify the complainant, if any, of the investigation and shall also notify the long-term care facility or the state or county department or agency affected by the investigation of his intent to investigate. However, if no investigation takes place, he shall inform the complainant of the reasons therefor. Records obtained by the ombudsman shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

In an investigation of any complaint or administrative act of any long-term care facility or state or county department or agency providing services to older people, the ombudsman may undertake, but not be limited to, any of the following actions:

(a) Make the necessary inquiries and obtain such information he deems necessary.

(b) Hold private hearings.

(c) Enter during regular business hours, a long-term care facility or state or county department or agency's premises.

Following the investigation and upon his determination that particular subject matter should be further considered by the long-term care facility or state or county department or agency, an administrative act should be modified or ~~cancelled~~ canceled, a statute or regulation on which an administrative act is based should be altered, reasons should be given for an administrative act, or some other action should be taken by a long-term care facility or state or county department or agency, he shall report his opinions and recommendations to the respective parties. The ombudsman may request the parties affected by such opinions or recommendations to notify him within the specified time of any action taken by such parties on his recommendation. Following an investigation, the ombudsman shall consult with the particular parties before issuing any opinion or recommendation that is critical to such parties.

The ombudsman shall notify the complainant in writing within a reasonable time from the date the investigation is terminated of any actions taken by him and the long-term care facility, or state or county department or agency to resolve any issues raised by the complaint.

The ombudsman, on December 1 of each year, shall submit to the governor, the speaker of the house, president of the senate, the department of health and welfare bureau of licensing and certification, the president of the Idaho hospital association and the president of the Idaho health care association a report of the activities of the ombudsman for the elderly during the prior fiscal year. This report shall include, but not be limited to, the number and general patterns of complaints received by the ombudsman, the action taken on such complaints, the results of such action, and any opinions or recommendations which further the state's capability in providing for statutory resolution of complaints.

Nothing in this section shall be construed to be a limitation of the

powers and responsibilities assigned by law to other state or county departments or agencies.

Records obtained by the ombudsman shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

Approved March 22, 2001.

CHAPTER 88
(H.B. No. 32)

AN ACT

RELATING TO THE BOARD OF ARCHITECTURAL EXAMINERS; AMENDING SECTION 54-308, IDAHO CODE, TO PROVIDE FOR THE USE OF AN ELECTRONICALLY APPLIED SEAL, TO PROVIDE THAT THE DATE AND ARCHITECT'S SEAL AND SIGNATURE ARE REQUIRED ONLY ON THE TITLE PAGE OF CERTAIN DOCUMENTS, TO PROVIDE THAT ELECTRONICALLY PRODUCED DOCUMENTS DISTRIBUTED FOR INFORMATIONAL USES MAY BE ISSUED WITH ONLY THE ARCHITECT'S SEAL UNDER CERTAIN CONDITIONS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-309, IDAHO CODE, TO PROVIDE FOR THE USE OF THE TERM "ARCHITECTURAL INTERN" AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 54-308, Idaho Code, be, and the same is hereby amended to read as follows:

54-308. LICENSED ARCHITECT'S SEAL. (1~~.~~) Every licensed architect shall have a seal, the impression of which must contain the name and Idaho architect license number of the architect and the words "licensed architect" and "state of Idaho," with which he shall seal all technical submissions issued from his office.

(2~~.~~) The seal may be a rubber stamp or an electronically applied seal. Whenever the seal is applied to a technical submission, the original signature of the architect and the date thereof shall be written adjacent to or across the seal. Facsimile signatures shall not be utilized. The signature and seal shall appear on all technical submissions prepared by the architect or prepared under his direction and personal supervision, and the original signature and seal may be placed on original submissions or on prints or copies of original submissions, at the option of the architect. Only the title page of reports, specifications and like documents must bear the date and the seal and signature of the architect. Electronically produced documents distributed for informational uses, such as for bidding purposes or as working copies, may be issued with only the architect's seal if:

(a) The copy includes a notice that the original document is on file with the date and architect's signature;

(b) The words "original signed by" and "date original signed" are placed adjacent to or across the seal on the electronic document; and

(c) The storage location of the original document is identified.

The design and use of the seal shall be as required by board rule.

(3~~.~~) Technical ~~submissions involv~~ing the practice of architecture

which are submitted to any public or governmental agency for the purpose of obtaining a building permit which are not clearly identified by the affixed seal of the architect and the original signature of the architect and date thereof shall be deemed unacceptable submissions for the purpose of obtaining such building permit.

SECTION 2. That Section 54-309, Idaho Code, be, and the same is hereby amended to read as follows:

54-309. DEFINITIONS -- LIMITATION ON APPLICATION. (1) Within the meaning and intent of this chapter, the following words shall be defined as follows:

(a) "Architect" means a person who engages in the practice of architecture as herein defined, and is licensed under the provisions of this chapter.

(b) "Building" is an enclosure including improvements related thereto, which has as its principal purpose the adaptation of space for occupancy, or habitation by human beings.

(c) "Practice of architecture" consists of rendering or offering those services hereinafter described, in connection with the design, construction, enlargement, or alteration of a building or a group of buildings. The services covered within this definition include architectural planning, advice and consultation; providing preliminary studies; architectural designs, drawings and specifications; technical submissions; and, administration of construction contracts.

(d) "Technical submissions" involving the practice of architecture, consist of designs, drawings, specifications, studies and other technical reports prepared in the course of practicing architecture.

(2) Nothing contained in this chapter shall be held or construed to have any application to, or to prevent or affect the following:

(a) The practice of engineering or any other profession or trade for which a license is required under any law of this state, or the practice of consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government.

(b) Draftsmen, students, clerks of work, project representatives, and others working under the supervision of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their supervisors, or to prevent the employment of clerks of work or inspectors of buildings paid by the owners from acting, if under the control or direction of a licensed architect who has prepared the drawings and specifications for the building.

(c) The rendering of any architectural service required in the erection, enlargement, alteration, or repair of any building, where such building is to be, or is used as a single or multiple family residence not exceeding two (2) stories in height, or as a farm building; or for the purpose of outbuildings or auxiliary buildings in connection with such residential or farm premises.

(d) The rendering of any architectural service required in the erection, enlargement, alteration, or repair of any building which does not involve the public health or safety.

(e~~)~~ The preparation of shop drawings by persons other than architects for use in connection with the execution of their work; or the preparation of drawings of fixtures, or other appliances or equipment, or for any work necessary to provide for their installation.
(f~~)~~ Expert consultation rendered to an architect by a consultant, whether licensed or not, employed by the architect to consult, advise, and assist as long as the architect approves, adopts and is responsible for the results of such consultation, advice and assistance.
(g) An intern working under the supervision of a licensed architect, including the use of the title "architectural intern," as may be established and limited by board rule.

Approved March 22, 2001.

CHAPTER 89
(H.B. No. 38)

AN ACT
RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1308, IDAHO CODE, TO PERMIT ANY MEMBER OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM TO INITIATE VOLUNTARY CONTRIBUTIONS INTO THE SUPPLEMENTAL PLAN IMMEDIATELY UPON EMPLOYMENT 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 59-1308, Idaho Code, be, and the same is hereby amended to read as follows:

59-1308. SUPPLEMENTAL BENEFIT PLAN -- CONTRIBUTIONS AND EXPENSES OF THE SUPPLEMENTAL BENEFIT PLAN -- INDEMNIFICATION. (1) The state shall sponsor and the board shall administer 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 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 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) Supplemental benefit plans shall be available to 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) 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~~ the initial transfer of extraordinary gains, ~~transfer,~~ any 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 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 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 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 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 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.

(12) 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. 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 22, 2001.

CHAPTER 90
(H.B. No. 39)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1316, IDAHO CODE, TO CLARIFY THE INFORMATION THE RETIREMENT BOARD MAY PROVIDE TO A SPOUSE OR FORMER SPOUSE OF A MEMBER.

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

SECTION 1. That Section 59-1316, Idaho Code, be, and the same is hereby amended to read as follows:

59-1316. MEMBER'S RETIREMENT RECORDS CONFIDENTIAL. (1) Each member shall furnish the board with such information as the board shall deem necessary for the proper operation of the system. As provided 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 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.

(2) 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.

(3) 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.

(4) 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~~ or segregation of the member's accounts or benefit. This information includes account balances, service accumulations, and related information and histories, but does not include current addresses and phone numbers. The system may release the same information to a member's current spouse at any time, regardless of whether a court has ordered a distribution or division of the member's account.

Approved March 22, 2001.

CHAPTER 91
(H.B. No. 54)

AN ACT

APPROPRIATING MONEYS TO THE LEGISLATIVE ACCOUNT FROM THE GENERAL FUND FOR RETAINING A CONSULTANT TO STUDY THE EFFECTS OF RESTRUCTURING THE ELECTRIC UTILITY INDUSTRY; AND DECLARING AN EMERGENCY.

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

SECTION 1. There is hereby appropriated to the Legislative Account $75,000 from the General Fund to be expended for the period on and after the effective date of this act until November 30, 2002, and shall be utilized to retain a consultant or consultants to assist the Committee appointed by the Legislative Council to study the possible restructuring of the electric utility industry. Notwithstanding any other provision of law to the contrary, any unexpended moneys appropriated pursuant to this act need not be encumbered at the end of the fiscal year.

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 22, 2001.

CHAPTER 92
(H.B. No. 58)

AN ACT

RELATING TO HARD-TO-PLACE CHILDREN; AMENDING SECTION 56-802, IDAHO CODE, TO FURTHER DEFINE "HARD-TO-PLACE CHILD"; AMENDING SECTION 56-804, IDAHO CODE, TO AUTHORIZE DISSEMINATION OF INFORMATION CONCERNING GUARDIANSHIP OF A HARD-TO-PLACE CHILD; AND AMENDING SECTION 56-805, IDAHO CODE, TO GOVERN FINANCIAL AID TO FAMILIES WHO ADOPT OR ACCEPT GUARDIANSHIP OF A HARD-TO-PLACE CHILD AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 56-802, Idaho Code, be, and the same is hereby amended to read as follows:

56-802. DEFINITIONS. For the purposes of this act:

(1) "Hard-to-place child" means a child who is difficult to place for adoption or guardianship because of ethnic background, race, color, ~~mixed--parentage,~~ age, sibling grouping, or physical~~, mental,~~ or emotional ~~or medical~~ handicap.

(2) "Department" means the department of health and welfare.

SECTION 2. That Section 56-804, Idaho Code, be, and the same is hereby amended to read as follows:

56-804. DISSEMINATION OF INFORMATION TO ~~ADOPTIVE~~ FAMILIES. The department shall disseminate information to prospective adoptive families~~, especially those families of lower income levels and those belonging--to disadvantaged groups~~ and families who wish to be appointed legal guardians of a child in the state's custody, as to the availability of hard-to-place children, adoption and guardianship procedures, and of the existence of financial aid to adoptive ~~families herein~~ and guardians of hard-to-place children.

SECTION 3. That Section 56-805, Idaho Code, be, and the same is hereby amended to read as follows:

56-805. FINANCIAL AID -- PERIOD. Financial aid to families adopting or becoming guardians of hard-to-place children shall be awarded by the department as follows:

(1) Persons ~~who~~ have applied to adopt the hard-to-place child and to receive subsidies for the care and support of the hard-to-place child shall be evaluated as to their suitability as adoptive parents by means of an adoptive home study. Persons who are caring for a hard-to-place child in the state's custody for whom reunification or adoption is not an option, and who wish to be appointed legal guardians of the child and to receive subsidies for the care and support of the child, shall be evaluated as to their suitability as guardians by means of a guardianship study.

(2) ~~There may be paid an amount of f~~Financial assistance shall be not more than the amount that would be paid for foster or institutional

care for the child if the placement for adoption or guardianship had not taken place. Assistance may be provided families adopting or becoming guardians for hard-to-place children until such child is eighteen (18) years of age, parents are no longer legally responsible for the child, or until the parents are no longer providing support for the child. ~~This is subject to annual review by the department and the adoptive parents.~~

After an adoption with a subsidy is finalized or a guardianship with subsidy has been ordered by the court and the court has released the child from the state's legal custody, the family is independent of the department except for an annual evaluation by the department of the need for continued subsidy and the amount of the subsidy.

(~~2~~3) Payment of the costs of medical services shall be made directly to the physician or provider of the services according to the department's established procedures.

(~~3~~4) Payment of the cost of nonrecurring adoption or guardianship expenses ~~are~~ is limited to the following: reasonable and necessary adoption or guardianship fees, court costs, attorney's fees, and other expenses which are directly related to the legal adoption or guardianship of a child with special needs and which are not incurred in violation of state or federal laws.

(~~4~~5) Eligibility for the benefits payable and amounts thereof shall be determined on a case-by-case basis by the ~~adoption support section of the~~ department as set forth in the rules ~~and regulations~~ promulgated by the state board of health and welfare.

Approved March 22, 2001.

CHAPTER 93
(H.B. No. 60, As Amended)

AN ACT

RELATING TO CHILD CARE LICENSING; AMENDING SECTIONS 16-1623, 33-1002B AND 33-1404, IDAHO CODE, TO STRIKE REFERENCE TO GROUP HOMES; AMENDING SECTION 36-401, IDAHO CODE, TO STRIKE REFERENCE TO GROUP HOMES AND TO EDIT REFERENCE TO CHILDREN'S RESIDENTIAL CARE FACILITIES; AMENDING SECTION 39-1202, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-1205, IDAHO CODE, TO STRIKE REFERENCE TO GROUP HOMES, TO EDIT REFERENCE TO CHILDREN'S RESIDENTIAL CARE FACILITIES AND TO DELETE JUVENILE DETENTION CENTERS; REPEALING SECTION 39-1208, IDAHO CODE; AMENDING SECTIONS 39-1210 AND 39-1211, IDAHO CODE, TO STRIKE REFERENCE TO GROUP HOMES, TO EDIT REFERENCE TO CHILDREN'S RESIDENTIAL CARE FACILITIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-1213, IDAHO CODE, TO STRIKE REFERENCE TO GROUP HOMES, TO EDIT REFERENCE TO CHILDREN'S RESIDENTIAL CARE FACILITIES, TO PROVIDE ADDITIONAL AUTHORITY TO THE BOARD FOR PROVISION OF CONTINUED CARE, AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 39-1214, 39-1216, 39-1217, 39-1220, 39-1221 AND 39-1222, IDAHO CODE, TO STRIKE REFERENCE TO GROUP HOMES AND TO EDIT REFERENCE TO CHILDREN'S RESIDENTIAL CARE FACILITIES.

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

SECTION 1. 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, 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 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 2. That Section 33-1002B, Idaho Code, be, and the same is hereby amended to read as follows:

33-1002B. PUPIL TUITION-EQUIVALENCY ALLOWANCES. 1. Districts which educate pupils placed by Idaho court order in licensed group homes, agencies, institutions or juvenile detention facilities shall be eligible for an allowance equivalent to the previous year's certified local annual tuition rate per pupil. This district allowance shall be in addition to support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

2. Districts which educate school age special education students who, due to the nature and severity of their disabilities are residing in licensed public or private residential facilities or homes, and whose

parents are not patrons of the district, shall be eligible for an allowance equivalent to the previous year's certified local annual tuition rate per child plus the excess cost rate that is annually determined by the state superintendent of public instruction. This district allowance shall be in addition to exceptional education support unit funding and included in district apportionment payments, subject to approval of district applications by the state superintendent of public instruction.

SECTION 3. That Section 33-1404, Idaho Code, be, and the same is hereby amended to read as follows:

33-1404. DISTRICTS TO RECEIVE PUPILS. Every school district shall receive and admit pupils transferred thereto, where payment of their tuition is to be paid by the home district, or waived by the receiving district, except when any such transfer would work a hardship on the receiving district. Each receiving school district shall be governed by written policy guidelines, adopted by the board of trustees, which define hardship impact upon the district or upon an individual school within the district. The policy shall provide specific standards for acceptance and rejection of applications for accepting out of district pupils. Standards may include the capacity of a program, class, grade level or school building. Standards may not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, or proficiency in the English language.

Nonresident pupils who are placed by court order under provisions of the Idaho youth rehabilitation or child protective acts and reside in licensed group homes, agencies and institutions shall be received and admitted by the school district in which the facility is located without payment of tuition.

Homeless children and youth as defined by the Stewart B. McKinney homeless assistance act (P.L. 100-77), may attend any school district or school within a district without payment of tuition when it is determined to be in the best interest of that child.

SECTION 4. 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~~ children's residential care facility 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) 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.

(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.

(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.

(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 5. That Section 39-1202, Idaho Code, be, and the same is hereby amended to read as follows:

39-1202. DEFINITIONS. For the purposes of this chapter:

(1) "Board" means the Idaho board of health and welfare.

(2) "Child care" means that care, control, supervision or maintenance of children for twenty-four (24) hours a day which is provided as an alternative to parental care.

(3) "Child" means an individual less than eighteen (18) years of age who is not enrolled in an institution of higher education.

(4) "Children's agency" means a person who operates a business for the placement of children in foster homes or ~~group homes or~~ for adoption in a permanent home and who does not provide child care as part of that business. Children's agency does not include a licensed attorney or physician assisting or providing natural and adoptive parents with legal services or medical services necessary to initiate and complete adoptive placements.

(5) "Children's camp" means a program of child care at a location away from the child's home which is primarily recreational and includes the overnight accommodation of the child and is not intended to provide treatment, therapy or rehabilitation for the child.

(6) "Children's institution" means a person who operates a residential facility for children not related to that person if that person is an individual, for the purpose of providing child care. Children's institutions include, but are not limited to, foster homes, ~~group homes,~~ maternity homes, juvenile detention centers and other residential facilities referenced in the juvenile justice reform act, or any facilities providing treatment, therapy or rehabilitation for children. Children's institutions do not include: (a) facilities which provide only day care as defined in chapter 11, title 39, Idaho Code; (b) facilities and agencies including hospitals, skilled nursing facilities, intermediate care facilities, and intermediate care facilities for the mentally retarded licensed pursuant to chapter 13, title 39, Idaho Code; (c) day schools; (d) individuals acting in an advisory capacity, counseling a child in a religious context, and providing no child care associated with the advice; (e) the occasional or irregular care of a neighbor's, relative's or friend's child or children by a person not ordinarily engaged in child care.

(7) "Children's ~~treatment~~ residential care facility" means a children's institution, excluding:

(a) Foster homes;

(b) ~~Group homes;~~

~~(c) Juvenile detention centers;~~

~~(d)~~ Residential schools;

(~~e~~c) Children's camps.

No facility expressly excluded from the definition of a children's institution is included within the definition of a children's ~~treatment~~ residential care facility.

(8) "Continued care" means the ongoing placement of an individual in a foster home, children's residential care facility, or transitional living placement who reaches the age of eighteen (18) years but is less than twenty-one (21) years of age.

(9) "Day school" means a public, private, parochial or secular facility offering an educational program in which the children leave the facility each day at the conclusion of the academic, vocational or school supervised activities.

(~~9~~10) "Department" means the state department of health and welfare.

(~~10~~11) "Director" means the director of the department of health and welfare.

(~~11~~12) "Foster care" means child care by a person not related to the child, in lieu of parental care, in a foster home.

(~~12~~13) "Foster home" means a home which accepts, for any period of time, with or without compensation, one (1) or more children who are not related to the foster parent as members of the household for the purpose of providing substitute parental care.

(~~13~~14) "Group care" means foster care of a number of children for whom child care in a family setting is not available or appropriate, in a dormitory or cottage type setting, characterized by activities and discipline of a more regimented and less formal nature than found in a family setting.

~~(14) "Group home" means a residential facility providing group care.~~

(15) "Juvenile detention" ~~means the temporary child care of juveniles who require secure custody pursuant to the juvenile justice reform~~

~~act;--as-defined-in-section-16-1802(i),-Idaho-Code,-for-their-own-or-the community's-protection~~ is as defined in section 20-502(6), Idaho Code, of the juvenile corrections act.

(16) "Juvenile detention center" means a ~~physically-restrictive~~ facility ~~for-juveniles-pending-court-adjudication-or-subsequent-to-court adjudication,-as-defined-in-section-16-1802(j)~~ established pursuant to sections 20-517 and 20-518, Idaho Code.

(17) "Person" includes any individual, group of individuals, association, partnership, limited liability company or corporation.

(18) "Placement" means finding a suitable licensed foster home or suitable ~~adoptive home~~ for a child and ~~completing~~ the arrangements for a child to be accepted into and adjusted to such home.

(19) "Representative" means an employee of the state department of health and welfare.

(20) "Residential facility" means any facility where child care is provided, as defined in this section, and which provides day and night accommodation.

(21) "Residential school" means a residential facility for children which:

(a) Provides a planned, scheduled, regular, academic or vocational school program for students in the elementary, middle or secondary grades as defined in section 33-1001, Idaho Code; and

(b) Provides services substantially comparable to those provided in ~~non-residential~~ nonresidential public schools where the primary purpose is the education and academic pursuits of the students; and

(c) Does not seek, ~~receive or enroll~~ students for treatment of such special needs as substance abuse, mental illness, emotional disturbance, developmental disability or mental retardation; and

(d) Is not:

(i) A college or university; or

(ii) A children's camp as defined in this section; or

(iii) A public or private day school in which the children leave the facility each day at the conclusion of the academic, vocational and school supervised activities.

(22) "Transitional living" means living arrangements and aftercare services for children, or as continued care, to gain experience living on their own in a supportive and supervised environment prior to emancipation.

SECTION 6. That Section 39-1205, Idaho Code, be, and the same is hereby amended to read as follows:

39-1205. EVALUATION OF DISCLOSURE REPORTS. The department shall review all initial and annual update disclosure reports and shall categorize each children's institution, based on the type of care provided, into one (1) of the following categories:

(1) Foster homes;

(2) ~~Group-homes;~~

~~(3)--Juvenile-detention-centers;~~

~~(4)~~ Residential schools;

(~~5~~3) Children's camps; or

(6~~4~~) Each children's institution not otherwise categorized in subsections (1) through (~~5~~3) of this section, except any day school, shall be designated as a "children's ~~treatment~~ residential care

facility."

SECTION 7. That Section 39-1208, Idaho Code, be, and the same is hereby repealed.

SECTION 8. That Section 39-1210, Idaho Code, be, and the same is hereby amended to read as follows:

39-1210. STANDARDS FOR CHILDREN'S ~~TREATMENT~~ RESIDENTIAL CARE FACILITIES. The board of health and welfare shall have the power and it shall be its duty to promulgate appropriate rules ~~and regulations~~ necessary to implement and enforce the following standards for licensing a children's ~~treatment~~ residential care facility:

(1) Assure the organizational stability of the facility, which may require incorporation under the laws of Idaho.

(2) Require from the policy-making authority of the facility the promulgation of a statement setting forth the facility's purposes and objectives and describing the character and extent of the services which it offers and maintains, and the geographical area to be served.

(3) Require a statement of solvency sufficient to maintain facilities and personnel necessary to achieve its purposes and objectives and to maintain its services.

(4) Assure such ~~record-keeping~~ recordkeeping and reporting as may be deemed necessary to the facility's services and to the department's licensing responsibility.

(5) Assure the safety and physical care of children for whom the facility assumes or accepts responsibility.

(6) Establish the legal status of each child accepted for care and the legal authority and responsibility of the facility for the child.

(7) Require a statement of intake policy which shall set forth criteria for accepting children for care or service in relation to the facility's purposes and facilities.

(8) Provide through observation and collateral inquiry for studies of homes into which children may be placed sufficient to enable a judgment determining the adequacy of the homes in relation to the needs of the children~~; and~~.

(9) In the case of an institution specializing in maternity care to unmarried mothers:

(a) Assure social services on behalf of both the mother and infant; and

(b) Assure protection of the legal rights and rights to confidential treatment of minor unmarried mothers and their children which shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

(10) The department shall obtain a criminal history check on the owners, operators and employees of all children's ~~treatment~~ residential care facilities. The criminal history check shall include the following:

(a) Statewide criminal identification bureau;

(b) Federal bureau of investigation (FBI) criminal history;

(c) National crime information center; and

(d) Statewide child abuse register.

SECTION 9. That Section 39-1211, Idaho Code, be, and the same is hereby amended to read as follows:

39-1211. STANDARDS FOR FOSTER HOMES ~~AND GROUP HOMES~~ -- BOARD AUTHORIZED TO IMPLEMENT AND ENFORCE. The board of health and welfare shall have the power, and it shall be its duty to promulgate appropriate rules ~~and regulations~~ necessary to implement and enforce the following standards for licensing private foster homes ~~and group homes~~ pursuant to this chapter. ~~The board's rules and regulations for group homes may be separate from rules and regulations for foster homes.~~ Such rules ~~and regulations~~ shall:

(1) Require evidence of income and resources sufficient to maintain the home and the services offered.

(2) Require such ~~record keeping~~ recordkeeping and reporting regarding children's status and progress as may be deemed necessary.

(3) Assure the safety and adequate physical care of children under care.

(4) Require that foster parents be physically and emotionally suited to care for unrelated children and to deal with problems presented by children away from their own homes and own parents and shall require a criminal background check.

Provided, however, nothing in this chapter shall be construed to cover the occasional or irregular care of a neighbor's, relative's or friend's child or children by a person not ordinarily engaged in child care.

SECTION 10. That Section 39-1213, Idaho Code, be, and the same is hereby amended to read as follows:

39-1213. LICENSING AUTHORITY. (a) The board of health and welfare is hereby authorized and directed to establish procedures for licensing foster homes, ~~group homes,~~ children's agencies and children's ~~treatment~~ residential care facilities which are maintained and operated in conformity with the rules~~, regulations~~ and standards authorized herein. Such procedures shall include the manner and form for making application for license, investigation upon application and notice of decision.

(b) It is recognized that children's agencies may have their own procedure for approval of foster homes affiliated with their program. Any foster home which has been approved by a licensed children's agency shall be exempt from the licensing provisions of this chapter, provided that the standards for approval by such agency are no less restrictive than rules~~, regulations~~ and standards established by the board of health and welfare, and provided further that such children's agency is maintained and operated in conformity with rules~~, regulations~~ and standards of the board of health and welfare. The board of health and welfare may promulgate rules ~~and regulations~~ necessary to implement the provisions of this section.

(c) The board of health and welfare is hereby authorized to establish rules allowing for continued care for appropriate individuals eighteen (18) to twenty-one (21) years of age who have been receiving services by, through, or with the authorization of the department of health and welfare or the department of juvenile corrections prior to their eighteenth birthday.

SECTION 11. That Section 39-1214, Idaho Code, be, and the same is hereby amended to read as follows:

39-1214. ELIGIBILITY FOR LICENSE. Any foster home, ~~group--home,~~ children's agency or children's ~~treatment~~ residential care facility which applies for a license in the manner and form prescribed by the board of health and welfare and is found upon investigation by the department to be established in conformity with the rules~~,--regulations~~ and standards established by the department under the authority conferred herein shall be licensed for a period of one (1) year.

SECTION 12. That Section 39-1216, Idaho Code, be, and the same is hereby amended to read as follows:

39-1216. PROVISIONAL LICENSE. Upon initial investigation, should an applicant for a license be unable to meet a standard because of conditions that are unlikely to endure beyond six (6) months from the date of such investigation, the department may, if in its judgment the health and safety of any child is not thereby endangered, issue a provisional license for a period not to exceed six (6) months. No more than one (1) provisional license shall be issued to the same foster home, ~~group-home,~~ children's agency or children's ~~treatment~~ residential care facility in any twelve (12) month period.

SECTION 13. That Section 39-1217, Idaho Code, be, and the same is hereby amended to read as follows:

39-1217. VISITATION. For the purpose of determining whether every licensed foster home, ~~licensed-group-home,~~ licensed children's agency and licensed children's ~~treatment~~ residential care facility consistently maintains conformity with the standards established under the authority conferred herein, the department, through an authorized representative, shall visit each such home and facility as often as it deems necessary or desirable, but in any event at intervals not to exceed twelve (12) months.

SECTION 14. That Section 39-1220, Idaho Code, be, and the same is hereby amended to read as follows:

39-1220. OPERATING WITHOUT LICENSE MISDEMEANOR. Any person or persons who operate a foster home, ~~group--home,~~ children's agency or children's ~~treatment~~ residential care facility, within this state, without first obtaining a license as provided in this chapter shall be guilty of a misdemeanor. However, in the event of an initial citation for violation of the provisions of this section, if a person makes the application required within thirty (30) days, the complaint shall be dismissed. The penalty for violation of the provisions of this section shall be three hundred dollars ($300) for each day of a continuing violation, which penalty shall accrue from thirty (30) days following the initial notice of violation in the event of a finding of violation.

SECTION 15. That Section 39-1221, Idaho Code, be, and the same is hereby amended to read as follows:

39-1221. REMOVAL OF CHILDREN. Any child or children receiving child care in a ~~group-home-or~~ children's ~~treatment~~ residential care facility found to be operating without a license may be removed from such home,

agency or institution upon order of the magistrate court of the county in which the child is receiving care and returned to the child's own home, or placed in the custody of the department if the child's custodial parent is not available. The prosecuting attorneys of the several counties shall represent the department at all stages of the proceedings before the magistrate court. The magistrate court shall retain jurisdiction relative to child custody pursuant to the provisions of this section. In the event that the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the violation, the attorney general is authorized to prosecute violations under this chapter.

SECTION 16. That Section 39-1222, Idaho Code, be, and the same is hereby amended to read as follows:

39-1222. ACTION AGAINST UNLICENSED FOSTER HOME, ~~GROUP---HOME,~~ CHILDREN'S AGENCY OR CHILDREN'S ~~TREATMENT~~ RESIDENTIAL CARE FACILITY. Notwithstanding the existence or pursuit of any other remedy, the department shall, upon showing good cause to the prosecuting attorney who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or other process against a person as defined herein who shall hereafter operate or maintain any foster home, ~~group-home,~~ children's agency or children's ~~treatment~~ residential care facility without first having secured a license pursuant to the provisions of this chapter. Upon a finding that the safety of children at a foster home, ~~group-home,~~ children's agency or children's ~~treatment~~ residential care facility is endangered, the department has the authority to immediately revoke a license.

Approved March 22, 2001.

CHAPTER 94
(H.B. No. 67)

AN ACT

RELATING TO THE STATE AERONAUTICS FUND; AMENDING SECTION 21-211, IDAHO CODE, TO PROVIDE THAT INTEREST EARNED ON INVESTMENT OF IDLE MONEYS IN THE FUND SHALL BE PAID TO THE FUND.

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

SECTION 1. That Section 21-211, Idaho Code, be, and the same is hereby amended to read as follows:

21-211. PROCEEDS OF LICENSES AND FINES -- STATE AERONAUTICS FUND. All moneys collected for the licensing of aircraft and airmen, all fines and penalties paid under the provisions of laws relating to or regulating the operation, registration or licensing of aircraft or pilots, air safety or air flight not otherwise appropriated and such other funds as may be paid into the state aeronautics fund shall be paid to the state treasurer, and shall be placed by him in the state aeronautics fund, which is hereby created, and all of said state aeronautics fund is

hereby appropriated for the purpose of furthering the administration, development and enforcement of laws relating to aviation and for defraying administrative expenses of the Idaho transportation department, including per diem compensation of the Idaho transportation board, and the salary of the director of the department. Interest earned on the investment of idle moneys in the state aeronautics fund shall be paid to the state aeronautics fund.

Approved March 22, 2001.

CHAPTER 95
(H.B. No. 101)

AN ACT

RELATING TO LIQUOR LAW ENFORCEMENT; AMENDING SECTION 23-1038, IDAHO CODE, TO REQUIRE THAT HEARINGS PURSUANT TO LIQUOR LAW VIOLATION SHALL BE HELD IN THE COUNTY WHERE THE ALLEGED VIOLATION OCCURRED AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 23-1038, Idaho Code, be, and the same is hereby amended to read as follows:

23-1038. SUSPENSION, REVOCATION, AND REFUSAL TO RENEW LICENSES. When the director shall make a determination to revoke, to suspend, or to refuse grant of renewal of license issued pursuant to the terms of this act for any violation of or failure to comply with the provisions of this act or rules ~~and regulations~~ promulgated by the director or the state tax commission pursuant to the terms and conditions of this act, procedures for the suspension, revocation or refusal to grant or renew licenses issued under this act shall be in accordance with the provisions of chapter 52, title 67, Idaho Code. Any hearing alleging a violation of chapter 9 or 10, title 23, Idaho Code, shall be conducted in the county where the alleged violation occurred.

Approved March 22, 2001.

CHAPTER 96
(H.B. No. 131)

AN ACT

RELATING TO MANUFACTURED HOME INSTALLATION; AMENDING THE CHAPTER HEADING FOR CHAPTER 22, TITLE 44, IDAHO CODE; AMENDING SECTION 44-2201, IDAHO CODE, TO PROVIDE REFERENCE TO THE MANUFACTURED HOME INSTALLATION STANDARD, TO DELETE THE REQUIREMENT THAT A COPY OF THE MANUFACTURER'S SPECIFICATIONS BE IN THE HOME, TO DELETE THE REQUIREMENT THAT A COPY OF THE STATE SETUP REQUIREMENTS BE INCLUDED WITH THE HOME AND TO DELETE THE REQUIREMENT THAT A HOMEOWNER OR PARK OWNER ENSURE THAT CERTAIN GROUND PROVIDES A PROPER BASE AND DRAINAGE

FOR A MOBILE OR MANUFACTURED HOME; AMENDING SECTION 44-2202, IDAHO CODE, TO PROVIDE REFERENCES TO THE IDAHO MANUFACTURED HOME INSTALLATION STANDARD; REPEALING SECTIONS 44-2203, 44-2204 AND 44-2205, IDAHO CODE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That the Heading of Chapter 22, Title 44, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 22
MANUFACTURED HOME ~~SETUP CODE~~ INSTALLATION STANDARD

SECTION 2. That Section 44-2201, Idaho Code, be, and the same is hereby amended to read as follows:

44-2201. MOBILE/MANUFACTURED HOMES INSTALLATION. (1) All mobile/manufactured homes must be installed in accordance with the ~~manufacturer's instructions or where the manufacturer's instructions are not readily available from the manufacturer, the mobile/manufactured home must be installed in accordance with the provisions of this chapter~~ Idaho manufactured home installation standard, as provided by rule pursuant to this chapter. All mobile/manufactured homes must be installed in accordance with all other applicable state laws or rules ~~pertaining~~ to utility connection requirements. ~~If the home is installed in accordance with the manufacturer's specifications, a copy of those specifications shall be in the home at the time of setup and inspection. If the home is installed in accordance with the provisions of this chapter, then a copy of the state setup requirements shall be included with the home. All dimensions required by the provisions of this chapter are considered to be nominal.~~

(2) The administrator of the division of building safety may promulgate rules in accordance with the provisions of chapter 52, title 67, Idaho Code, ~~providing for variances from the installation requirements specified in sections 44-2204 and 44-2205, Idaho Code,~~ or specifying standardized installation instructions for ~~manufacturers, or both~~ mobile/manufactured homes. Upon the effective date of such rules, the rules shall prevail over any conflicting provisions in this chapter.

~~(3) The homeowner or park owner must ensure that the ground on which a mobile/manufactured home is to be installed has been improved as necessary to provide a proper base for the unit and that the area beneath it has adequate drainage.~~

SECTION 3. That Section 44-2202, Idaho Code, be, and the same is hereby amended to read as follows:

44-2202. INSTALLATION PERMITS AND INSPECTIONS REQUIRED. (1) The owner or the installer of a mobile/manufactured home must obtain an installation permit as required by city or county ordinance before installing a mobile/manufactured home that will be used as a residence on a building site or in a park. The installer's license must be in effect at the time of the application for the installation permit.

(2) Cities and counties, which have by ordinance adopted a building code, shall establish a permit process for the installation of all

mobile/manufactured homes within their respective jurisdictions and shall provide for inspection of all work ~~required by the manufacturer's installation instructions or the installation and setup provisions of this chapter, whichever is applicable pursuant to the provisions of section 44-2201, Idaho Code~~ in accordance with the Idaho manufactured home installation standard. Fees for installation permits and inspections shall be as established by ~~the city or county~~ having jurisdiction.

(3) Immediately upon completion of the installation of a mobile or manufactured home, a licensed installer or the responsible managing employee of the licensed installer shall perform an inspection of the completed installation to ensure compliance with the Idaho manufactured home ~~setup code~~ installation standard. Such inspection shall be recorded on an inspection record document approved by the division and a copy shall be provided to ~~the homeowner~~ upon completion of the inspection.

SECTION 4. That Sections 44-2203, 44-2204 and 44-2205, Idaho Code, be, and the same are hereby repealed.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 22, 2001.

CHAPTER 97
(H.B. No. 134)

AN ACT

RELATING TO PROTECTION OF PERSONS UNDER A DISABILITY; AMENDING SECTION 15-5-602, IDAHO CODE, TO CLARIFY THAT MEMBERS OF A BOARD OF COMMUNITY GUARDIAN SHALL BE APPOINTED BY THE BOARD OF COUNTY COMMISSIONERS THAT CREATED THE BOARD OF COMMUNITY GUARDIAN, TO EXTEND TERMS OF MEMBERS OF A BOARD OF COMMUNITY GUARDIAN, TO ALLOW A MEMBER OF A BOARD OF COMMUNITY GUARDIAN TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 15-5-602, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-602. BOARD STRUCTURE -- POWERS AND DUTIES. (a) Any board of community guardian which is created within a county or counties in a judicial district shall operate under the laws of the state of Idaho, including the Idaho guardianship, conservatorship and trust laws.

(b) A board of community guardian shall consist of not fewer than seven (7) or more than eleven (11) members who are representatives of community interests involving persons needing guardians or conservators as defined by chapter 5, title 15, Idaho Code. Members shall be appointed by the board of county commissioners that created the board of community guardian under section 15-5-601, Idaho Code.

(1) The terms of the members of the board shall be for ~~two~~ four

(~~2~~4) years and shall be staggered. A number of members equaling or most closely exceeding one-half (1/2) shall initially be appointed for ~~one~~ three (~~1~~3) years. Any vacancy created by resignation or expiration of term shall be filled in the same manner as the original appointment;

(2) No person shall be appointed for more than ~~four~~ three (~~4~~3) successive terms or ~~eight~~ twelve (~~8~~12) successive years on the board; provided however, that the limitations expressed in this paragraph do not prohibit a person from continuing to serve on the board until that person's successor is appointed;

(3) The board shall meet not less than once each quarter;

(4) No person shall be a member of a board who is also an employee of the district court or the clerk of the district court;

(5) A board member having previously provided or currently providing services to a ward shall disclose such to the board and abstain from any decision or action taken concerning that particular ward;

(6) Board members and officers shall serve without pay;

(7) Each board shall elect its own chairman and other officers.

(c) A board, in those instances when a guardian and/or conservator is required and no qualified family member or other qualified person has volunteered to serve, may:

(1) Locate a qualified person to serve as guardian and/or conservator; or

(2) Petition the court to be appointed guardian and/or conservator.

(d) The board shall have all the powers and duties where applicable by court order, as provided under section 15-5-312, ~~of this code~~ Idaho Code, and/or sections 15-5-408 and 15-5-424, ~~of this code~~ Idaho Code, and in addition thereto shall:

(1) Locate and recommend to the court, where necessary, that a visitor be appointed as provided in section 15-5-503, ~~of this code~~ Idaho Code;

(2) Have access to all confidential records, including abuse registry reports that may be maintained by state or private agencies or institutions, which records concern a person for whom the board acts as guardian and/or conservator. The name of the person reporting the alleged abuse shall be subject to disclosure according to chapter 3, title 9, Idaho Code;

(3) Review and monitor the services provided by public and private agencies to any incapacitated person for whom the board acts as guardian and/or conservator and determine the continued need for those services;

(4) Assess a fee for services developed pursuant to this part;

(5) Have the power, subject to the approval of the board of county commissioners, to adopt such rules as are necessary to carry out the duties and responsibilities of the board.

(e) When a board serves as guardian or conservator, it shall be compensated as other guardians or conservators pursuant to Idaho law. If, at the time the board is appointed as guardian and/or conservator, the incapacitated person for whom the board is to act has no funds, the court may waive the payment of fees.

(f) When a board serves as guardian and/or conservator there is created, at the time of filing of the order of appointment, a lien in favor of the board against any real property owned by the ward or protected person, enforceable only upon the termination of the guardianship

and/or conservatorship, for all fees which were incurred throughout the duration of the services and which were not paid prior to termination. All fees incurred throughout the duration of the services and which were not paid prior to the termination of services shall relate back to the effective date of the lien. The board must record a notice of said lien within thirty (30) days of filing of the order of appointment. Such liens shall be recorded in every county where property subject to the lien is located. The notice shall contain at least the following information: full court heading of the action in which the appointment was made; the effective date of the lien; the name and address of the board; and any limitations or terms regarding the fees covered by the lien contained in the order of appointment. The court may postpone or arrange for gradual repayment of the fees if the court finds that the immediate repayment would create a hardship on the person.

(g) No member of a board of community guardian, any employees, or any visitor appointed at the request of such board pursuant to section 15-5-303, ~~of this code~~ Idaho Code, shall be liable for civil damages by reason of authorizing medical treatment or surgery for the person for whom the board is appointed, if the board member, employee or visitor, after medical consultation with the person's physician, acts in good faith, is not negligent, and acts within the limits established for the guardian and/or conservator by the court. No such person shall be liable, by reason of his authorization, for injury to the person for whom the guardian and/or conservator has been appointed which injury results from the negligence or other acts of a third person, if the court has authorized the giving of medical consent by the board or the individual members of the board. No such person shall be liable in the performance of acts done in good faith within the scope of his authority as long as the act is not of a wanton or grossly negligent nature. The board of community guardian shall be deemed to be a governmental entity for the purposes of application of the Idaho tort claims act.

Approved March 22, 2001.

CHAPTER 98
(H.B. No. 143)

AN ACT

RELATING TO SALES TAX EXEMPTIONS; AMENDING SECTION 63-3622GG, IDAHO CODE, TO EXEMPT FROM SALES AND USE TAXES THE SALE, LEASE, PURCHASE OR USE OF REPAIR AND REPLACEMENT MATERIALS AND PARTS FOR REMODELING, REPAIR OR MAINTENANCE OF AIRCRAFT AND TO PROVIDE THAT SUCH EXEMPTION DOES NOT INCLUDE CERTAIN TOOLS AND EQUIPMENT.

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

SECTION 1. That Section 63-3622GG, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622GG. AIRCRAFT. There is exempted from the taxes imposed by this chapter:

(1) The sale, lease, purchase, or use of aircraft primarily used to

transport passengers or freight for hire. This exemption ~~does--not~~ includes repair and replacement materials and parts installed in or ~~other-tangible-personal-property-used-to-repair-or--maintain--such--aircraft;--whether-or-not-such-parts-or-property-become-a-component-part-of any-aircraft~~ affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of such aircraft, but does not include tools and equipment utilized in performing such remodeling, repair or maintenance;

(2) The sale, lease or purchase of aircraft for use outside this state by nonresidents, even though delivery be made within this state, but only when:

(a) The aircraft will be taken from the point of delivery to a point outside this state;

(b) The aircraft will be registered immediately in another state or nation and not required to be registered under the laws of this state; and

(c) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period.

Approved March 22, 2001.

CHAPTER 99
(H.B. No. 146)

AN ACT

RELATING TO ELECTIONS; AMENDING SECTION 34-408, IDAHO CODE, TO CLARIFY THAT ELECTION DAY REGISTRATION IS ALLOWED AT AN ABSENTEE POLLING PLACE; AMENDING SECTION 34-416, IDAHO CODE, TO STRIKE REQUIREMENTS FOR A DUPLICATE REGISTRATION CARD; AMENDING SECTION 31-871, IDAHO CODE, TO PROVIDE THAT ELECTION BALLOTS AND TALLY BOOKS ARE TEMPORARY RECORDS; AND REPEALING SECTION 34-409, IDAHO CODE.

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

SECTION 1. That Section 34-408, Idaho Code, be, and the same is hereby amended to read as follows:

34-408. CLOSING OF REGISTER -- TIME LIMIT. (1) No elector may register in the office of the county clerk within twenty-four (24) days preceding any election held throughout the county in which he resides for the purpose of voting at such election. This deadline shall also apply to any registrars the county clerk may have appointed.

(2) Any elector who will complete his residence requirement or attain the requisite voting age during the period when the register of electors is closed may register prior to the closing of the register.

(3) Notwithstanding subsection (1) of this section, an individual who is eligible to vote may also register, upon providing proof of residence, at the "absent electors' polling place" provided in section 34-1006, Idaho Code.

SECTION 2. That Section 34-416, Idaho Code, be, and the same is

hereby amended to read as follows:

34-416. REGISTRATION CARDS. (1) The ~~county clerk or official registrar shall enter the information supplied by the elector under section 34-411 on a~~ registration card ~~executed in duplicate which~~ shall contain the following warning:

WARNING: Any elector who supplies any information, knowing it to be false, is guilty of perjury.

(2) The elector shall read the warning set forth in subsection (1) of this section and shall sign his name in an appropriate place on the completed card. The official who personally registers the elector shall sign his name and title in attestation in an appropriate place on the completed card.

(3) The registration card completed and signed as provided in this section constitutes the official registration card of the elector. The county clerk shall keep and file all such cards in a convenient manner in his office. Such cards constitute the register of electors.

SECTION 3. 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 excluding election ballots and tally books, 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, election ballots and tally books, 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.

SECTION 4. That Section 34-409, Idaho Code, be, and the same is hereby repealed.

Approved March 22, 2001.

CHAPTER 100
(H.B. No. 148)

AN ACT

RELATING TO ELECTRONIC FUNDS TRANSFER; AMENDING SECTION 67-2026, IDAHO CODE, TO PROVIDE THAT NO INDIVIDUAL SHALL BE REQUIRED TO MAKE PAYMENT BY ELECTRONIC FUNDS TRANSFER REGARDLESS OF THE AMOUNT PAID OR PAYABLE WHEN THE TAXES, FEES OR AMOUNTS ARE PAYABLE PURSUANT TO THE IDAHO INCOME TAX ACT AND TO DEFINE "INDIVIDUAL"; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 67-2026, Idaho Code, be, and the same is hereby amended to read as follows:

67-2026. TAXES, FEES AND OTHER AMOUNTS TO BE PAID BY ELECTRONIC FUNDS TRANSFER -- EXCEPTION. (1) Except as allowed in subsection (3) of this section, a~~A~~ll taxes and additional amounts of interest, penalty or fees payable together with taxes and all other fees and amounts which are payable to the state must be paid by electronic funds transfer whenever the amount paid or payable is one hundred thousand dollars ($100,000) or greater. Whenever the payment of taxes is required to be made by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business day thereafter.

(2) All electronic funds transfers to the state, whether or not required by this section, shall be made through the automated clearing house system (ACH) operated by the federal reserve by the ACH debit or ACH credit method and shall include related addenda or messages necessary for:

(a) Coordinating the filing of tax returns or other reports with the payment of taxes and all other fees and amounts by electronic funds transfer; and

(b) Ensuring the proper receipt and crediting of the payment.

(3) No individual shall be required to make payment to the state by electronic funds transfer of any taxes, fees or amounts payable to the state, regardless of amount, when such taxes, fees or amounts are payable pursuant to section 63-3024, Idaho Code. However, if an individual elects to make payment by electronic funds transfer of income tax or any fees and amounts associated with income tax liability, such electronic funds transfer shall adhere to the provisions for electronic funds transfer as specified in this section. For the purposes of this subsection (3), the definition of "individual" shall be as the term is defined in section 63-3008, Idaho Code.

(4) The state treasurer shall adopt procedures necessary 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, and retroactively to January 1, 2001.

Approved March 22, 2001.

CHAPTER 101
(H.B. No. 151, As Amended)

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING SECTION 9-343, IDAHO CODE, TO PROVIDE THAT SPECIFIED SECTIONS OF IDAHO CODE RELATING TO THE DISCLOSURE OF PUBLIC RECORDS SHALL NOT MAKE AVAILABLE CONTENTS OF PROSECUTION CASE FILES WHERE SUCH MATERIAL HAS PREVIOUSLY BEEN PROVIDED TO THE DEFENDANT NOR SHALL SUCH SPECIFIED SECTIONS BE AVAILABLE TO SUPPLEMENT, AUGMENT, SUBSTITUTE OR SUPPLANT DISCOVERY PROCEDURES IN ANY OTHER FEDERAL, CIVIL OR ADMINISTRATIVE PROCEEDING AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 9-343, Idaho Code, be, and the same is hereby amended to read as follows:

9-343. PROCEEDINGS TO ENFORCE RIGHT TO EXAMINE OR TO RECEIVE A COPY OF RECORDS -- RETENTION OF DISPUTED RECORDS. (1) The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency or independent public body corporate and politic to make the information available for public inspection in accordance with the provisions of ~~this act~~ sections 9-337 through 9-348, Idaho Code. The petition contesting the public agency's or independent public body corporate and politic's decision shall be filed within one hundred eighty (180) calendar days from the date of mailing of the notice of denial or partial denial by the public agency or independent public body corporate and politic. The time for responsive pleadings and for hearings in such proceedings shall be

set by the court at the earliest possible time, or in no event beyond twenty-eight (28) calendar days from the date of filing.

(2) The public agency or independent public body corporate and politic shall keep all documents or records in question until the end of the appeal period, until a decision has been rendered on the petition, or as otherwise statutorily provided, whichever is longer.

(3) Nothing contained in ~~this act~~ sections 9-337 through 9-348, Idaho Code, shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings. Additionally, in any criminal appeal or post-conviction civil action, sections 9-335 through 9-348, Idaho Code, shall not make available the contents of prosecution case files where such material has previously been provided to the defendant nor shall sections 9-335 through 9-348, Idaho Code, be available to supplement, augment, substitute or supplant discovery procedures in any other federal, civil or administrative proceeding.

Approved March 22, 2001.

CHAPTER 102
(H.B. No. 154)

AN ACT

RELATING TO SITING OF MANUFACTURED HOMES IN RESIDENTIAL AREAS; AMENDING SECTION 67-6509A, IDAHO CODE, TO PROVIDE A MANUFACTURED HOME SHALL HAVE A GARAGE OR CARPORT CONSTRUCTED OF LIKE MATERIALS IF ZONING ORDINANCES WOULD REQUIRE A NEWLY CONSTRUCTED NONMANUFACTURED HOME TO HAVE A GARAGE OR CARPORT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 67-6509A, Idaho Code, be, and the same is hereby amended to read as follows:

67-6509A. SITING OF MANUFACTURED HOMES IN RESIDENTIAL AREAS -- PLAN TO BE AMENDED. (1) By resolution or ordinance adopted, amended or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, each governing board shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses, except for lands falling within an area defined as a historic district under section 67-4607, Idaho Code, to allow for siting of manufactured homes as defined in section 39-4105(13), Idaho Code.

(2) Manufactured homes on individual lots zoned for single-family residential uses as provided in subsection (1) of this section shall be in addition to manufactured homes on lots within designated mobile home parks or manufactured home subdivisions.

(3) This section shall not be construed as abrogating a recorded restrictive covenant.

(4) A governing board may adopt any or all of the following placement standards, or any less restrictive standards, for the approval of

manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than one thousand (1,000) square feet;

(b) The manufactured home shall be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the home is located not more than twelve (12) inches above grade;

(c) The manufactured home shall have a pitched roof, except that no standards shall require a slope of greater than a nominal three (3) feet in height for each twelve (12) feet in width;

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority;

(e) The manufactured home shall have a garage or carport constructed of like materials~~;--A--governing--board--may--require--an attached--or-detached-garage-in-lieu-of-a-carport-where-such-is-consistent-with-the-predominant-construction-of-immediately-surrounding dwellings~~ if zoning ordinances would require a newly constructed nonmanufactured home to have a garage or carport;

(f) In addition to the provisions of paragraphs (a) through (e) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirements to which a conventional single-family residential dwelling on the same lot would be subjected.

(5) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

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 22, 2001.

CHAPTER 103
(H.B. No. 164)

AN ACT

RELATING TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 9-340F, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 9-342A, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 18-6015, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 22-3413, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTIONS 22-4801 AND 22-4802, IDAHO CODE, TO PROVIDE REFERENCE

TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 22-4902, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-4903, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 22-4905, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 31-4405, IDAHO CODE, TO PROVIDE REFERENCES TO THE BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 36-1905, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 36-2404, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING THE HEADING TO CHAPTER 1, TITLE 39, IDAHO CODE; AMENDING SECTION 39-104A, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-166, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 204, LAWS OF 1996, TO REDESIGNATE THE SECTION, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-167, IDAHO CODE, AS ADDED BY SECTION 2, CHAPTER 204, LAWS OF 1996, TO REDESIGNATE THE SECTION, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-168, IDAHO CODE, AS ADDED BY SECTION 3, CHAPTER 204, LAWS OF 1996, TO REDESIGNATE THE SECTION, TO DELETE REFERENCE TO PUBLIC HEALTH DISTRICTS AND TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-169, IDAHO CODE, AS ADDED BY SECTION 4, CHAPTER 204, LAWS OF 1996, TO REDESIGNATE THE SECTION; AMENDING SECTION 39-3003, IDAHO CODE, TO PROVIDE REFERENCES TO THE BOARD OF ENVIRONMENTAL QUALITY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3005, IDAHO CODE, TO PROVIDE REFERENCES TO THE BOARD OF ENVIRONMENTAL QUALITY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3006, IDAHO CODE, TO PROVIDE REFERENCES TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 39-3007, 39-3008, 39-3011, 39-3012 AND 39-3017, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3018, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3019, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3026, IDAHO CODE, TO PROVIDE REFERENCES TO THE BOARD OF ENVIRONMENTAL QUALITY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-3601, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3602, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-3613, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-3617, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO THE BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-3620, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3624, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3625, IDAHO CODE,

TO FURTHER DEFINE TERMS; AMENDING SECTION 39-3626, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3627, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3631, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3632, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3633, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3635, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3637, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL MAINTAIN A SITE INVENTORY OF EXISTING SEWAGE DISPOSAL SYSTEMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-3638, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4403, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-4426, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-4428, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-4429, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-4431, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5803, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-5805, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5806, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-5812, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-6203, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-6404, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-6407, IDAHO CODE, TO PROVIDE THAT A REPRESENTATIVE FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL SERVE ON THE REGIONAL CLEAN LAKES TECHNICAL ADVISORY GROUP; AMENDING SECTION 39-6501, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-6503, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-6504, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-6506, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-6603, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-6609, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE A GRAMMATICAL CORRECTION; AMENDING SECTION 39-7002, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-7108, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION

39-7114, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-7203, IDAHO CODE, TO FURTHER DEFINE TERMS; AMENDING SECTION 39-7401, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-7402, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-7403, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-7408B, IDAHO CODE, TO PROVIDE REFERENCE TO THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-7602, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-7902, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-7903, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-7908, IDAHO CODE, TO PROVIDE REFERENCE TO THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-7911, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 39-7914, IDAHO CODE, TO PROVIDE REFERENCE TO RULES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 41-4911, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-4947, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 42-227, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 42-1503, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-1711, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-1734, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-3902, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 42-3910, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 46-1019, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL SERVE AS A MEMBER OF THE EMERGENCY RESPONSE COMMISSION; AMENDING SECTION 47-1315, IDAHO CODE, TO PROVIDE THAT WATER USED IN MINING PROCESSES MUST CONFORM TO THE STANDARDS AND RULES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 47-1513, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY; AMENDING SECTION 49-2203, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 50-1326, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 50-1327, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 50-1328, IDAHO CODE, TO PROVIDE REFERENCE TO THE BOARD OF ENVIRONMENTAL QUALITY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 50-1329, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 50-1703, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTIONS 55-2014 AND 55-2714, IDAHO

CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTIONS 63-3022C AND 63-3024B, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 67-818, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 67-2917, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 67-5303, IDAHO CODE, TO PROVIDE THAT DIVISION ADMINISTRATORS IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY ARE NONCLASSIFIED EMPLOYEES AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-7502, IDAHO CODE, TO PROVIDE REFERENCE TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND TO MAKE A TECHNICAL CORRECTION.

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 legislative 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.

(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. That Section 9-342A, Idaho Code, be, and the same is hereby amended to read as follows:

9-342A. ACCESS TO AIR QUALITY AND HAZARDOUS WASTE RECORDS~~;~~ -- PROTECTION OF TRADE SECRETS. (1) To the extent required by the federal clean air act and the resource conservation and recovery act for state primacy over any delegated or authorized programs, even if the record is otherwise exempt from disclosure under ~~section 9-340~~ chapter 3, title 9, Idaho Code, any person may inspect and copy:

(a) Air pollution emission data;

(b) The content of any title V operating permit;

(c) The name and address of any applicant or permittee for a hazardous waste treatment, storage, or disposal facility permit pursuant to chapter 44, title 39, Idaho Code; and

(d) Any other record required to be provided to or obtained by the department of ~~health and welfare, division of~~ environmental quality pursuant to the federal clean air act and the resource conservation and recovery act, and the implementing state statutes, federal regulations and state rules, unless the record is a trade secret.

(2) For purposes of this section, a record, or a portion of the record, is a "trade secret" if the information contained in the record is a trade secret within the meaning of the Idaho trade secrets act, sections 48-801, et seq., Idaho Code, including commercial or financial information which, if disclosed, could cause substantial competitive harm to the person from whom the record was obtained.

(3) Any record, or portion of a record, provided to or obtained by the department of ~~health and welfare, division of~~ environmental quality and identified by the person providing the record as a trade secret shall not be disclosed to the public and shall be kept confidential according to the procedures established in this section.

(4) Nothing in this section shall be construed as limiting the disclosure of a trade secret by the department of ~~health and welfare, division of~~ environmental quality:

(a) To any officer, employee, or authorized representative of the state or the United States, under a continuing claim of confidentiality, as necessary to carry out the provisions of state or federal law, or when relevant to any proceeding thereunder;

(b) As determined necessary by the ~~administrator~~ director of the ~~division~~ department of environmental quality (under a continuing confidentiality claim) to protect the public health and safety from imminent and substantial endangerment;

(c) As required by state or federal law, including section 9-343(3), Idaho Code, under a continuing claim of confidentiality and subsection (1), of this section; or

(d) With the consent of the person from whom the record is obtained.

(5) It shall be the responsibility of any person providing a record to the department of ~~health and welfare, division of~~ environmental qual-

ity to give notice of the existence of a trade secret on each page or other portion of information at the time of submittal and such person shall have the burden of demonstrating that the information is a trade secret.

(6) Notwithstanding the time frames set forth in section 9-339(1), Idaho Code, when a request is made to the department of ~~health and welfare, division of~~ environmental quality pursuant to the provisions of this chapter for the disclosure of information for which a trade secret claim has been made, and the information has not been demonstrated to be a trade secret to the satisfaction of the ~~administrator~~ director of the ~~division~~ department of environmental quality, within three (3) working days of receipt of the request for the disclosure of the information the ~~division~~ department of environmental quality shall provide a written request for substantiation to the person making the confidentiality claim. A response shall be submitted to the ~~division~~ department of environmental quality by the person claiming the trade secret protection within ten (10) working days after receipt of the request for substantiation or the information subject to the claim shall be disclosed without further notice. Upon receipt of a timely response to the request for substantiation, the ~~administrator~~ director of the ~~division~~ department of environmental quality shall determine whether the information is a trade secret subject to protection.

(a) If it is determined that the information, or any portion of the information, is a trade secret, within three (3) working days after receipt of the response, the ~~administrator~~ director of the ~~division~~ department of environmental quality shall notify the person requesting the information that the request is denied pursuant to sections 9-339(3) and (4), Idaho Code.

(b) If it is determined that the information, or any portion of the information, is not a trade secret and is, therefore, subject to disclosure, within three (3) working days after receipt of the response, the ~~administrator~~ director of the ~~division~~ department of environmental quality shall inform the person making the confidentiality claim of the determination. The decision shall be a final agency action directly appealable, de novo, to the district court of the county where the records or some part thereof are located. An appeal contesting the decision of the ~~administrator~~ director of the ~~division~~ department of environmental quality to release information claimed to be a trade secret shall be filed within ten ~~(10) working~~ days from the date of receipt of the written notice of decision. The information claimed to be a trade secret shall not be disclosed until the period for appeal has expired with no appeal being taken, or a court order has been issued finding that the information is not a trade secret and all appeals of that order have been exhausted.

(7) In any appeal taken pursuant to this section, the court may award reasonable costs and attorney's fees to the prevailing party if it finds the claim of confidentiality or the decision of the ~~administrator~~ director of the ~~division~~ department of environmental quality to provide records was frivolously pursued.

(8) ~~By December 31, 1998, t~~The department of ~~health and welfare~~ environmental quality shall adopt rules which include:

(a) Appropriate measures to safeguard and protect against improper disclosure of trade secrets, including procedures to train all employees on the proper handling of trade secrets; and

(b) Any other provisions necessary to carry out this section.

(9) As it relates to the department of ~~health and welfare, division of~~ environmental quality, or to agents, contractors, or other representatives of the ~~division~~ department, the immunity created in section 9-346, Idaho Code, shall apply only when disclosure of a trade secret is made consistent with this section.

SECTION 3. That Section 18-6015, Idaho Code, be, and the same is hereby amended to read as follows:

18-6015. PROHIBITION ON DISPOSAL OF HUMAN BODY WASTE FROM PASSENGER TRAINS. (1) As used in this section:

(a) "Human body waste" means excrement, feces or other waste material discharged from the human body.

(b) "Passenger train" means any train operated by a railroad company or corporation or operated by an entity created by federal law, for the primary purpose of transporting passengers.

(c) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, state, state or federal agency or entity, city, commission, or political subdivision of a state.

(2) No person operating or controlling any passenger train through or within this state may knowingly and openly place, throw, release, discharge, or deposit human body waste from a passenger train upon the right-of-way over which it operates.

(3) Any person who violates any provision of this section is guilty of a misdemeanor.

(4) The department of ~~health and welfare~~ environmental quality and the public health districts shall enforce the provisions of this section.

SECTION 4. That Section 22-3413, Idaho Code, be, and the same is hereby amended to read as follows:

22-3413. CONTAINER DISPOSAL. Partially full or empty pesticide containers shall be disposed of as prescribed by the Idaho department of ~~health and welfare~~ environmental quality and in accordance with ~~the~~ federal regulations.

SECTION 5. That Section 22-4801, Idaho Code, be, and the same is hereby amended to read as follows:

22-4801. LEGISLATIVE FINDINGS AND INTENT. The legislature finds that the current knowledge and technology supports the practice of burning crop residue to control disease, weeds, pests, and to enhance crop rotations. It is the intent of the legislature to promote agricultural activities. Currently some of those activities include crop residue burning. The director of the Idaho department of agriculture may promulgate rules relating to crop residue burning under this chapter. Further, the legislature encourages the Idaho department of agriculture and the Idaho department of ~~health and welfare, division of~~ environmental quality to cooperate with the agricultural community and establish voluntary smoke management and crop residue burning programs. The legislature encourages the Idaho department of agriculture and the agricultural com-

munity to pursue alternative means to crop residue disposal. Nothing in this chapter shall prohibit the Idaho department of ~~health and welfare, division of~~ environmental quality from enforcing the environmental protection and health act, chapter 1, title 39, Idaho Code, and the rules promulgated pursuant thereto, as they relate to air quality and protection of the state and national ambient air quality standards.

SECTION 6. That Section 22-4802, Idaho Code, be, and the same is hereby amended to read as follows:

22-4802. DEFINITIONS. In this chapter:

(1) "Adequate smoke dispersion" means that favorable meteorological and air quality conditions exist to allow crop residue burning to occur without endangering ambient air quality standards.

(2) "Cereal grain field" means a field of grass cultivated for edible seeds such as wheat, oats, barley, rye, rice, maize, grain, sorghum and proso millet.

(3) "Crop residue" means any vegetative material remaining in the field after harvest and shall not include weeds along ditch banks or waterways, orchard prunings, or forest slash piles.

(4) "Department" means the Idaho department of agriculture.

(5) "DEQ" means the Idaho department of ~~health and welfare, division of~~ environmental quality.

(6) "Director" means the director of the Idaho department of agriculture.

(7) "Field grass" or "forage grass field" means a field which has been planted with one (1) of the following varieties of grass for the purpose of producing seed: canary grass, bromegrass, oat grass, Timothy grass, wheat grass, or orchard grass.

(8) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two (2) or more persons having a joint or common interest, or any unit or agency of local, state or federal government.

(9) "Reasonable efforts" means, but is not limited to, the obtaining of any available information on local meteorological and air quality conditions and observing the smoke plume from small test fires or from other field burns.

(10) "Turf grass field" means a field which has been planted with one (1) of the following varieties of grass for the purpose of producing seed: bluegrass, bent grass, fescues or perennial ryegrass.

SECTION 7. That Section 22-4902, Idaho Code, be, and the same is hereby amended to read as follows:

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~~ chapter 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~~ chapter 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~~ chapter 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~~ chapter upon operators of beef cattle animal feeding operations are cost~~-effective~~ and economically, environmentally and technologically feasible.

(3) Successful implementation of this ~~act~~ chapter 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~~ department of environmental quality and the Idaho cattle association which sets forth a working arrangement between the agencies to ensure compliance with this ~~act~~ chapter 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.

SECTION 8. That Section 22-4903, Idaho Code, be, and the same is hereby amended to read as follows:

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~~ chapter, 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~~ director of the ~~division~~ department 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~~ director of the ~~division~~ department of environmental quality to so delegate. The ~~administrator~~ director of the ~~division~~ department 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.

SECTION 9. That Section 22-4905, Idaho Code, be, and the same is hereby amended to read as follows:

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.

SECTION 10. That Section 31-4405, Idaho Code, be, and the same is hereby amended to read as follows:

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

SECTION 11. That Section 36-1905, Idaho Code, be, and the same is hereby amended to read as follows:

36-1905. MYRTLE CREEK PRESERVE. There is hereby created within the boundaries of Boundary County, within the state of Idaho, a wildlife preserve to be known as Myrtle Creek preserve, the boundaries of which are as follows: beginning at the southwest corner of section 23, township 62 north, range 1 west of the Boise meridian; thence north along

the west line of section 23 to the summit of the ridge between Myrtle Creek and Cascade Creek, thence northwesterly along this ridge to Burton Peak, then westerly along the summit of the ridge between Myrtle Creek and Ball Creek to Myrtle Peak, then southerly around the head of Myrtle Creek following the summit of the ridge between Myrtle Creek and Two Mouth Creek, to Harrison Peak, then following the summit of the ridge between Myrtle Creek and Snow Creek in an easterly direction to a point approximately 1 mile east of Kootenai Point where this ridge intersects the east line of section 28, township 62 north, range 1 west of the Boise meridian; thence in a northeasterly direction to the point of beginning.

~~(a)~~ Fishing restricted. In addition to the provisions of section 36-1902, ~~of this chapter~~ Idaho Code, it shall be unlawful for any person at any time to fish within the boundaries of the aforesaid Myrtle Creek preserve. Provided that the Idaho fish and game commission may, after receiving concurrent written approval from the Idaho department of ~~health and welfare~~ environmental quality and the Bonners Ferry city council, open certain waters and lands lying within the Myrtle Creek preserve to hunting, fishing or trapping during prescribed seasons. Provided further that any fish eradication treatment of waters in the Myrtle Creek preserve by the Idaho department of fish and game shall be undertaken only with the concurrent written permission of the Idaho department of ~~health and welfare~~ environmental quality and the Bonners Ferry city council and under the direct supervision of the Idaho department of ~~health and welfare~~ environmental quality.

SECTION 12. That Section 36-2404, Idaho Code, be, and the same is hereby amended to read as follows:

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~~ department 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.

SECTION 13. That the Heading for Chapter 1, Title 39, Idaho Code, be, and the same is hereby amended to read as follows:

~~DEPARTMENT OF~~ ENVIRONMENTAL QUALITY -- HEALTH ~~AND WELFARE~~

SECTION 14. 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 ~~division~~ department 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 ~~division~~ department 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 ~~division~~ department. The ~~division~~ department 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~~ department of environmental quality to construct, 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~~ department 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~~ department. 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~~ department.

(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 15. That Section 39-166, Idaho Code, as added by Section 1, Chapter 204, Laws of 1996, be, and the same is hereby amended to read as follows:

39-16671. LEGISLATIVE FINDINGS AND PURPOSE. The legislature of the state of Idaho finds that:

(1) Wood and mill yard debris is a byproduct of wood processing and manufacturing; and

(2) If properly managed, wood and mill yard debris can be put to uses that have economic and environmental benefits; and

(3) There is a need for guidance about how to manage, store, use or dispose of wood and mill yard debris so that nuisance and adverse environmental impacts are minimized; and

(4) This guidance will enable the department and local units of government to more effectively regulate the use or disposal of wood and mill yard debris.

The purpose of ~~this act~~ sections 39-171 through 39-174, Idaho Code, is to provide guidance for the sound use, storage, management and disposal of wood and mill yard debris by requiring the director of the department of ~~health and welfare~~ environmental quality to appoint a committee to study the issues and to gather and disseminate information to persons and entities that deal with wood and mill yard debris.

SECTION 16. That Section 39-167, Idaho Code, as added by Section 2, Chapter 204, Laws of 1996, be, and the same is hereby amended to read as follows:

39-1672. DEFINITIONS. For purposes of ~~this act~~ sections 39-171 through 39-174, Idaho Code:

(1) "Committee" means the wood and mill yard debris committee.

(2) "Director" means the director of the Idaho department of ~~health and welfare~~ environmental quality.

(3) "Wood or mill yard debris" means solid wood, bark, or wood fiber generated from the process of manufacturing wood products that may include components of soil, rock, or moisture, and for which the use, management, storage or final disposition is approved pursuant to ~~this act~~ sections 39-171 through 39-174, Idaho Code.

SECTION 17. That Section 39-168, Idaho Code, as added by Section 3, Chapter 204, Laws of 1996, be, and the same is hereby amended to read as follows:

39-16873. COMMITTEE -- MEMBERS -- TERMS. The director shall~~, in cooperation with the appropriate public health districts created pursuant to chapter 4, title 39, Idaho Code,~~ appoint a committee to develop guidance on the use, storage, management and disposal of mill yard or wood debris. This committee shall consist of seven (7) individuals and shall include:

(1) One (1) representative of the ~~division~~ department of environmental quality, who will provide administrative and other support to the committee.

(2) Two (2) representatives of the public health districts which have mill yard or wood debris within their districts.

(3) Two (2) representatives from industries generating wood or mill yard debris.

(4) Two (2) members with demonstrated technical knowledge important to the work of the committee.

Committee members shall be appointed to serve three (3) year terms. No member may serve more than two (2) full terms. Members serve at the pleasure of the director.

Members of the committee shall serve without compensation pursuant to section 59-509(a), Idaho Code.

SECTION 18. That Section 39-169, Idaho Code, as added by Section 4, Chapter 204, Laws of 1996, be, and the same is hereby amended to read as follows:

39-16974. COMMITTEE DUTIES -- MEETINGS. The committee's duties shall include:

(1) Developing a manual providing guidance for the use, storage, management and disposal of wood or mill yard debris to prevent public nuisances and minimize or prevent harmful environmental impacts. Guidance provided by the manual may be incorporated or adopted by reference in the rules of the department or other appropriate state agencies.

(2) Considering and developing specific solutions to unforeseen wood or mill yard debris use, storage, management or disposal as needed.

(3) Developing and sharing knowledge related to the use, storage, management and disposal of wood or mill yard debris including ways to constructively use or reclaim the debris.

(4) Making recommendations for any necessary permits, rules or legislation related to the use, storage, management or disposal of wood or

mill yard debris.

The committee shall meet at least two (2) times a year at a time and place most convenient to the majority of members.

SECTION 19. That Section 39-3003, Idaho Code, be, and the same is hereby amended to read as follows:

39-3003. DEFINITIONS. (1~~.~~) "~~By-product~~Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radi~~ation in~~cident to the process of producing or utilizing special nuclear material.

(2~~.~~) "Electronic product" means any manufactured product or device or component part of such a product or device that has an electronic circuit which during operation can generate or emit a physical field of radiation.

(3~~.~~) (a~~.~~) "General license" means a license effective pursuant to ~~regulations~~ rules promulgated by the state radiation control agency, without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, ~~by-product~~ byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(b~~.~~) "Specific license" means a license, issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing ~~by-product~~ byproduct, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(4~~.~~) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States atomic energy commission, or any successor thereto.

(5~~.~~) "Source material" means: (a) uranium, thorium, or any other material which the governor declares by order to be source material after the United States atomic energy commission, or any successor thereto, has determined the material to be such; or (b) ores containing one (1) or more of the foregoing materials, in such concentration as the governor declares by order to be source material after the United States atomic energy commission, or any successor thereto, has determined the material in such concentration to be source material.

(6~~.~~) "Special nuclear material" means: (a) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the governor declares by order to be special nuclear material after the United States atomic energy commission, or any successor thereto, has determined the material to be such, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material.

(7~~.~~) "Registration" means registration with the state board of ~~health and welfare~~ environmental quality by any person possessing a source of radiation in accordance with rules~~, regulations~~ and standards adopted by the state board of ~~health and welfare~~ environmental quality.

(8~~.~~) "Radiation" means:

[a~~.~~] Ionizing radiation including gamma rays, X-rays, alpha and beta particles, and other atomic or nuclear particles or rays.

(b~~.~~) Any electromagnetic radiation which can be generated during the operation of electronic products.

(c~~.~~) Any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product.

(9~~.~~) "Radiation source" means any type of device or substance which is capable of producing or emitting radiation.

SECTION 20. That Section 39-3005, Idaho Code, be, and the same is hereby amended to read as follows:

39-3005. STATE RADIATION CONTROL AGENCY. (1~~.~~) The state department of ~~health--and-welfare~~ environmental quality is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency ~~having sole responsi~~bility for administration of the regulatory, licensing and radiation control provisions of this chapter.

(2~~.~~) The director of the department of ~~health-and-welfare~~ environmental quality shall be administrator of the agency, hereinafter referred to as the director, who shall perform the functions vested in the agency pursuant to the provisions of this chapter.

(3~~.~~) The director shall appoint a state radiation control officer, and in accordance with the laws of the state, fix his compensation and prescribe his powers and duties. Such officer shall be competent to evaluate radiation health hazards associated with the many uses of radioactive material and other sources of radiation. He shall at least have a baccalaureate degree, be trained in the physical and/or life sciences, and shall have had experience in health physics.

(4~~.~~) In accordance with the laws of the state, the director may appoint, fix the compensation, and prescribe the powers and duties of such other individuals, including consultants, advisory councils, emergency teams and committees as may be necessary to carry out the provisions of this act. The personnel engaged in field activities of evaluation and inspection shall at least have a baccalaureate degree in the physical and/or life sciences, or the equivalent, and be trained in health physics.

(5~~.~~) The agency shall for the protection of the occupational and public health and safety:

(a~~.~~) Develop programs for evaluation of hazards associated with use of radiation;

(b~~.~~) Develop programs with due regard for compatibility with federal programs for regulation of ~~by-product~~ byproduct, source, and special nuclear materials;

(c~~.~~) Formulate, and with the advice of the nuclear energy commission, recommend that the board of ~~health-and-welfare~~ environmental quality adopt, promulgate, and repeal codes, rules~~,-regulations~~ and standards relating to control of sources of radiation;

(d~~.~~) Advise, consult, and cooperate with other agencies of the state, and federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of radiation;

(e~~.~~) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation;

(f~~.~~) Collect and disseminate information relating to control of sources of radiation~~;~~ including:

(~~1~~i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(~~2~~ii) Maintenance of a file of registrants possessing sources of radiation requiring registration under the provisions of this act and any administrative or judicial action pertaining thereto; and

(~~3~~iii) Maintenance of a file of all rules and regulations relating to regulations of sources of radiation, pending or promulgated, and proceedings thereon.

(g~~.~~) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions from the federal government and from other sources, public or private.

(h~~.~~) Submit an annual report to the governor and to the legislature concerning the control of sources of radiation and atomic energy.

(i~~.~~) Issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records and documents.

SECTION 21. That Section 39-3006, Idaho Code, be, and the same is hereby amended to read as follows:

39-3006. RULES ~~AND REGULATIONS~~ -- LICENSING REQUIREMENTS AND PROCEDURE -- REGISTRATION OF SOURCES OF RADIATION -- EXEMPTIONS FROM REGISTRATION OR LICENSING. (1~~.~~) The board of ~~health and welfare~~ environmental quality shall provide ~~by~~ rule ~~or regulation~~ for general or specific licensing of ~~by-product~~ byproduct, source, special nuclear materials, or devices or equipment utilizing such materials, or other radioactive material occurring naturally or produced artificially. Such rule ~~or regulation~~ shall provide for amendment, suspension, or revocation of licenses. Such rule ~~or regulation~~ shall provide that:

(a~~.~~) Each application for a specific license shall be in writing and shall state such information as the board, by rule, ~~or regulation,~~ may determine to be necessary to decide the technical, insurance, and financial qualifications, or any other qualification of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety. The agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the agency deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. In no event shall the agency grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the agency has conducted an inspection or review which insures that the applicant can meet the rules~~, regulations~~ and standards adopted pursuant to this act. All applications and statements shall be signed by the applicant or licensee. The agency may require any applications or statements to be made under oath or affirmation;

(b~~.~~) Each license shall be in such form and contain such terms and conditions as the ~~B~~board may by rule ~~or regulation~~ prescribe;

(c~~.~~) No license issued under the authority of this act and no right to process or utilize sources of radiation granted by any license shall be assigned or in any manner disposed of; and

(d~~.~~) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules~~, regulations~~ or orders issued in accordance with the provisions of this act.

(2~~.~~) The board of ~~health--and--welfare~~ environmental quality may require licensing of those persons installing or repairing sources of radiation which the board has determined to present a potential hazard to the occupational and public health and safety. Such licensing requirements shall provide that:

(a~~.~~) Each application for a license shall be in writing and shall state such information as the board, by rule, ~~or--regulation,~~ may determine to be necessary to decide the technical, insurance, and financial qualifications, or any other qualification of the applicant as the agency may deem reasonable and necessary. The agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the agency deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The agency may require any applications or statements to be made under oath or affirmation;

(b~~.~~) Each license shall be in such form and contain such terms and conditions as the board of ~~health-and-welfare~~ environmental quality may by rule ~~or-regulation~~ prescribe;

(c~~.~~) No license issued under the authority of this act and no right to possess or utilize sources of radiation granted by any license shall be assigned or in any manner disposed of; and

(d~~.~~) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules~~, regulations~~ or orders issued in accordance with the provisions of this act.

(3~~.~~) The board of ~~health--and--welfare~~ environmental quality may require registration of all sources of ionizing radiation and other sources of radiation which the agency has determined to present a potential hazard to the occupational and public health and safety.

(4~~.~~) The board of ~~health--and--welfare~~ environmental quality may exempt certain sources of ionizing radiation or kinds of uses or users from the registration or licensing requirements ~~set forth~~ in this section when the agency makes a finding, with advice of the nuclear energy commission, that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(5~~.~~) In promulgating rules ~~and-regulations~~ pursuant to this act the board of ~~health-and-welfare~~ environmental quality shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the agency shall deem desirable, subject to such registration requirements as the board of ~~health-and-welfare~~ environmental quality may prescribe.

SECTION 22. That Section 39-3007, Idaho Code, be, and the same is hereby amended to read as follows:

39-3007. INSPECTION. The agency or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this act and rules ~~and regulations~~ issued thereunder, except that entry into areas under the exclusive jurisdiction of the federal government, or security areas under the direct or indirect jurisdiction of the federal government, shall be effected only with the concurrence of the federal government or its duly designated representative.

SECTION 23. That Section 39-3008, Idaho Code, be, and the same is hereby amended to read as follows:

39-3008. RECORDS. (1~~.~~) The agency shall require each person who possesses or uses a source of radiation to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the agency may require which will permit the determination of the extent of occupational and public exposure from the radiation source. Copies of these records shall be submitted to the agency on request. These requirements are subject to such exemptions as may be provided by rules.

(2~~.~~) The agency may by rule ~~and regulation~~ establish standards requiring that personnel monitoring be provided for any employee potentially exposed to radiation and may provide for the reporting to any employee of his radiation exposure record.

SECTION 24. That Section 39-3011, Idaho Code, be, and the same is hereby amended to read as follows:

39-3011. ADMINISTRATIVE PROCEDURE. In any proceeding under this act for the issuance or modification or repeal of rules ~~and regulations~~ relating to control of sources of radiation, the agency shall comply with the requirements of chapter 52, ~~of~~ title 67, Idaho Code.

Notwithstanding any other provision of this act, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, without notice or hearing, issue a ~~regulation~~ rule or order reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. Such ~~regulations~~ rules or orders shall be effective immediately.

SECTION 25. That Section 39-3012, Idaho Code, be, and the same is hereby amended to read as follows:

39-3012. INJUNCTION PROCEEDINGS. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this act, or any rule~~, regulation,~~ or order issued thereunder, the attorney general upon the request of the agency, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the agency that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction,

restraining order, or other order may be granted.

SECTION 26. That Section 39-3017, Idaho Code, be, and the same is hereby amended to read as follows:

39-3017. PENALTIES. Any person who violates any of the provisions of this act or rules~~, regulations,~~ or orders in effect pursuant thereto shall be guilty of a misdemeanor.

SECTION 27. That Section 39-3018, Idaho Code, be, and the same is hereby amended to read as follows:

39-3018. CONDUCT OF STUDIES CONCERNING NUCLEAR ENERGY DEVELOPMENT. Each of the several departments and agencies of this state, including specifically the state department of ~~health and welfare~~ environmental quality, the state department of labor and industrial services, the state industrial commission, and the ~~division of tourism and industrial development~~ department of commerce in the office of the governor, is directed:

(1~~.~~) To initiate and to pursue continuing studies as may be requested from time to time by the nuclear energy commission relative to the need for changes in the laws, regulations and programs administered by it so as to further the development of the peaceful and productive uses of nuclear energy in this state, and to make such recommendations, on the basis of such studies, for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it, as may appear necessary and appropriate.

(2~~.~~) To otherwise cooperate with the nuclear energy commission, the office of nuclear energy development, and the state radiation control agency in the performance of their duties as set out in this act.

SECTION 28. That Section 39-3019, Idaho Code, be, and the same is hereby amended to read as follows:

39-3019. EXISTING ~~REGULATIONS~~ RULES REMAIN IN EFFECT. The rules ~~and regulations~~ and minimum standards for radiation protection in the state of Idaho adopted by the state board ~~of health and welfare~~ environmental quality and in effect on the effective date of this act may be continued in full force and effect notwithstanding the other provisions of this act ~~unless~~ and until superseded or replaced by rules ~~and regulations~~ adopted and promulgated pursuant to the provisions of this act.

SECTION 29. That Section 39-3026, Idaho Code, be, and the same is hereby amended to read as follows:

39-3026. IMPLEMENTATION OF ARTICLE III. The state department of ~~health and welfare~~ environmental quality, as the designated state radiation control agency, shall adopt the practices and may impose the fees authorized under article III of the compact, except that the Idaho state police and the public utilities commission shall retain their existing enforcement and inspection authority relating to carriers. The board of ~~health and welfare~~ environmental quality shall adopt such rules ~~and regulations~~ as may be necessary to enable the department of ~~health and welfare~~ environmental quality to carry out the provisions of this section.

SECTION 30. That Section 39-3601, Idaho Code, be, and the same is hereby amended to read as follows:

39-3601. DECLARATION OF POLICY AND STATEMENT OF LEGISLATIVE INTENT. The legislature, recognizing that surface water is one of the state's most valuable natural resources, has approved the adoption of water quality standards and authorized the ~~administrator~~ director of the ~~division~~ department of environmental quality ~~of the department of health and welfare~~ in accordance with the provisions of this chapter, to implement these standards. In order to maintain and achieve existing and designated beneficial uses and to conform to the expressed intent of congress to control pollution of streams, lakes and other surface waters, the legislature declares that it is the purpose of this ~~act~~ chapter to enhance and preserve the quality and value of the surface water resources of the state of Idaho, and to define the responsibilities of public agencies in the control, and monitoring of water pollution, and, through implementation of this ~~act~~ chapter, enhance the state's economic well-being. 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 by monitoring and controlling water pollution; to support and aid technical and planning research leading to the control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution. The director, in cooperation with such other agencies as may be appropriate, shall administer this ~~act~~ chapter. It is the intent of the legislature that the state of Idaho fully meet the goals and requirements of the federal clean water act and that the rules promulgated under this ~~act~~ chapter not impose requirements beyond those of the federal clean water act.

SECTION 31. That Section 39-3602, Idaho Code, be, and the same is hereby amended to read as follows:

39-3602. DEFINITIONS. Whenever used or referred to in this ~~act~~ chapter, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.

(2) "Best management practice" means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(3) "Board" means the board of ~~health and welfare~~ environmental quality.

(4) "Department" means the department of ~~health and welfare~~ environmental quality.

(5) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture;

and the department of ~~health and welfare's division of~~ environmental quality for all other activities.

(6) "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. The department may adopt subcategories of a use.

(7) "Director" means the director of the department of ~~health and welfare~~ environmental quality, or his or her designee.

(8) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.

(9) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Existing uses may form the basis for subcategories of designated uses.

(10) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality criteria listed in the appropriate rules of the department, or where there is no applicable numerical criteria, compliance with the reference streams or conditions approved by the director in consultation with the appropriate basin advisory group.

(11) "Lower water quality" means a measurable adverse change in a chemical, physical, or biological parameter of water relevant to a designated beneficial use, and which can be expressed numerically. Measurable adverse change is determined by a statistically significant difference between sample means using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices.

(12) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(13) "New nonpoint source activity" means a new nonpoint source activity or a substantially modified existing nonpoint source activity on or adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing permits, or grazing activities and practices authorized under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.

(14) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters designated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.

(15) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(16) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(17) "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.

(18) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(19) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt; and industrial, municipal and agricultural waste, gases entrained in water; or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(20) "Reference stream or condition" means one (1) of the following:

(a) The minimum biological, physical and chemical conditions necessary to fully support the designated beneficial uses; or

(b) A water body representing natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin; or

(c) A water body representing minimum conditions necessary to fully support the designated beneficial uses.

In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(21) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(22) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through

natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

(23) "Soil conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.

(24) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.

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

(26) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.

(27) "Total maximum daily load (TMDL)" means a plan for a water body not fully supporting designated beneficial uses and includes the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, and natural background levels of the pollutant impacting the water body. Pollutant allocations established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations and a margin of safety to account for uncertainty concerning the relationship between the pollutant loading and water quality standards.

(28) "Waters or water body" means all the accumulations of surface water, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through or border upon this state. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state.

(29) "Water pollution" is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge or release 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, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(30) "Watersheds" means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code.

SECTION 32. That Section 39-3613, Idaho Code, be, and the same is hereby amended to read as follows:

39-3613. CREATION OF BASIN ADVISORY GROUPS. (1) The director, in consultation with the designated agencies, shall name, for each of the state's major river basins, no less than one (1) basin advisory group which shall generally advise the director on water quality objectives for each basin and work in a cooperative manner with the director to achieve these objectives. Each such group shall establish by majority vote, operating procedures to guide the work of the group. Members shall be compensated pursuant to section 59-509(c), Idaho Code. The membership of each basin advisory group shall be representative of the industries

and interests directly affected by the implementation of water quality programs within the basin and each member of the group shall either reside within the basin or represent persons with a real property interest within the basin. Recognized groups representing those industries or interests in the basin may nominate members of the group to the director. Each basin advisory group named by the director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include a representative from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. In addition, the director shall name one (1) person to represent the public at large who may reside outside the basin. Members named to the basin advisory groups shall, in the opinion of the director, have demonstrated interest or expertise which will be of benefit to the work of the basin advisory group. The director may also name as may be needed those who have expertise necessary to assist in the work of the basin advisory group who shall serve as technical nonvoting advisers to the basin advisory group.

(2) The governor shall establish a commission to be known as the Coeur d'Alene River basin commission whose membership is stated below for the Coeur d'Alene River basin, including the north and south forks of the Coeur d' Alene River, the main stem of the Coeur d'Alene River, Lake Coeur d'Alene and the Spokane River to replace and fulfill the duties of the basin advisory group and the watershed advisory group for those rivers and Lake Coeur d'Alene as stated in this section and sections 39-3614 through 39-3616, Idaho Code, as these duties related to heavy metal impacts in the Coeur d'Alene River basin. At the discretion of the governor, the commission may be asked to perform duties other than those specified in sections 39-3613 through 39-3616, Idaho Code. For duties related to sections 39-3613 through 39-3616, Idaho Code, the commission shall report to the director. For all other duties assigned the commission by the governor, the commission shall report to the governor, the speaker of the house of representatives and the president pro tempore of the senate. The governor shall appoint the following members of the commission: one (1) representative of the governor; one (1) representative of the ~~division~~ department of environmental quality; ~~of the department of health and welfare;~~ one (1) representative of the department of lands; one (1) representative each of the county governments of Benewah county, Kootenai county and Shoshone county; one (1) representative of the trustees established under the settlement agreement of May 3, 1986, entered in State of Idaho v. Bunker Hill Co., No. 83-3161 (D. Idaho); two (2) representatives of the citizen's advisory committee of the Coeur d'Alene basin restoration project; one (1) representative of the mining industry; and one (1) representative of other affected industries.

In addition to the governor's appointees, the commission shall have the following representatives appointed: one (1) representative of the U.S. environmental protection agency appointed by the agency; one (1) representative of the U.S. department of agriculture and the U.S. department of interior to be appointed jointly by those agencies; and one (1) representative of the Coeur d'Alene tribe appointed by the tribe. The term of a member of the commission shall be three (3) years. The governor may remove at his discretion any members appointed by him.

The commission shall operate by a simple majority vote of the members of the commission. The members of the commission shall elect a chairperson annually from the members of the commission. Members of the commission who are not state employees shall be compensated as provided in section 59-509(b), Idaho Code, if they are not otherwise being compensated for travel costs and per diem for serving on the commission.

SECTION 33. That Section 39-3617, Idaho Code, be, and the same is hereby amended to read as follows:

39-3617. DESIGNATION OF OUTSTANDING RESOURCE WATERS. Any person may request, in writing to the board of ~~health and welfare~~ environmental quality, that a stream segment may be considered for designation as an outstanding resource water. The board shall recommend to the legislature those stream segments the board proposes for designation as outstanding resource waters. The legislature shall determine by law which such stream segments to designate as outstanding resource waters. Stream segments so designated shall be included in a list of outstanding resource waters to be compiled and updated by the department of ~~health and welfare~~ environmental quality in its rules governing water quality standards. Interim status or special protection shall not be provided to streams recommended by the board prior to legislative designation as an outstanding resource water. No state agency shall delay actions, or deny or delay the processing or approval of any permit for a nonpoint source activity based on nomination of a segment for designation as an outstanding resource water, or while the legislature is considering such designation.

SECTION 34. That Section 39-3620, Idaho Code, be, and the same is hereby amended to read as follows:

39-3620. APPROVAL PROVISIONS FOR BEST MANAGEMENT PRACTICES FOR NEW NONPOINT SOURCE ACTIVITIES ON OR AFFECTING OUTSTANDING RESOURCE WATERS. No person may conduct a new nonpoint source activity on or affecting an outstanding resource water, except for a short-term or temporary activity as set forth in section 39-3602, Idaho Code, prior to approval by the designated agency as provided in this section.

(1) Within six (6) months of designation of an outstanding resource water by the legislature, the designated agency shall develop best management practices for reasonably foreseeable new nonpoint source activities. In developing best management practices the designated agencies shall:

(a) Solicit technical advice from state and federal agencies, research institutions, and universities and consult with affected landowners, land managers, operators, and the public; ~~and~~

(b) Shall assure that all public participation processes required by law have been completed, but if no public participation process is required by law, will require public notification and the opportunity to comment; and

(c) Recommend proposed best management practices to the board of ~~health and welfare~~ environmental quality.

(2) The board of ~~health and welfare~~ environmental quality and designated agencies shall adopt the proposed best management practices that are in compliance with the rules and regulations governing water quality

standards, and based on the recommendations of the designated agency and the comments received during the public participation process;

(3) After adoption, these best management practices will be known as the outstanding resource water best management practices and will be published by the designated agency. Outstanding resource water approved best management practices will be reviewed and revised where needed by the designated agency every four (4) years in consultation with the department, landowners, federal managers, operators and the public to determine conformance with objectives of this ~~act~~ chapter;

(4) Following adoption of best management practices, the designated agency shall require implementation of applicable outstanding resource water best management practices which will assure that water quality of an outstanding resource water is not lowered;

(5) Where outstanding resource water best management practices have not been adopted as set forth in subsections (1) through (4) of this section, the designated agency shall:

(a) Assure that all public participation processes required by law have been completed, but if no public participation process is required by law, the designated agency shall provide for public notification of the new activity and the opportunity to comment;

(b) Determine that the site-specific best management practices selected for a new nonpoint source activity are designed to ensure that water quality of the outstanding resource water is not lowered; and

(c) Provide for review by the department that the activity is in compliance with rules and regulations governing water quality standards.

(6) When the applicable outstanding resource water best management practices are applied, the landowner, land manager, or operator applying those practices will be in compliance with the provisions of this ~~act~~ chapter. In the event water quality is lowered, the outstanding resource water best management practices will be revised within a time frame establi~~rsh~~ed by the designated agency to ensure water quality is restored.

SECTION 35. 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 and public drinking water standards and authorized the director of the department of ~~health and welfare~~ environmental quality 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 and to provide safe drinking water to the public at the earliest possible 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~~ chapter 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; 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~~ environmental quality shall administer this ~~act~~ chapter and nothing herein shall be construed as impairing or in any manner affecting the statutory ~~autho~~rity or jurisdiction of municipalities in providing domestic water, sewage collection and treatment.

SECTION 36. That Section 39-3625, Idaho Code, be, and the same is hereby amended to read as follows:

39-3625. DEFINITIONS. (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.

(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.

(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:

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

(b) Which is, in the judgment of the Idaho board of ~~health and wel-~~

~~fare~~ environmental quality, eligible for water pollution abatement assistance or for provision of safe drinking water, whether or not federal funds are then available therefor;

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

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

(e) Which is needed, in the judgment of the Idaho board of ~~health and welfare~~ environmental quality, 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.

(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.

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

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

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

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

(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.

(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.

(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 37. 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. (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. The state of Idaho is hereby also authorized to make loans at or below market inter-

est rates for the implementation of a management program established under section 319 of the federal water pollution control act, as amended.

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

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

(4) Pursuant to subsection (3) of this section, the Idaho board of ~~health-and-welfare~~ environmental quality shall establish an integrated list of priority municipal sewage facility and nonpoint source pollution control projects and a list of priority community and nonprofit noncommunity public water systems.

SECTION 38. 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~~ ENVIRONMENTAL QUALITY -- CONTRACTS WITH MUNICIPALITIES AND COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS -- RULES -- APPROVAL OF ATTORNEY GENERAL -- AUDIT OF PAYMENTS. (1) The Idaho board of ~~health--and--welfare~~ environmental quality 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.

(2) The Idaho board of ~~health-and-welfare~~ environmental quality 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~~ environmental quality, 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:

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

(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:

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

Idaho Code.

(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~~ environmental quality.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(c) The terms under which the Idaho board of ~~health and welfare~~ environmental quality 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.

(3) The board of ~~health and welfare~~ environmental quality may, in the name of the state of Idaho, enter into loan contracts with appli-

cants for the implementation of nonpoint source pollution control programs. To be eligible for a loan the project proposed by an applicant must be consistent with the state nonpoint source management plan. Up to five percent (5%) of the total state revolving loan fund may be used for nonpoint source pollution control projects which demonstrate a benefit/nexus to a municipality.

~~D.~~(4) 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.

(~~4~~5)~~E.~~ 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 39. That Section 39-3631, Idaho Code, be, and the same is hereby amended to read as follows:

39-3631. APPROPRIATION OF WASTEWATER FACILITY LOAN ~~ACCOUNT~~ FUND -- PURPOSE OF CHAPTER. Moneys in the wastewater facility loan ~~account~~ fund are hereby perpetually appropriated for the following purposes:

(1~~.~~) To provide loans and other forms of financial assistance authorized under title VI of the federal water quality act of 1987, P.L. 100-4, to any municipality for construction of sewage treatment works.

(2~~.~~) To provide funds, subject to annual federal and state appropriation and applicable federal limitations, for operation of the wastewater facility loan program by the department of ~~health--and--welfare~~ environmental quality.

SECTION 40. That Section 39-3632, Idaho Code, be, and the same is hereby amended to read as follows:

39-3632. GRANTS AND LOANS FOR DESIGN, PLANNING OR CONSTRUCTION -- LIMITS ON AMOUNT OF GRANTS AND LOANS. (1) The board of ~~health-and-welfare~~ environmental quality may divide financial assistance for eligible construction projects into separate grants, loans or a combination of grants and loans for the design, planning, and construction stages of project development. The making of a grant or loan for early stages of a project does not obligate the state to make a grant or loans for later stages of the same project.

(2) The board may make grants from the water pollution control ~~account~~ fund; provided, that the projected payments for such grants would not cause the projected balance in the ~~account~~ fund to fall below zero at any time. All grant payments shall be subject to the availability of moneys in the ~~account~~ fund.

(3) The board may make loans from the wastewater facility loan ~~account~~ fund, provided that the projected payments for such loans would not cause the projected balance in the ~~account~~ fund to fall below zero at any time. All loan payments shall be subject to the availability of moneys in the ~~account~~ fund.

SECTION 41. That Section 39-3633, Idaho Code, be, and the same is hereby amended to read as follows:

39-3633. WATER POLLUTION CONTROL BONDS. ~~A.~~(1) Water pollution control bonds, as provided by section 5, article VIII of the constitution of the state of Idaho, shall be authorized by resolution of the state board of ~~health and welfare~~ environmental quality. The bonds may be issued in one (1) or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, may mature in such amount or amounts, may bear interest at the most advantageous rate or rates available to the state at the time offered, payable semiannually, may be in such form, either coupon or registered, may carry such registration and such conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds, if sold to a federal agency, may be sold at a private sale at not less than par and accrued interest, without advertising the same at competitive bidding. If not sold to a federal agency, the bonds shall be sold publicly in a manner to be provided by the state board of ~~health and welfare~~ environmental quality. The bonds shall be fully negotiable within the meaning and for all purposes of the Uniform Commercial Code.

~~B.~~(2) The moneys ~~derived~~ from the sale of any bonds shall be deposited in the state treasury to the credit of the water pollution control fund for the purposes of that fund.

~~C.~~(3) All bonds issued pursuant to this ~~act~~ chapter shall be obligations of the state and shall be payable in accordance with the terms of this ~~act~~ chapter and the provisions of section 5, article VIII of the constitution of the state of Idaho.

SECTION 42. That Section 39-3635, Idaho Code, be, and the same is hereby amended to read as follows:

39-3635. COTTAGE SITE LEASES -- REQUIREMENTS -- CONSTRUCTION OF SEWAGE DISPOSAL FACILITIES -- CONNECTION TO WATER AND SEWER DISTRICT SYSTEMS -- PAYMENT OF CHARGES -- NOTIFICATION OF DEFAULTS -- SATISFACTION OF REQUIREMENTS. (1) After the effective date of ~~this act~~ sections 39-3634 through 39-3639, Idaho Code, all cottage site leases authorized by the state of Idaho shall require that each lessee must construct, at his cost and expense, sewage disposal facilities, certified by the director of the department of ~~health and welfare~~ environmental quality as adequate, as follows:

(a) For all new cottage or house construction completed after July 1, 1971 on any cottage site the certificate shall be issued prior to occupancy.

(b) Those cottages or houses existing on the cottage sites prior to the effective date of ~~this act~~ sections 39-3634 through 39-3639, Idaho Code, shall meet those standards required by the director of the department of ~~health and welfare~~ environmental quality for certification within two (2) years of the effective date of ~~this act~~ sections 39-3634 through 39-3639, Idaho Code, unless a public or private sewage collection or disposal system is being planned or constructed in which case the director of the department of ~~health and welfare~~ environmental quality may grant extensions on a year by year basis but not exceed three (3) such extensions for any one (1) cottage site.

(c) Isolated dwellings on sites situated on mining, grazing or

other similar types of state land board leases shall not be affected unless within two hundred (200) yards of any flowing stream or a lake.

(2) Wherever any cottage site is located within the boundaries of a district organized for water or sewer purposes, or a combination thereof, pursuant to the provisions of chapter 32, title 42, Idaho Code, as amended, the cottage site lessee shall connect his property to the sewer system of the district within sixty (60) days after written notice from the district so to do, provided, however, no cottage site lessee shall be compelled to connect his property with such sewer system unless a service line is brought by the district to a point within two hundred (200) feet of his dwelling place. All cottage site leases hereafter issued shall require, as a condition of acceptance thereof by the lessee, that the lessee will connect his property to a district sewer system as required in this subsection (2). With respect to all cottage site leases issued subsequent to July 1, 1970, filing with the department issuing the lease of evidence of connection to the district sewer system as contemplated in this subsection (2) shall be conclusive evidence of compliance by the cottage site lessee with the requirements of subsection (1) of this section and of the provisions of the cottage site lease to provide sewage disposal facilities at the expense of the cottage site lessee. Each cottage site lessee whose cottage site is subject to connection to a district sewer system as required in this subsection (2) shall pay to the district to which the cottage site is required to be connected, in a timely manner and when due, all connection fees and charges, all monthly rates, tolls and charges, as provided by chapter 32, title 42, Idaho Code, as amended, and all special benefits payments in lieu of tax payments provided for in subsection (3) of this section.

(3) Notwithstanding that title to a cottage site remains in the state of Idaho, each cottage site lessee shall pay to any district operating a sewer system to which the cottage site is connected as provided in subsection (2) of this section, each year in the same manner and at the same time as county taxes are paid and collected a sum of money in lieu of taxes equal to the sum which would have been paid had the cottage site been held in private ownership, hereinafter called special benefits payments. The special benefits payments shall be computed by applying the millage levy of the district to the cottage site in the ordinary course to the assessed valuation of the property as determined by the county assessor of the county in which the cottage site is located. No special benefits payments shall be imposed prior to January 1, 1980. The cottage site lessee shall have such rights of protest, hearings and appeals with respect to the valuation of the cottage site for purposes of determining the special benefits payments as if such cottage site were held in private ownership.

It shall be the duty of the county assessor to establish the value of each cottage site as compared to like property upon the request, in writing, of the district.

(4) Each water and sewer district shall immediately notify the department issuing a cottage site lease of the failure of any cottage site lessee to connect to the district sewer system, or to pay any connection fee or charge, monthly rate, toll or charge, or any special benefits payments, all as required or provided for in subsection (3) of this section. Any such notification shall set forth the amount of any such fees, charges or payments which are delinquent.

(5) Approval, pursuant to the provisions of section 39-118, Idaho Code, by the department of ~~health and welfare~~ environmental quality of the plans and specifications of a sewer system to be constructed, acquired, improved or extended by a water and sewer district shall, as to all cottage sites connected to the district sewer system, satisfy the requirements of section 39-3637, Idaho Code.

(6) The state of Idaho, its boards, agencies or departments, shall not be liable, directly or indirectly, for any connection fees and charges, monthly rates, tolls and charges, or special benefits payments charged to cottage site lessees beyond those fees or payments collected from new lessees pursuant to section 58-304A, Idaho Code, and placed in the revolving fund created by section 58-141A, Idaho Code.

SECTION 43. That Section 39-3637, Idaho Code, be, and the same is hereby amended to read as follows:

39-3637. STATE BOARD OF ~~HEALTH AND WELFARE~~ ENVIRONMENTAL QUALITY -- RULES -- INSPECTION. The state board of ~~health and welfare~~ environmental quality shall adopt reasonable rules and ~~standards for the installation~~ and operation of cottage site sewage treatment facilities, and shall provide adequate inspection services so as not to delay unreasonably the construction of any lessee. Duplicate originals of all certificates issued by the director of the department of ~~health and welfare~~ environmental quality shall be filed with the director of the department issuing a cottage site lease.

The director of the department of ~~health and welfare~~ environmental quality shall ~~initiate on or before July 1, 1971,~~ maintain a site by site inventory of such sewage disposal systems that may exist. The inventory shall ascertain:

(~~a~~1) If the existing system meets the board standards. If the system meets all standards and rules for cottage sewage disposal systems a certificate shall be issued immediately.

(~~b~~2) If the system does not meet the board standards. In such case, the lessee shall be advised in writing of the actions necessary to meet the proper standards. A copy of such report shall be filed with the state agency granting the lease. The modifications, unless specifically exempted from the time limit, as provided in ~~this act~~ sections 39-3634 through 39-3637, Idaho Code, shall be completed within two (2) years of the date of the written notice.

SECTION 44. That Section 39-3638, Idaho Code, be, and the same is hereby amended to read as follows:

39-3638. FINAL DETERMINATION BY ISSUING DEPARTMENT AUTHORIZED. In the event of dispute~~,~~ or unreasonable delay on the part of lessee or the department of ~~health and welfare~~ environmental quality, the department issuing a cottage site lease may, upon notice and hearing, make a final determination consistent with control of water pollution and public health.

SECTION 45. That Section 39-4403, Idaho Code, be, and the same is hereby amended to read as follows:

39-4403. DEFINITIONS. As used in this chapter:

(1) "Board" means the Idaho board of ~~health and welfare~~ environmental quality.

(2) "Commercial hazardous waste facility or site" means any hazardous waste facility whose primary business is the treatment, storage or disposal, for a fee or other consideration, of hazardous waste generated offsite by generators other than the owner and operator of the facility.

(3) "Department" means the Idaho department of ~~health and welfare~~ environmental quality.

(4) "Director" means the director of the Idaho department of ~~health and welfare~~ environmental quality or the director's authorized agent.

(5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(6) "Gate ton" means the weight, in tons (2,000 pounds/ton), of waste material received at a facility. This weight does not include any subsequent changes to the weight resulting from the management of the waste by the facility.

(7) "Generator" means any person, who by virtue of ownership, management, or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(8) "Hazardous waste" means a waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illnesses; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitible, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties but do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to national pollution discharge elimination system permits under the ~~F~~federal ~~W~~water ~~P~~pollution ~~C~~control ~~A~~act, as amended, 33 U.S.C., ~~S~~section 1251 et seq., or source, special nuclear, or ~~by-product~~ byproduct material as defined by the ~~A~~atomic ~~E~~energy ~~A~~act of 1954, as amended, 42 U.S.C., ~~S~~section 2011 et seq.

(9) "Hazardous waste management" means the systematic control of the collection, source separation, storage, treatment, transportation, processing, and disposal of hazardous wastes.

(10) "Hazardous waste facility or site" means any property, structure, or ancillary equipment intended or used for the transportation, treatment, storage or disposal of hazardous wastes.

(11) "Injection" means the subsurface emplacement of free liquids.

(12) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste identification code(s), and destination of hazardous waste during any transportation from the point of generation to the point of treatment, storage or disposal.

(13) "Manifested waste" means waste which at the point of origin or generation is required to be manifested for transportation in a manner

similar to that of the federal uniform hazardous waste manifest or by other manifest requirements designed to assure proper treatment, storage and disposal of such waste.

(14) "PCB waste" means any waste or waste item which is not included in the definition of "hazardous waste" and which is contaminated with polychlorinated biphenyls.

(15) "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.

(16) "RCRA" means the ~~R~~resource ~~C~~conservation and ~~R~~recovery ~~A~~act of 1976 as amended from time to time.

(17) "Restricted hazardous waste" means a waste or combination of wastes regulated as land disposal restricted pursuant to federal statutes and regulations, including 40 CFR part 268.

(18) "Storage" means the containment of hazardous wastes, on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

(19) "Transportation" means the movement of any hazardous waste to or from a hazardous waste facility or site.

(20) "Transporter" means any person who transports a hazardous waste to or from a hazardous waste facility or site.

(21) "Treatment" means any method, technique, or process, including neutralization, which is designed not to be an integral part of a production process, but which is rather designed to change the physical, chemical, or biological character or composition of any hazardous waste prior to storage or final disposal so as to neutralize such waste or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(22) "Waste" means any solid, semisolid, liquid or contained gaseous material for which no reasonable use or reuse is intended or which is intended to be discarded.

SECTION 46. That Section 39-4426, Idaho Code, be, and the same is hereby amended to read as follows:

39-4426. APPOINTMENT OF ~~HEALTH~~ INSPECTORS. (1) The department of ~~health and welfare~~ environmental quality shall assign a sufficient number of employees and equipment to inspect hazardous waste facilities or sites permitted under section 39-4409, Idaho Code, and located in Idaho where disposal of hazardous waste occurs for the purpose of assuring the protection of the health and safety of the public by monitoring the receipt and handling of hazardous wastes which have been transported by common carrier.

(2) All employees of the department designated pursuant to subsection (1) of this section shall alert proper authorities or peace officers regarding violations pursuant to this chapter, violations pursuant to title 49, Idaho Code, and violations to any rules issued pursuant to section 67-2901A, Idaho Code.

(3) All actions brought for violations of the provisions of this

chapter or rules promulgated pursuant thereto shall be brought as provided for in this chapter. All actions brought for violations of the provisions of title 49, Idaho Code, shall be brought as provided in that title.

SECTION 47. That Section 39-4428, Idaho Code, be, and the same is hereby amended to read as follows:

39-4428. COLLECTION OF COMMERCIAL DISPOSAL FEES -- RETURNS. (1) The fees imposed under section 39-4427, Idaho Code, shall be due and payable in monthly installments by the owner, agent, employee, or operator of such hazardous waste facility or site and remittance shall be made to the Idaho department of ~~health and welfare~~ environmental quality on or before the fifteenth day of the month next succeeding the end of the monthly period in which the fee accrued. The owner, operator or designated employee or agent of the hazardous waste facility or site, on or before the fifteenth day of the month, shall make out a return, upon such forms setting forth such information as the department may require, showing the amount of the fee for which the owner or operator of the hazardous waste facility or site is liable for the preceding monthly period, and shall sign and transmit the same to the department, together with a remittance for such amount in the form required.

(2) The department may relieve any person or class of persons from the obligation of filing monthly returns and may require the return to cover other reporting periods, but in no event shall returns be filed for a period greater than three (3) months.

SECTION 48. That Section 39-4429, Idaho Code, be, and the same is hereby amended to read as follows:

39-4429. BOOKS AND RECORDS TO BE PRESERVED -- ENTRY AND INSPECTION BY DEPARTMENT OF ~~HEALTH AND WELFARE~~ ENVIRONMENTAL QUALITY. Every person or entity subject to the imposition of the fees specified in section 39-4427, Idaho Code, shall keep complete and accurate records, including itemized invoices and manifests for federally regulated types and quantities of hazardous waste ultimately disposed of at a hazardous waste facility or site in Idaho. All books, documents and papers, computer tapes, discs, and other records required to be kept by this section shall be preserved for a period of at least five (5) years from the date of the records or the date of the entries appearing in the records, unless the department in writing, authorized their destruction or disposal at an earlier date. For purposes of this ~~act~~ chapter, at any time during usual business hours, the department or duly authorized agents or employees, may enter any place of business of the owner or operator of a hazardous waste facility or site where hazardous wastes are disposed and inspect the premises, the records required to be kept under this chapter, and the hazardous wastes or other chemicals contained therein, to determine whether or not all the applicable provisions of sections 39-4427 and 39-4428, Idaho Code, are being fully complied with. Trade secret information obtained by the department under the provisions of this section shall be treated in the same manner as such information obtained under section 39-4411, Idaho Code. If the department, or any of its authorized agents or employees is unreasonably denied free access or is unreasonably hindered or interfered with in making the examination of

a hazardous waste facility or site, that hindrance or interference shall constitute grounds for suspension or revocation of the facility or site's permit by the director of the department of ~~health and welfare~~ environmental quality under subsection (b) of section 39-4413, Idaho Code.

SECTION 49. That Section 39-4431, Idaho Code, be, and the same is hereby amended to read as follows:

39-4431. COLLECTION AND ENFORCEMENT. (1) The collection and enforcement procedures available to the Idaho state tax commission provided by the Idaho income tax act, sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042 through 63-3045A, 63-3047 through 63-3065A, 63-3068, 63-3070, 63-3071, 63-3072, 63-3073 and 63-3078, Idaho Code, as they now exist or as they may subsequently be amended, shall apply and be available to the department of ~~health and welfare~~ environmental quality for the enforcement of the commercial disposal fee and for the assessment and collection of any amounts due thereunder. Said sections shall, for the aforementioned purposes, be considered part of this ~~act~~ chapter and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this ~~act~~ chapter, be described as commercial disposal fee liens and proceedings.

(2) The department of ~~health and welfare~~ environmental quality may be made a party defendant in any action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the department of ~~health and welfare~~ environmental quality and said judgment shall be paid or satisfied out of the general fund of the state.

SECTION 50. That Section 39-5803, Idaho Code, be, and the same is hereby amended to read as follows:

39-5803. DEFINITIONS. As used in this chapter:

(1) "Panel" means the site review panel created in section 39-5811, Idaho Code.

(2) "Committee" means the state hazardous waste management planning committee created in section 39-5805, Idaho Code.

(3) "Department" means the department of ~~health and welfare~~ environmental quality.

(4) "Designated facility" means a hazardous waste treatment, storage or disposal facility which has received a permit or has interim status under title II of the solid waste disposal act or has a permit from the state authorized under section 3006 of title II of the solid waste disposal act (42 U.S.C.A. section 3006).

(5) "Director" means the director of the department of ~~health and welfare~~ environmental quality.

(6) "Disposal" is defined in section 39-4403, Idaho Code.

(7) "Disposal facility" means a facility or a part of a facility at which managed hazardous waste, as defined by rule, is intentionally placed into or on any land or water and at which hazardous waste will remain after closure.

(8) "Generator" is defined in section 39-4403, Idaho Code.

(9) "Hazardous waste" is defined in section 39-4403, Idaho Code.

(10) "Hazardous waste management" is defined in section 39-4403, Idaho Code.

(11) "On-site" means on the same or geographically contiguous property which may be divided by a public or private right-of-way if the entrance and exit between the pieces of property are at a crossroads intersection and access is by crossing rather than going along the right-of-way. Noncontiguous pieces of property owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access is also considered on-site property.

(12) "Operator" means the person responsible for the overall operation of a disposal, treatment or storage facility with approval of the director either by contract or permit.

(13) "Person" is defined in section 39-4403, Idaho Code.

(14) "Plan" means the state hazardous waste management plan prepared under the provisions of section 39-5806, Idaho Code.

(15) "Storage" is defined in section 39-4403, Idaho Code.

(16) "Storage facility" means a facility or part of a facility at which managed hazardous waste, as defined by rule and regulation is subject to storage.

(17) "Title II of the solid waste disposal act" means sections 1001 through 8006 of public law 89-272, 42 U.S.C. 6901, 6902 through 6910, 6912 through 6940 and 6942 through 6986.

For purposes of this chapter, words and phrases defined in section 39-4403, Idaho Code, shall carry the same meaning when used in this chapter unless the context clearly denotes otherwise.

SECTION 51. That Section 39-5805, Idaho Code, be, and the same is hereby amended to read as follows:

39-5805. STATE HAZARDOUS WASTE MANAGEMENT PLANNING COMMITTEE -- CREATION -- MEMBERS. (1) The state hazardous waste management planning committee is hereby created in the department. The committee shall represent diverse geographical areas of the state. No later than September 1, 1985, the governor shall, subject to the advice and consent of the senate, appoint seventeen (17) members to the committee consisting of the following representatives:

(a) One (1) representative of city government;

(b) One (1) representative of county government;

(c) One (1) hazardous waste transporter;

(d) One (1) hazardous waste generator;

(e) One (1) hazardous waste treatment, storage, or disposal facility operator;

(f) One (1) member of an environmental group;

(g) One (1) member of a conservation group;

(h) Two (2) members of the general public;

(i) The director of the department or his designee;

(j) The director of the department of water resources or his designee;

(k) One (1) licensed professional engineer;

(l) A faculty member of a university or college in this state well versed in geology, hydrology or other environmental matters;

(m) The director of the Idaho transportation department or his designee;

(n) One (1) representative of the mining industry;
(o) One (1) representative of the forest products industry; and
(p) One (1) representative of the agricultural industry.

(2) A vacancy occurring on the committee shall be filled in the same manner as the original appointment.

(3) The chairman of the committee shall be elected by the members of the committee and the chairman shall be a voting member of the committee.

(4) Members of the committee who are not state employees shall be entitled to receive compensation as provided in section 59-509(b), Idaho Code.

(5) The committee by majority vote shall establish operating procedures. The operating procedures shall be made available for public review.

(6) In the conduct of its business, the committee shall solicit the advice of, and consult periodically with cities, counties and persons within the state for the purpose of receiving information or advice that may be helpful in the preparation of the plan.

(7) Employees of the department of ~~health and welfare~~ environmental quality, department of water resources and the transportation department shall assist the committee on a priority basis.

(8) The committee shall disband after final approval of the plan by the legislature.

(9) Upon petition to the director and the director's recommendation to the governor, the governor shall appoint a committee in the same manner as the original committee to amend or revise the plan.

(10) The committee shall hold its first meeting as soon as practicable after confirmation by the senate.

SECTION 52. That Section 39-5806, Idaho Code, be, and the same is hereby amended to read as follows:

39-5806. STATE HAZARDOUS WASTE SITING MANAGEMENT PLAN -- PREPARATION -- INCLUSIONS -- STUDIES -- PUBLIC HEARINGS -- SUMMARY -- AMENDMENTS -- RECOMMENDATION. (1) Not later than January 1, 1987, the committee shall prepare a state hazardous waste siting management plan.

(2) The plan shall:

(a) Provide for a reasonable geographic distribution of hazardous waste treatment, storage, or disposal facilities to meet existing and probable future needs.

(b) Be based upon location of generators, health and safety, economics of transporting, types of waste and existing hazardous waste treatment, storage, or disposal facilities.

(c) Include necessary legislative, administrative and economic mechanisms, a timetable to carry out the plan.

(3) The committee may instruct the department of ~~health and welfare~~ environmental quality, the department of water resources and the transportation department to complete studies as considered reasonably necessary for the completion of the plan. The studies may include:

(a) An inventory and evaluation of the sources of hazardous waste generation within this state or from other states, including the types and quantities of the hazardous waste.

(b) An inventory and evaluation of current hazardous waste management practices and costs, including treatment and disposal, within

this state.

(c) A projection or determination of future hazardous waste management needs based on an evaluation of existing capacities, treatment or disposal capabilities, manufacturing activity, limitations and constraints. Projection of needs shall consider the types and sizes of hazardous waste treatment, storage, or disposal facilities, general locations within the state, management control systems, and an identified need for additional privately owned or state owned treatment, storage, or disposal facilities.

(d) An investigation and analysis of methods and incentives to encourage interstate and international cooperation in the management of hazardous waste.

(e) An investigation and analysis of methods, incentives or technologies for source reduction, reuse, recycling, or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste.

(f) An investigation and analysis of alternate methods for treatment and disposal of hazardous waste.

(4) Upon completion of the plan, the committee shall publish a notice after giving twenty (20) days' notice as provided in section 60-109, Idaho Code, in a number of newspapers and shall issue a statewide news release announcing the availability of the plan for inspection by interested persons. The announcement shall indicate where and how the plan may be obtained or reviewed and shall indicate that not less than three (3) public hearings shall be conducted at varying locations in the state before formal adoption. The first public hearing shall not be held until sixty (60) days have elapsed from the date of the notice announcing the availability of the plan.

(5) After public hearings, the committee shall prepare a written summary of the comments received, provide comments on the major concerns raised, make amendments to the plan as necessary and shall formally adopt the plan, and shall submit the plan to the legislature at the first regular session of the legislature following adoption of the plan.

SECTION 53. That Section 39-5812, Idaho Code, be, and the same is hereby amended to read as follows:

39-5812. SITE REVIEW PANELS -- MEMBERS, CHAIRMAN, QUORUM, MEETINGS, STAFF. (1) A site review panel shall be established to insure public input in the licensing process and to recommend to the director conditions which should be included in the siting license. Such conditions may include measures to mitigate public concerns for the following types of facilities:

(a) All commercial hazardous waste disposal facilities not in existence prior to July 1, 1985;

(b) All commercial hazardous waste treatment or storage facilities not in existence prior to July 1, 1985;

(c) Any on-site disposal of wastes listed pursuant to section 201(d)(2) and (e) as modified by section 209 of "The Hazardous and Solid Waste Amendments of 1984," as enacted by the U.S. congress, for sites not in existence prior to July 1, 1985;

(d) Any significant expansion of the above-listed facilities after July 1, 1985.

A panel shall consist of ten (10) members to be appointed as pro-

vided in subsections (2) and (3) of this section.

(2) The following six (6) members shall serve on every panel established to review a siting license application:

(a) Three (3) members shall be representatives of this state, one (1) each from the department of ~~health and welfare~~ environmental quality, the department of water resources and the Idaho transportation department. A member who is a representative of this state shall be appointed by each of the directors of the respective departments and a vacancy shall be filled as necessary by the appropriate director. A member who is a representative of the state shall be appointed to serve on site review panels for a period of two (2) years and may be appointed for additional two (2) year periods. In addition, a member who is a representative of the state may serve beyond the expiration of the member's two (2) year period of service for so long a period of time as is necessary to complete action on siting license applications pending at the expiration of the member's term.

(b) Three (3) members shall be public members appointed by the governor with the advice and consent of the senate. One (1) public member shall be a geologist or hydrologist, one (1) an engineer, and one (1) a representative of industries which generate hazardous waste. One (1) public member shall be on the faculty of an institution of higher education in this state. A vacancy shall be filled for the unexpired portion of the period in the same manner as the original appointment. A member who is a public member shall be appointed to serve on site review panels for a period of three (3) years and may be appointed for additional three (3) year periods.

(3) The following four (4) members shall serve on a panel which is established to consider a particular siting license application:

(a) Two (2) members shall be appointed by the city council of the city located closest to or in which the hazardous waste treatment, storage, or disposal facility is proposed to be located, at least one (1) of whom shall be a resident of the city. The members serving pursuant to this subsection shall serve until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(b) Two (2) members shall be residents of the county where the hazardous waste treatment, storage, or disposal facility is proposed to be located and shall be appointed by the board of commissioners of the county. The members serving pursuant to this subsection shall serve until the particular siting license application subject to their review is approved, or until the application is rejected and is no longer subject to their review.

(4) The member appointed as the representative of the state from the department shall be chairman of each panel and shall notify the city council of the nearest city and the board of county commissioners of a siting license application filed with the department, and shall instruct the city and county to appoint the necessary representatives to a panel. The chairman shall be a nonvoting member of the panel except when the chairman's vote is necessary to break a tie vote.

(5) Six (6) of the ten (10) members of the panel shall constitute a quorum for the transaction of business of the panel and the concurrence of six (6) members of the panel shall constitute a legal action of the

panel. All meetings of the panel shall be conducted pursuant to the state open meeting law.

(6) The director shall make staff available to assist a panel in carrying out its responsibilities.

(7) Members of the panel who are not state employees shall be entitled to receive compensation as provided in section 59-509(b), Idaho Code.

SECTION 54. That Section 39-6203, Idaho Code, be, and the same is hereby amended to read as follows:

39-6203. DEFINITIONS. As used in this chapter:

(1) "Board" means the Idaho board of ~~health and welfare~~ environmental quality.

(2) "Commercial PCB waste facility or site" means any facility which engages in the treatment, storage or disposal, for a fee or other consideration, of PCB waste generated off site by generators other than the owner and operator of the facility.

(3) "Department" means the Idaho department of ~~health and welfare~~ environmental quality.

(4) "Director" means the director of the Idaho department of ~~health and welfare~~ environmental quality or the director's authorized agent.

(5) "Disposal" means to intentionally or accidentally discard, throw away, or otherwise complete or terminate the useful life of PCB waste within a PCB waste facility or site. Disposal includes spills, leaks, and other uncontrolled discharges of PCB waste as well as actions related to containment, destruction, degradation, decontamination or storage of PCB waste within a PCB waste facility or site.

(6) "Generator" means any person, who by virtue of ownership, management, or control, is responsible for causing or allowing to be caused the creation of a PCB waste.

(7) "Manifest" means a form used for identifying the quantity, composition, origin, routing, waste identification code(s), and destination of PCB waste during any transportation from the point of generation to the point of treatment, storage or disposal.

(8) "PCB" means polychlorinated biphenyl.

(9) "PCB waste" means any waste or waste item which is contaminated with PCB.

(10) "PCB waste facility or site" means any property, structure, or ancillary equipment intended or used for the disposal of PCB wastes.

(11) "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.

(12) "Polychlorinated biphenyl" means any chemical substance limited to the biphenyl molecule that has been chlorinated to varying degrees.

(13) "Storage" means the containment of PCB wastes, on a temporary basis or for a period of years, in such a manner as to not constitute disposal of such PCB wastes.

(14) "Transportation" means the movement of any PCB waste to or from a PCB waste facility or site.

(15) "Transporter" means any person who transports a PCB waste to or from a PCB waste facility or site.

(16) "Treatment" means any method, technique, or process, including neutralization, which is designed not to be an integral part of a production process, but which is rather designed to change the physical, chemical, or biological character or composition of any PCB waste prior to storage or final disposal so as to neutralize such waste or so as to render such waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of PCB waste to render it nonhazardous.

(17) "TSCA" means the toxic substances control act, as amended, 15 U.S.C., section 2601, et seq.

(18) "Waste" means any solid, semisolid, liquid or contained gaseous material for which no reasonable use or reuse is intended or which is intended to be discarded.

SECTION 55. That Section 39-6404, Idaho Code, be, and the same is hereby amended to read as follows:

39-6404. ESTABLISHMENT OF A REGIONAL CLEAN LAKES COORDINATING COUNCIL. There is hereby created in the region encompassing Boundary, Benewah, Bonner, Kootenai and Shoshone counties a regional clean lakes coordinating council. It shall be the responsibility of the clean lakes coordinating council to implement the clean lakes pilot program created by this chapter. The regional clean lakes coordinating council shall be assisted in carrying out its responsibilities by the staffs of the panhandle health district and the ~~division~~ department of environmental quality. ~~of the department of health and welfare.~~

SECTION 56. That Section 39-6407, Idaho Code, be, and the same is hereby amended to read as follows:

39-6407. TECHNICAL ADVISORY GROUP. To assist in its objectives, the council shall create a technical advisory group which may include the designated representatives of the public health district, city and county planning or engineering departments, Department of ~~Health and Welfare~~ Environmental Quality, Department of Lands, Department of Fish and Game, Department of Parks and Recreation, Department of Water Resources, State Soil Conservation Commission, United States Forest Service, United States Bureau of Land Management, United States Army Corps of Engineers, United States Agricultural Conservation and Stabilization Services, United States Environmental Protection Agency, United States Geological Survey or any one or more of said agencies and such representatives of agriculture, conservation, forest products, sportsmen and mining interests as may be appointed by the county. Indian tribes may nominate a representative for the technical advisory group to the county for appointment to the group. Members shall serve without state compensation except such normal compensation received by members who are state employees serving in the normal course and scope of their employment.

SECTION 57. That Section 39-6501, Idaho Code, be, and the same is hereby amended to read as follows:

39-6501. DEFINITIONS. As used in this chapter:

(1) "~~Division~~Department" means the ~~division~~ department of environmental quality. ~~of the department of health and welfare.~~

(2) "Motor vehicle" means any automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination or other vehicle operated on the roads of this state, used to transport persons or property and propelled by power other than muscular power, but motor vehicle does not include bicycles.

(3) "Retail seller of motor vehicle tires" and "wholesale seller of motor vehicle tires" include those persons who sell or lease motor vehicles to others in the ordinary course of business.

(4) "Tire" shall have the meaning contained in section 49-121, Idaho Code.

(5) "New tire" means a tire which is not used or retreaded, and is being sold on the market for the first time.

(6) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(7) "Waste tire collection site" means a site where waste tires are collected before being offered for recycling or reuse and where more than fifty (50) tons of used tires are kept on site on any day.

(8) "Idaho retreader" is a person who accepts passenger and light truck tires generated in Idaho and retreads such tires in Idaho and is registered with the division.

(9) "Passenger and light truck tire" means any motor vehicle tire with a rim diameter of twelve (12) inches through sixteen (16) inches.

(10) "Review committee" is an advisory committee appointed by the ~~administrator~~ director of the ~~division~~ department to establish and/or review percentages for reimbursing retreaders and other users of waste tires, and to review proposals for other uses, grants to counties and contracts with private entities.

(11) "Waste tires generated in Idaho" are tires which first become waste tires in Idaho.

(12) "Mining waste tire" means a waste tire which is greater than fifty-four (54) inches in diameter which was used in mining operations. Mining waste tires may be disposed of by burial. The department of lands shall prepare guidelines to govern the burial of mining waste tires.

(13) "End user" means the first person or company that purchases and uses waste tires, chips or other materials made from waste tires.

SECTION 58. That Section 39-6503, Idaho Code, be, and the same is hereby amended to read as follows:

39-6503. WASTE TIRE COLLECTION SITES. An owner or operator of a waste tire collection site, within six (6) months of the effective date of this section, shall register with the ~~division~~ department and provide the ~~division~~ department with information concerning the site's location and size and the approximate number of waste tires which are stored at the site and shall initiate steps to comply with the provisions of this chapter and other local, state and/or federal authorities.

SECTION 59. That Section 39-6504, Idaho Code, be, and the same is hereby amended to read as follows:

39-6504. DISPOSAL OF WASTE TIRES. (1) The disposal of waste tires, in any form, in landfills and the incineration of those tires is prohib-

ited, except as provided by permissible methods of waste tire management listed in subsection (3) of this section or in accordance with rules ~~and regulations~~ of the department of ~~health and welfare~~ environmental quality. An owner and operator of a solid waste disposal site shall not knowingly accept waste tires for disposal.

(2) Beginning on January 1, 1993, a person shall not dispose of waste tires unless the waste tires are disposed of at a waste tire collection site or managed as provided in subsection (3) of this section in accordance with rules ~~and regulations~~ of the ~~division~~ department.

(3) The following are permissible methods of waste tire management:

(a) Retreading.

(b) Constructing collision barriers.

(c) Controlling soil erosion only if used in accordance with approved engineering practices.

(d) Chopping or shredding prior to reuse.

(e) Grinding for use in asphalt or as a raw material for other products.

(f) Using as playground equipment.

(g) Incinerating or using as a fuel or pyrolysis if permitted by law, regulations, rules or ordinances relating to burning of fuel.

(h) Hauling to lawful out-of-state collection or processing sites.

(i) Any other ~~bene~~ficial use, reuse or recycling of waste tires, chips or similar material from waste tires generated in Idaho which meets the criteria set forth by the ~~division~~ department.

(4) The board of ~~health and welfare~~ environmental quality, by rule, ~~and regulation,~~ may authorize other methods of management and/or disposal of waste tires.

(5) The ~~division~~ department shall expedite the processing and issuance of any permits required by the rules ~~and regulations~~ of the department ~~of health and welfare~~ for facilities or operations utilizing permissible methods of waste tire management in accordance with the provisions of subsections (2) and (3) of this section.

SECTION 60. That Section 39-6506, Idaho Code, be, and the same is hereby amended to read as follows:

39-6506. RULES. ~~AND REGULATIONS.~~ The board of ~~health and welfare~~ environmental quality shall promulgate rules ~~and regulations~~ to address the registration of waste tire transporters in Idaho; management standards; collection, storage and disposal of waste tires in Idaho, financial assurance and removal agreements; development of a grant program to counties and reimbursement requirements for eligible tire recyclers and Idaho retreaders, and to carry out the provisions of this chapter.

SECTION 61. That Section 39-6603, Idaho Code, be, and the same is hereby amended to read as follows:

39-6603. ESTABLISHMENT OF THE BIG PAYETTE LAKE WATER QUALITY COUNCIL. There is hereby created a Big Payette Lake water quality council for the lake. It shall be the responsibility of the council to develop and implement the program created in this chapter. The council shall be assisted in carrying out its responsibilities by the ~~division~~ department of environmental quality, ~~of the department of health and welfare,~~ the

local public health district and other appropriate state and local agencies as needed.

SECTION 62. That Section 39-6609, Idaho Code, be, and the same is hereby amended to read as follows:

39-6609. TECHNICAL COMMITTEE. To assist in the development of its program, the council shall create a technical committee which may include but ~~are~~ is not exclusively limited to designated representatives of the public health district, city and county planning or engineering departments, the county planning and zoning commission, the McCall water and sewer district, department of ~~health and welfare~~ environmental quality, department of lands, department of fish and game, department of parks and recreation, department of water resources, state soil conservation commission, United States forest service, United States army corps of engineers, United States agricultural conservation and stabilization services, United States soil conservation service, United States geological survey, United States environmental protection agency and representatives proposed by interests in agriculture, environmental protection, forest products, sporting and mining. Indian tribes may nominate a representative for the technical committee. Members shall serve without state compensation except such normal compensation received by members who are state, city, county, district or federal employees serving in the normal course and scope of their employment.

SECTION 63. That Section 39-7002, Idaho Code, be, and the same is hereby amended to read as follows:

39-7002. DISPOSAL OF LEAD ACID BATTERIES. (1) The disposal of lead acid batteries in landfills and the incineration of those batteries is prohibited. An owner or operator of a solid waste disposal facility shall not knowingly accept a lead acid battery for disposal unless the owner or operator is removing lead acid batteries from the waste stream for recycling. A lead acid battery shall be discarded or disposed of only as follows:

(a) A lead acid battery retailer or wholesaler may deliver a lead acid battery to any one (1) of the following:

(i) A permitted secondary lead smelter.

(ii) A battery manufacturer.

(iii) A collection or recycling facility authorized by the federal environmental protection agency or ~~division~~ department of environmental quality.

(iv) In the case of battery retailers only, an agent of a battery wholesaler.

(v) A landfill operator who offers collection services for recycling lead acid batteries.

(2) A person other than a lead acid battery retailer or wholesaler may deliver a lead acid battery to any of the following:

(a) A lead acid battery retailer or wholesaler.

(b) A permitted secondary lead smelter.

(c) A collection or recycling facility authorized by the federal environmental protection agency or the ~~division~~ department of environmental quality.

(d) A landfill operator who offers collection services for recycling lead acid batteries.

SECTION 64. That Section 39-7108, Idaho Code, be, and the same is hereby amended to read as follows:

39-7108. NOTIFICATION OF RELEASE IS REQUIRED. (1) Any person who has responsibility for reporting a release under the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 U.S.C. 9603, shall, as soon as practicable after he has knowledge of any such reportable release other than a permitted release or as exempted in section 39-7108(3), Idaho Code, notify the military division of such release.

(2) Any person who has responsibility for reporting a release under the federal emergency planning and community right-to-know act, 42 U.S.C. 11001 et seq., shall as soon as practicable after he has knowledge of any such reportable release other than a permitted release notify the military division of such release.

(3) Any facility having a release reportable under section 39-7108(1), Idaho Code, shall not be required to report the release to the military division if the following circumstances are met:

(a) Such release is not reportable under subsection (2) of section 39-7108, Idaho Code.

(b) The facility has an approved private emergency response plan that details how such spills shall be responded to and reported.

This provision does not relieve the facility from any reporting required under other federal statutory, regulatory or other permit authorities.

(4) The military division shall immediately notify the ~~division~~ department of environmental quality ~~within the department of health and welfare~~ of any release reported to the military division. Such reporting to the military division shall fulfill all state reporting requirements for the ~~division~~ department of environmental quality.

(5) Any person who does not notify the military division in accordance with the provisions of section 39-7108, Idaho Code, shall be liable for a civil penalty of a sum not to exceed one thousand dollars ($1,000) for each day the violation continues to a maximum of twenty-five thousand dollars ($25,000).

(6) No penalty pursuant to this section shall occur if an incident occurs on private property and results in no offsite environmental damage.

SECTION 65. That Section 39-7114, Idaho Code, be, and the same is hereby amended to read as follows:

39-7114. PRIVATE EMERGENCY RESPONSE PLAN APPROVAL. Private emergency response plans may be prepared for any facility or specific set of conditions. A private emergency response plan must be approved by the local emergency response authority or the military division unless the plan:

(1) Is a contingency plan that has been approved in the issuance of a final part B operating permit, in accordance with section 39-4401, Idaho Code, by the Idaho ~~division~~ department of environmental quality;

(2) Is a contingency plan prepared in accordance with the requirements of rules promulgated pursuant to section 39-4401, Idaho Code, by the Idaho ~~division~~ department of environmental quality;

(3) Has otherwise been approved by the ~~the~~ military division or ~~division~~ department of environmental quality. Private emergency response plans must be submitted, for file purposes, to the local emergency response authorities and the military division to qualify as a private emergency response plan under this section.

SECTION 66. That Section 39-7203, Idaho Code, be, and the same is hereby amended to read as follows:

39-7203. GENERAL DEFINITIONS. As used in this chapter:

(1) "Board" means the board of ~~health and welfare~~ environmental quality.

(2) "Department" means the department of ~~health and welfare~~ environmental quality.

(3) "Hazardous substance" has the meaning set forth in section 101(14) of the comprehensive environmental, response, compensation and liability act (CERCLA), 42 U.S.C. 9601 (14) as amended.

(4) "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.

(5) "Petroleum" includes petroleum asphalt and crude oil or any part of petroleum asphalt or crude oil that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute).

(6) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance or petroleum.

(7) "Remediation" means any of the following:

(a) Actions necessary to prevent, minimize, or mitigate damages to the public health or welfare or to the environment, which may otherwise result from a release or threat of a release; or

(b) Actions consistent with a permanent remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance or petroleum into the environment to eliminate the release of hazardous substances or petroleum so that the hazardous substances or petroleum do not migrate to cause substantial danger to present or future public health or welfare or the environment; or

(c) The cleanup or removal of released hazardous substances or petroleum from the environment.

(8) "Site" means a parcel of real estate for which an application has been submitted under section 39-7204, Idaho Code.

SECTION 67. That Section 39-7401, Idaho Code, be, and the same is hereby amended to read as follows:

39-7401. LEGISLATIVE FINDINGS AND PURPOSES. (1) The legislature finds:

(a) That adverse public health and environmental impacts can result from the improper land disposal of solid waste and that the need for establishing safe sites with adequate capacity for the disposal of solid waste is a matter of statewide concern and necessity; and

(b) That the resource conservation and recovery act (42 U.S.C. sec. 6901, et seq.) as amended, and regulations adopted pursuant thereto, establish complex, detailed and costly provisions for the location, design, operation and monitoring of solid waste disposal sites, including such sites as may be operated pursuant to the responsibility established in chapter 44, title 31, Idaho Code; and

(c) That a state program to implement flexible standards provided in 40 CFR 258, if approved by the U.S. environmental protection agency, enables a state to take advantage of site specific factors in the design and operation of solid waste facilities and flexibility in meeting federal criteria set forth in that regulation; and

(d) That 40 CFR 258 provides that such a program of flexible standards requires approvals by a designated state agency; and

(e) That chapter 1, title 39, Idaho Code, vests the department of ~~health and welfare~~ environmental quality with the responsibility to issue a certificate of suitability concerning prospective solid waste landfill sites, to approve solid waste facility and ground water monitoring programs and to provide approvals pursuant to 40 CFR 258; and

(f) That chapter 44, title 31, Idaho Code, imposes on the counties the primary responsibility for the development and operation of a solid waste management system; and

(g) That chapter 4, title 39, Idaho Code, vests the health districts with the primary responsibility for the review of solid waste facility operations plans and the enforcement of solid waste management operations; and

(h) That the coordination and timeliness of response to federal law on the part of all public officials within the state is critical to compliance with federal regulations, the ability of each affected agency to carry out their statutory responsibilities and the avoidance of excessive construction and public expenditures.

(2) Therefore, it is the intent of the legislature to establish a program of solid waste management which complies with 40 CFR 258 and facilitates the incorporation of flexible standards in facility design and operation. The legislature hereby establishes the solid waste disposal standards and procedures outlined herein and a facility approval process for the state of Idaho, the political subdivisions thereof, and any private solid waste disposal site owner in order to facilitate the development and operation of solid waste disposal sites, to effect timely and responsible completion of statutory duties and to ensure protection of human health and the environment, to protect the air, land and waters of the state of Idaho.

SECTION 68. That Section 39-7402, Idaho Code, be, and the same is hereby amended to read as follows:

39-7402. APPLICABILITY. (1) The standards and procedures set forth in this chapter apply to owners and operators of new municipal solid

waste landfill (MSWLF) units, existing MSWLF units, and lateral expansions of existing MSWLF units, except as otherwise specifically provided.

(2) The requirements of this chapter do not apply to MSWLF units that ceased to accept waste on or prior to October 9, 1991.

(3) MSWLF units that receive waste after October 9, 1991, but stop receiving waste in conformance with the provisions of 40 CFR 258.1(d), are exempt from the requirements of this chapter, except as expressly provided herein.

(4) All MSWLF units that receive waste on or after October 9, 1993, must comply with all of the requirements of this chapter, unless otherwise allowed in 40 CFR 258.1(d), (e) or (f).

(5) MSWLF units failing to satisfy these standards shall cease operation and shall not accept municipal solid waste for disposal by order of the ~~division~~ department of environmental quality and/or the district health department until provisions of this chapter are complied with unless a compliance sch~~edule~~ has been approved by the director of the department of ~~health and welfare~~ environmental quality and/or the district health department.

(6) MSWLF units failing to satisfy the requirements set forth in this ~~act~~ chapter are considered open dumps for purposes of state solid waste management planning and are prohibited under section 4005 of RCRA.

(7) MSWLF units containing sewage sludge and which fail to satisfy the criteria set forth in 40 CFR 258 violate sections 309 and 405(e) of the clean water act.

SECTION 69. That Section 39-7403, Idaho Code, be, and the same is hereby amended to read as follows:

39-7403. DEFINITIONS. As used in this chapter:

(1) "Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with 40 CFR 258.60.

(2) "Agricultural wastes" means wastes generated on farms resulting from the production of agricultural products including, but not limited to, manures and carcasses of dead animals weighing each or collectively in excess of fifteen (15) pounds but do not include wastes that are classified as hazardous.

(3) "Applicant" means the owner or the operator with the owner's written consent.

(4) "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.

(5) "Board" means the Idaho board of ~~health and welfare~~ environmental quality.

(6) "Buffer zone" means that part of a facility that lies between the active portion and the property boundary.

(7) "Clean soils and clean dredge spoils" means soils and dredge spoils which are not hazardous wastes or problem wastes as defined in this section.

(8) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses and other nonmanufacturing activities, excluding residential and industrial wastes.

(9) "Commercial solid waste facility" means a facility owned and operated as an enterprise conducted with the intent of making a profit by any individual, association, firm, or partnership for the disposal of solid waste, but excludes a facility owned or operated by a political subdivision, state or federal agency, municipality or a facility owned or operated by any individual, association, firm or partnership exclusively for the disposal of solid waste generated by such individual, association, firm or partnership.

(10) "Construction/demolition waste" means the waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures. Such waste includes, but is not limited to, bricks, concrete, other masonry materials, soil, rock, lumber, road spoils, rebar, paving materials and tree stumps. Noninert wastes and asbestos wastes are not considered to be demolition waste for the purposes of this chapter.

(11) "Contaminate" means to allow discharge of a substance from a landfill that would cause:

(a) The concentration of that substance in the ground water to exceed the maximum contamination level (MCL) specified in 40 CFR 258.40, Idaho drinking water standards; or

(b) A statistically significant increase in the concentration of that substance in the ground water where the existing concentration of that substance exceeds the maximum contamination level specified in paragraph (a) of this subsection; or

(c) A statistically significant increase above background in the concentration of a substance which:

(i) is not specified in paragraph (a) of this subsection; and

(ii) is a result of the disposal of solid waste; and

(iii) has been determined by the department to present a substantial risk to human health or the environment in the concentrations found at the point of compliance.

(12) "County" means any county in the state of Idaho.

(13) "Cover material" means soil or other suitable material that is used to protect the active portion of the MSWLF unit.

(14) "Director" means the director of the Idaho department of ~~health and welfare~~ environmental quality.

(15) "Existing MSWLF unit" means any municipal solid waste landfill unit that is receiving sol~~id waste~~ as of the applicable date specified in 40 CFR 258.1(e).

(16) "Facility" means all contiguous land and structures, buffer zones, and other appurtenances and improvements on the land used for the disposal of solid waste.

(17) "Floodplain" means the area encompassed by the one hundred (100) year flood as defined by applicable federal emergency management agency (FEMA) flood insurance maps or, if no map exists, then as defined in 40 CFR 258.11.

(18) "Ground water" means water below the land surface in a zone of saturation.

(19) "Health district" means one (1) of the seven (7) district health departments of the state of Idaho.

(20) "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.

(21) "Household waste" means any solid waste, including garbage, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

(22) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: ~~E~~electric power generation; fertilizer and agricultural chemicals; food and related products and ~~by-products~~ byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic ~~chemicals;~~ plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

(23) "Inert wastes" means noncombustible, nonhazardous, ~~nonputresible~~ nonputrescible, nonleaching solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack.

(24) "Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well or waste pile.

(25) "Landspreading disposal facility" or "land application unit" means a facility that applies sludges or other solid wastes onto or incorporates solid waste into the soil surface, excluding manure spreading operations, at greater than agronomic rates and soil conditioners and immobilization rates.

(26) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

(27) "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.

(28) "Limited purpose landfill" means a landfill that receives solid waste of limited type with known and consistent composition other than wood wastes, municipal solid waste, inert waste and construction/demolition waste.

(29) "Liquid waste" as defined in 40 CFR 258.28(c)(1).

(30) "Monofill" means a landfill which contains a specific waste whose waste stream characteristics remain unchanged over time and may include special wastes, problem wastes or other consistent characteristic wastes but do not include wastes regulated under any other applicable regulations.

(31) "Municipal solid waste landfill unit (MSWLF)" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an

existing MSWLF unit or a lateral expansion.

(32) "New MSWLF unit" means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or prior to October 9, 1995, if the MSWLF unit meets the conditions specified in 40 CFR 258.1(f)(1).

(33) "Open burning" means the combustion of solid waste without: (a) control of combustion air to maintain adequate temperature for efficient combustion; (b) containment of the combustion reaction in an enclosed device to provide sufficient resident time and mixing for complete combustion; and (c) control of the emission of the combustion products.

(34) "Operator" means the person(s) responsible for the overall operation of a facility or part of a facility.

(35) "Owner" means the person(s) who owns a facility or part of a facility.

(36) "Permeability" means the capacity of a material to transmit a liquid. For the purposes of this chapter permeability is expressed in terms of hydraulic conductivity of water in centimeters-per-second units of measurement.

(37) "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.

(38) "Pile" or "waste pile" means any noncontainerized solid, nonflowing waste that is accumulated for treatment or storage.

(39) "Plan of operation" means the written plan developed by an owner or operator of a MSWLF unit detailing how the facility is to be operated during its active life, during closure, and throughout the post closure period.

(40) "Point of compliance" means a vertical surface located at the hydraulically downgradient intercept with the uppermost aquifer at which a release from a waste management unit measured as change in constituent values will trigger assessment monitoring. Point of compliance shall be used to define the facility design, location and frequency of ground water monitoring wells and corrective action.

(41) "Post closure" means the requirements placed upon the MSWLF unit after closure to ensure their environmental safety for a thirty (30) year period or until the site becomes stabilized in accordance with section 39-7416, Idaho Code.

(42) "Processing" means an operation conducted on solid waste to prepare it for disposal.

(43) "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.

(44) "RCRA" means the resource conservation and recovery act (42 U.S.C. sec. 6901 et seq.), as amended.

(45) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(46) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(47) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(48) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system.

(49) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant or air pollution control facility exclusive of the treated effluent from a waste water treatment plant.

(50) "Solid waste" means any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or ~~by-product~~ byproduct material as defined in the atomic energy act of 1954, as amended (68 Stat. 923). These regulations shall not apply to the following solid wastes:

(a) Overburden, waste dumps and low-grade stockpiles from mining operations;

(b) Liquid wastes whose discharge or potential discharge is regulated under federal, state or local water pollution permits;

(c) Hazardous wastes as designated in the hazardous waste management act, chapter 44, title 39, Idaho Code;

(d) Wood waste used for ornamental, animal bedding, mulch and plant bedding and road building purposes;

(e) Agricultural wastes, limited to manures and crop residues, returned to the soils at agronomic rates;

(f) Clean soils and clean dredge spoils as otherwise regulated under section 404 of the federal clean water act (PL 95-217);

(g) Septage taken to a sewage treatment plant permitted by either the U.S. environmental protection agency or the department;

(h) Radioactive wastes, defined in the radiation and nuclear materials act, chapter 30, title 39, Idaho Code; and

(i) Wood debris resulting from the harvesting of timber and the disposal of which is permitted under chapter 1, title 38, Idaho Code.

(51) "Special waste" means those wastes which require special treatment or handling after it arrives at the disposal site. The term includes, but is not limited to, asbestos containing material, petroleum contaminated soils, low-level PCB containing material, low-level dioxin containing material and uncut tires.

(52) "Statistically significant" means significant as determined by ANOVA analysis of variance as applied within 40 CFR 258.53(h)(2) or as provided by 40 CFR 258.53(g)(5).

(53) "Uppermost aquifer" means the geological formation nearest the natural ground surface that is an aquifer as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(54) "Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

(55) "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 16.01.2001).~~

(56) "Wetlands" as defined in 40 CFR 232.2(r).

(57) "Wood waste" means solid waste consisting of wood pieces or particles generated as a ~~by-product~~ byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel and log yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

Undefined terms shall be given their usual and ordinary meaning within the context of the provisions of this chapter.

SECTION 70. That Section 39-7408B, Idaho Code, be, and the same is hereby amended to read as follows:

39-7408B. SITE REVIEW PANELS — MEMBERS, CHAIRMAN, QUORUM, MEETINGS, STAFF. (1) A site review panel shall be established to insure public input in the licensing process, to recommend to the director conditions which should be included in a siting license and to recommend to the director whether a particular facility should or should not be constructed, expanded or enlarged.

(2) A panel shall consist of eight (8) members to be appointed as follows:

(a) Three (3) members shall be the ~~administrator~~ director of the ~~division~~ department of environmental quality or his designee, the director of the Idaho transportation department or ~~his~~ designee and the director of the department of water resources 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 siting license 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 commercial solid waste facility is proposed to be located, at least one (1) of whom shall be a resident of the city. The members serving pursuant to this subsection shall serve until the particular siting license application subject to their review is approved, or until the application 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 commercial solid waste facility is proposed to be located. The members serving pursuant to this subsection shall serve until the particular siting license 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 or siting of the proposed commercial solid waste facility.

(3) The director shall notify the city council of the nearest city and the board of county commissioners of a siting license application filed with the department, and shall instruct the city and county to appoint the necessary members to a panel.

(4) Five (5) of the eight (8) members of the panel shall constitute a quorum for the transaction of business of the panel and the concurrence of five (5) members 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 a 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.

SECTION 71. That Section 39-7602, Idaho Code, be, and the same is hereby amended to read as follows:

39-7602. DISBURSEMENTS BY THE DIRECTOR OF LOANS TO PUBLIC WATER SYSTEMS -- LIMITATIONS ON LOANS -- RULES -- APPROVAL OF THE ATTORNEY GENERAL -- AUDIT OF DISBURSEMENTS. (1) There is hereby created the drinking water loan ~~account~~ fund. The ~~division~~ department of environmental quality shall use moneys ~~from~~ this ~~account~~ fund only for providing loans, or as a source of reserve and security ~~for~~ leveraged loans, the proceeds of which are deposited in the drinking water loan ~~account~~ fund, or for other financial assistance authorized in this chapter or by ~~fed~~eral law to community water systems and nonprofit noncommunity water systems. Financial assistance under this section may be used by a public water system only for project expenditures, not including monitoring, operation and maintenance expenditures, which will facilitate compliance with national primary drinking water standards applicable to the system or which will significantly further the health protection objectives of this chapter. The funds may also be used for public water systems using constructed conveyances and not piped water systems if they meet the requirements of the safe drinking water act amendments of 1996 and the director determines that the water provided for residential or similar uses for cooking, drinking and bathing is centrally treated or treated at the point of entry to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations. The funds shall not be used for the acquisition of real property or an interest in real property unless the acquisition is integral to the project authorized by this section and the purchase is from a willing seller.

(2) (a) Except as provided in subsection (2)(b) of this section, no loan assistance shall be provided to a public water system that:

(i) Does not have the technical, managerial and financial capability to ensure compliance with the requirements of this chapter; or

(ii) Is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(b) A public water system referenced in subsection (2)(a) of this section may receive assistance under this section if:

(i) The assistance will ensure compliance, and

(ii) If subsection (2)(a)(i) of this section applies to the system, the owner or operator of the system agrees to undertake

feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply or other procedures, and then only if the director determines that the measures are necessary to ensure that the system has the technical, managerial and financial capability to comply with the requirements of this chapter and the safe drinking water act amendments of 1996.

(3) Except as otherwise prohibited by state law, the amounts deposited into the drinking water loan ~~account~~ fund under this chapter may be used only for the following:

(a) To make loans on the conditions that:

(i) The interest rate for each loan is less than or equal to the market interest rate,

(ii) Principal and interest payments on each loan will commence not later than one (1) year after completion of the project for which the loan was made and each loan will be fully amortized not later than twenty (20) years after completion of the project, except that in the case of a disadvantaged community, an extended form for a loan may be allowed if it terminates not later than thirty (30) years after the date the project is completed, and does not exceed the design life of the project,

(iii) The recipient of each loan will establish a dedicated source of revenue, or, in the case of a privately owned system, demonstrate that there is adequate security, for the repayment of the loan, and

(iv) The drinking water loan ~~account~~ fund will be credited with all payment of principal and interest on each loan;

(b) To buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the state at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(c) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of the bonds will be deposited into the drinking water loan ~~account~~ fund; and

(d) To earn interest on the amounts deposited into the drinking water loan ~~account~~ fund.

(4) For every agreement between the state and the federal government by which funds are made available, the state shall deposit in the drinking water loan ~~account~~ fund an amount equal to at least twenty percent (20%) of the total amount of the grant to be made to the state on or before the dates on which grant payments are made to the state.

(5) The director may promulgate rules necessary for the making and enforcing of loan contracts hereunder and for establishing procedures to be followed in applying for state loans or loan subsidies or training assistance herein authorized as shall be necessary for the effective administration of the loan program.

(6) All contracts entered into pursuant to this chapter shall be subject to approval by the attorney general as to form. All disbursements 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 72. That Section 39-7902, Idaho Code, be, and the same is hereby amended to read as follows:

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~~ environmental quality with the responsibility to make rules regulating swine operations; and section 39-105, Idaho Code, vests the department of ~~health and welfare~~ environmental quality 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~~ environmental quality 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.

SECTION 73. That Section 39-7903, Idaho Code, be, and the same is hereby amended to read as follows:

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 calcu-

lated 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~~ environmental quality.

(10) "Director" means the director of the Idaho department of ~~health and welfare~~ environmental quality 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~~ rules of the department.

(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.

SECTION 74. That Section 39-7908, Idaho Code, be, and the same is hereby amended to read as follows:

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~~ director of the

~~division~~ department 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.

SECTION 75. That Section 39-7911, Idaho Code, be, and the same is hereby amended to read as follows:

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~~ department of environmental quality.

SECTION 76. That Section 39-7914, Idaho Code, be, and the same is hereby amended to read as follows:

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."~~ rules of the department of environmental quality.

SECTION 77. That Section 41-4911, Idaho Code, be, and the same is hereby amended to read as follows:

41-4911. STORAGE TANKS ELIGIBLE FOR INSURANCE. (1) Eligible storage tanks are those tanks that meet all of the following criteria:

(a) Appropriate fees required in section 41-4908, Idaho Code, or section 41-4910A, Idaho Code, have been paid;

(b) The tank, if an underground storage tank, is in compliance with applicable federal and state underground storage tank rules and regulations;

(c) The tank is used only for storage of petroleum products;

(d) The tank, if an underground storage tank, passes a tank tightness test;

(e) The tank, if an ~~above-ground~~ aboveground storage tank, is in compliance with state and federal rules and regulations including the uniform fire code. If an ~~above-ground~~ aboveground tank is exempt from state or federal rules and regulations and/or the uniform fire code by virtue of its being installed prior to the effective date of such rules and regulations or the uniform fire code, such tank is not eligible unless it passes a tank tightness test;

(f) The tank, if a farm tank or residential tank, is in compliance with any applicable state or federal rules and regulations;

(g) Any contamination caused by or released by or from the tank has been cleaned up, or a plan for cleanup or removal approved by the Idaho department of ~~health and welfare, division of~~ environmental quality, is being implemented; provided, however, that the trust fund shall not pay for any costs associated with prior contamination.

(2) Any tank which is a part of a refiner's terminal or a tank directly supplied by a pipeline shall not be eligible.

SECTION 78. That Section 41-4947, Idaho Code, be, and the same is hereby amended to read as follows:

41-4947. INSURANCE. The coverage provided by the trust fund established pursuant to this chapter shall be deemed insurance for the purposes of any requirements of the Idaho department of ~~health and welfare~~ environmental quality concerning the financial responsibility of owners or operators of petroleum storage tanks.

SECTION 79. That Section 42-227, Idaho Code, be, and the same is hereby amended to read as follows:

42-227. DRILLING AND USE OF WELLS FOR DOMESTIC PURPOSES EXCEPTED. The excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be subject to the permit requirement under section 42-229, Idaho Code; providing such wells and withdrawal devices are subject to inspection by the department of water resources and the department of ~~health and welfare~~ environmental quality and providing further that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code. Rights to ground water for such domestic purposes may be acquired by withdrawal and use.

SECTION 80. That Section 42-1503, Idaho Code, be, and the same is hereby amended to read as follows:

42-1503. APPLICATION TO APPROPRIATE -- PROCESS -- JUDICIAL REVIEW. Whenever the board desires to appropriate a minimum stream flow of the unappropriated waters of any stream, it shall submit an application to the director. Such application shall be made upon forms to be furnished by the director and shall include:

(a) The name of the stream and legal description of the point on the stream where the minimum stream flow is proposed to be appropriated and determined;

(b) The minimum stream flow proposed;

(c) The purpose for which the minimum stream flow appropriation is proposed to be made;

(d) The period of time or season of the year during which said appropriation is proposed; and

(e) Such other information as shall be required by the form furnished by the director.

Upon the receipt of an application filed under the provisions of this act, the director shall forward a copy thereof to the departments of fish and game, ~~health and welfare~~ environmental quality, parks and recreation, and any other public entity likely to have an interest or knowledge in the matter. The director shall also prepare a notice describing the proposed appropriation of minimum stream flow and cause said notice to be published once each week in two (2) consecutive weekly issues of a newspaper published within the county where the appropriation of minimum stream flow is proposed, if there is such newspaper, otherwise in a newspaper of general circulation within the county. The director may also give other notice of the proposed appropriation in such manner and to such persons or organizations as he may determine. Such notice shall specify the time and place for a public hearing to be held concerning the proposed appropriation of minimum stream flow. Such hearing shall be held in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director shall have power to administer oaths and to require the attendance of such witnesses and the production of such books, records, and papers as he may desire at the hearing and for that purpose the director may apply to the district court for a subpoena for any witnesses or a subpoena duces tecum to compel the production of any books, records, or papers which shall be served and returned in the same manner as a subpoena in a civil case. In case of any disobedience or neglect to obey a subpoena or subpoena duces tecum it shall be the duty of the district court in any county of this state in which such disobedience, neglect, or refusal occurs, or any judge thereof, on application by the director, to compel obedience by proceedings for contempt as in the case of a subpoena issued by a regularly constituted court. Upon the conclusion of the hearings and completion of any investigation conducted by the director, he shall enter his findings in writing approving the application in whole, or in part, or upon conditions or rejecting said application. Approval of any such application must be based upon a finding that such appropriation of minimum stream flow:

(a) will not interfere with any vested water right, permit, or water right application with priority of right date earlier than the date of receipt in the office of the director of a complete application for appropriation of minimum stream flow filed under the provisions of this act;

(b) is in the public, as opposed to private, interest;

(c) is necessary for the preservation of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, transportation, or water quality of the stream;

(d) is the minimum flow or lake level and not the ideal or most desirable flow or lake level; and

(e) is capable of being maintained as evidenced by records of stream flows and water levels and the existing or future establishment of necessary gauging stations and bench marks.

A copy of the director's findings shall be mailed to the board and

to each person or organization who gave testimony in support of or in opposition to the proposed appropriation. The board or any person testifying at a hearing who is aggrieved by a decision of the director shall have the right to have that decision reviewed by the courts pursuant to section 42-1701A(4), Idaho Code. Approved applications shall be submitted to each ~~l~~legislature by the fifth legislative day of each regular session, and: (i) shall not become finally effective until affirmatively acted upon by concurrent resolution of the Idaho legislature; or (ii) except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved.

SECTION 81. 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~~ chapter.

(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~~ department 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 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, oper-

ate, 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 82. That Section 42-1734, Idaho Code, be, and the same is hereby amended to read as follows:

42-1734. POWERS AND DUTIES. The board shall, subject to the provisions of chapter 52, title 67, Idaho Code, have the following powers and duties:

(1) To have and exercise all of the rights, powers, duties and privileges vested by article XV, section 7, of the constitution of this state in the water resource agency, and the water resource board, herein created, is hereby constituted the water resource agency;

(2) To institute judicial proceedings to have water rights established by court decree on any stream, lake or underground water basin; in such proceedings court costs of the action, including the survey and determination of water uses by the director of the department of water resources, shall be borne by the state;

(3) To appear, when requested by the governor, on behalf of and represent the state in matters related to its duties in any proceeding, negotiation, or hearing involving the federal government or other state; provided, however, that compact commissions now established by law shall continue to act but in so doing shall report to it;

(4) To accept, receive, initiate, investigate, consider and promote such water projects as it deems to be in the public interest;

(5) To generate and wholesale hydroelectric power at the site of production if such power production is connected with another purpose for such project;

(6) To file applications and obtain permits in the name of the board, to appropriate, store, or use the unappropriated waters of any body, stream, or other surface or underground source of water for specific water projects. Such filings and appropriations by the board, or any water rights owned or claimed by the board, shall be made in the same manner and subject to all of the state laws relating to appropriation of water, with the exception that the board will not be required to pay any fees required by the laws of this state for its appropriations. The filings and appropriations by the board shall be subject to contest or legal action the same as any other filing and appropriation, and such filings and appropriations shall not have priority over or affect existing prior water rights of any kind or nature; provided that the board shall have the right to file for water rights with appropriate officials of other states as trustee for project users, and to do all things necessary in connection therewith;

(7) To finance said projects with revenue bonds or such moneys as may be available;

(8) To acquire, purchase, lease, or exchange land, rights, water rights, easements, franchises and other property deemed necessary or proper for the construction, operation and maintenance of water projects;

(9) To exercise, in accordance with the provisions of title 7, chapter 7, Idaho Code, the right of eminent domain to acquire property necessary for the construction of projects, both land and water;

(10) To cooperate in all water studies, planning, research, or activities with any state or local agency in this state, or any other state or any federal agency and to enter into contracts with federal, state and local governmental agencies to effect this purpose;

(11) To present to the governor for presentation to the legislature

not later than the 30th of November prior to the convening of a regular legislative session the final report containing the complete plans, costs and feasibility estimates for any water project which the board recommends that the state construct in accordance with the comprehensive state water plan; and to construct any water project specifically authorized by the legislature;

(12) To enter into contracts with political subdivisions, municipal entities, individuals and others for the rehabilitation and repair of existing irrigation projects and irrigation facilities, the sale and/or lease of water, use of water, water storage, electric power, or other service, to turn over projects to water users after pay-out and to lease facilities, sell, lease or dispose of surplus facilities subject to the provisions of applicable law;

(13) To enter into contracts to effect the purposes of this ~~act~~ chapter;

(14) To sue and be sued;

(15) To study and examine pollution of rivers, streams, lakes and ground water, and to advise, cooperate and counsel with the state board of ~~health--and--welfare~~ environmental quality in a manner designed to avoid inhibition of economic development and at the same time insure the right of the people to comfortably enjoy our water resources and accomplish the establishment of water quality criteria;

(16) To call upon any other state agency for cooperation, assistance or use of information available to such agency; provided, however, if such agency is required to make substantial expenditures in responding to such request, appropriate arrangements for compensation may be accomplished;

(17) To issue revenue bonds for the rehabilitation and repair of existing irrigation projects and irrigation facilities, and for water projects, pledge any revenues available to the board to secure said bonds, exclusive of any revenues derived from legislative appropriations, and pool revenues from one (1) or more projects constructed, financed or operated by the board, or existing irrigation project or facilities rehabilitated or repaired by the board;

(18) To formulate and recommend, prior to each session of the legislature, proposed legislation that may be necessary to assist it in effecting a proper plan for conservation, development and utilization of water resources and waterways and to report to each session of the legislature on the public business entrusted to its care and the financial affairs of the board. In the period between legislative sessions, the board shall deposit with the legislative council statements describing all actions taken and projects undertaken by it;

(19) To issue procedural and operative rules ~~and regulations~~ as may be necessary for the conduct of its business;

(20) To appoint advisory boards when deemed desirable to aid in the execution of its powers;

(21) To take such other action as may be necessary to carry out its duties and powers under this ~~act~~ chapter and the constitution of the state of Idaho;

(22) To loan without prior legislative approval, the proceeds of the sale of revenue bonds to the local water project sponsor or sponsors; to enter into lease, sale or loan agreement; and to purchase all or a portion of, or participate in, loans, originated by private lending institutions.

SECTION 83. That Section 42-1805, Idaho Code, be, and the same is hereby amended to read as follows:

42-1805. ADDITIONAL DUTIES. In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to interstate and international water rights affecting Idaho water resources; and to cooperate with all agencies, now existing or hereafter to be formed, within the state or within other jurisdictions, in matters affecting the development of the water resources of this state.

(2) To prepare a present and continuing inventory of the water resources of this state, ascertain means and methods of conserving and augmenting these and determine as accurately as possible the most effective means by which these water resources may be applied for the benefit of the people of this state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the ~~administrator~~ director of the ~~division~~ department of environmental ~~protection of--the--department--of--health--and--welfare~~ quality as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the ~~administrator~~ director of the department of environmental quality and his staff to discuss water quality programs. A copy of the minutes of such meet~~ing sha~~ll be transmitted to the governor.

(b) The director transmit to the ~~administrator,~~ director of the department of environmental quality reports and information prepared by him pertaining to water quality programs, and proposed rules ~~and regulations~~ pertaining to water quality programs.

(c) The director shall make available to the ~~administrator~~ director of the department of environmental quality and the ~~administrator~~ director of the department of environmental quality shall make available to the director all notices of hearings relating to the ~~promulgat~~ion of rules ~~and--regulations~~ relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notices of any other hearings and meetings which relate to water quality.

(6) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan.

(8) To promulgate, adopt, modify, repeal and enforce rules ~~and regulations~~ implementing or effectuating the powers and duties of the department.

(9) To seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate (a) those provisions of law relating to all aspects of the appropriation of water, distribution of water, headgates and measuring devices; or (b) the administrative or judicial orders entered in accordance with the provisions of law.

(10) To develop, coordinate and provide, through contract or by other means, for weather modification projects involving cloud seeding that are designed to increase the water supplies of the state by enhancing natural precipitation and which conform to state water planning objectives. To accomplish these purposes the director is authorized to accept and use funds acquired through legislative appropriation or by gift, grant, contribution or funding received from any private or public individual or entity. All funds accepted under this provision shall be transmitted to the state treasurer for deposit in the water administration ~~account~~ fund and shall be reserved and made available until expended as ordered by the director for weather modification purposes determined by the director to be beneficial.

(11) To develop and implement a plan for data gathering to determine any effect of the weather modification efforts in which the department is involved.

SECTION 84. That Section 42-3902, Idaho Code, be, and the same is hereby amended to read as follows:

42-3902. DEFINITIONS. Whenever used in this chapter:

(1) "Aquifer" means any geologic formation that will yield water to a well in sufficient quantities to make production of water from the formation feasible for beneficial use, except when the water in such formation results solely from injection through a waste disposal and injection well.

(2) "Director" means the director of the department of water resources.

(3) "Drinking water source" means an aquifer which contains water having less than 10,000 mg/l total dissolved solids and has not been exempted from this designation by the director of the department of water resources.

(4) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gaseous or any other form or state.

(5) "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is mappable at the earth's surface or traceable in the subsurface.

(6) "Hazardous waste" means any fluid or combination of fluids, excluding radioactive wastes, which because of quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illness; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes

include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties, but do not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows.

(7) "Injection" means the subsurface emplacement of fluids.

(8) "Injection well" means any excavation or artificial opening into the ground which meets the following three (3) criteria:

(a) It is a bored, drilled or dug hole, or is a driven mine shaft or a driven well point; and

(b) It is deeper than its largest straight-line surface dimension; and

(c) It is used for or intended to be used for injection.

(9) "Irrigation waste water" means surplus water diverted for irrigation but not applied to crops or runoff of surplus water from the cropland as a result of irrigation.

(10) "Licensed driller" means any person holding a valid license to drill water wells in Idaho as provided and defined in section 42-238, Idaho Code.

(11) "Operate" means to allow fluids to enter an injection well by action or by inaction of the operator.

(12) "Operator" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district or federal agency who operates or proposes to operate any injection well.

(13) "Owner" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, or federal agency owning land on which any injection well exists or is proposed to be constructed.

(14) "Radioactive material" means any material, solid, liquid or gas which emits radiation spontaneously.

(15) "Radioactive waste" means any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by the board of ~~health and welfare~~ environmental quality under the provisions of chapter 30, title 39, Idaho Code.

(16) "Shallow injection well" means an injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface.

(17) "Sanitary waste" means any fluid generated through domestic activities, such as food preparation, cleaning and personal hygiene.

(18) "Surface runoff water" means runoff water from the natural ground surface and cropland. Runoff from urbanized areas, such as streets, parking lots, airports, and runoff from animal feedlots, agricultural processing facilities and similar facilities are not included within the scope of this term.

(19) "Waste disposal and injection well" means an injection well which is more than eighteen (18) feet in vertical depth below land surface.

SECTION 85. That Section 42-3910, Idaho Code, be, and the same is hereby amended to read as follows:

42-3910. CANCELLATION OF PERMIT -- NOTICE -- HEARING -- REVIEW. When the director of the department of water resources has reason to believe the operation and use of an injection well, for which a permit has been issued in accordance with this chapter, is interfering with the right of the public to withdraw water for beneficial uses, or is causing unreasonable contamination or deterioration of the quality of the ground water below the adopted water quality standards of the board of ~~health and welfare~~ environmental quality, he may cancel such permit. Prior to the cancellation of such permit there shall be a hearing before the water resource ~~board for~~ the purpose of determining whether or not the permit should be cancelled. At such hearing the director of the department of water resources shall be the complaining party. For purposes of such hearing, the board shall have power to administer oaths, examine witnesses and issue subpoenas requiring testimony of witnesses and production of evidence relevant to any matter in the hearing. The hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code, and the board shall provide the owner or operator whose permit is proposed to be cancelled with reasonable notice and the opportunity to be heard in accordance with chapter 52, title 67, Idaho Code. A certified transcript of the proceedings and the evidence received at such hearing shall be maintained by the board. The board shall affirm, modify or reject the director's decision, and make its decision in the form of an order to the director. Review of a final determination by the board may be secured by the owner or operator by filing a petition for review as prescribed by chapter 52, title 67, Idaho Code, in the district court of the county wherein the injection well is situated. The petition for review shall be served upon the chairman of the water resource board and upon the attorney general as provided by the Idaho rules of civil procedure.

SECTION 86. That Section 46-1019, Idaho Code, be, and the same is hereby amended to read as follows:

46-1019. EMERGENCY RESPONSE. (1) There is hereby created an emergency response commission in the office of the governor. The commission shall consist of the following state and local officials, industry representatives, or their designees: the adjutant general of the Idaho national guard; the director of the department of health and welfare; the state fire marshal; the director of the Idaho state police; the director of the Idaho transportation department; the director of the department of agriculture; the director of the department of lands; the director of the Idaho geological survey; the director of the department of water resources; the director of the department of environmental quality; the coordinator for INEEL oversight; one (1) member representing Idaho cities; one (1) member of an organization representing farmers or ~~ranchers~~; one (1) member representing Idaho counties; one (1) member representing the hazardous waste or materials transportation industry; one (1) member representing a user of hazardous materials; one (1) member representing the Idaho state fire chief's association; one (1) member representing the Idaho county sheriff's association; one (1) member of the Idaho police chief's association; one (1) member representing the Idaho emergency management association; and one (1) member at-large representing the citizens of the state of Idaho. The last ten (10) members shall be appointed by the governor to serve staggered three (3) year

terms. The manager of the bureau of disaster services and the manager of the bureau of hazardous materials shall be nonvoting members of the commission. All members shall serve without compensation, except that members who are not state officers or employees shall be compensated as provided in section 59-509(g), Idaho Code. The governor shall appoint a chairman from the appointees. The attorney general shall provide legal counsel to the commission.

(2) The commission shall act as an all-hazards advisory and coordinating body to the governor for all types of disasters and emergencies which could affect the citizens of Idaho. They shall review, evaluate, report and advise the governor on state and local plans and programs to prepare for, respond to, and recover from all types of disaster emergencies.

SECTION 87. That Section 47-1315, Idaho Code, be, and the same is hereby amended to read as follows:

47-1315. WATER CLARIFICATION. Where any person conducts a placer or dredge mining operation where the water used in such mining process flows in, or into a natural watercourse, such person shall construct and use settling ponds of sufficient capacity and character and/or install and use filtration processes fully adequate to clarify the water used in the mining process to conform to the standards and ~~regulations~~ rules of the state department of ~~health--and--welfare~~ environmental quality regarding water quality as authorized under chapter 1, title 39, Idaho Code, before such water is discharged into the natural watercourse.

SECTION 88. That Section 47-1513, Idaho Code, be, and the same is hereby amended to read as follows:

47-1513. OPERATOR'S FAILURE TO COMPLY -- FORFEITURE OF BOND -- PENALTIES -- RECLAMATION FUND. (a) Whenever the board determines that an operator has not complied with the provisions of this act, the board may notify the operator of such noncompliance, and may by private conference, conciliation, and persuasion, endeavor to remedy such violation. In the event of a violation referred to in subsections (d) and (e) of this section, the board may proceed without an administrative action, hearing or decision to exercise the remedies set forth in said subsections. Additionally, no administrative action, hearing or decision shall be required from the Idaho board of ~~health-and-welfare~~ environmental quality prior to the board proceeding under subsections (d) and (e) of this section. In the event of the failure of any conference, conciliation and persuasion to remedy any alleged violation, the board may cause to have issued and served upon the operator alleged to be committing such violation, a formal complaint which shall specify the provisions of this act which the operator allegedly is violating, and a statement of the manner in and the extent to which said operator is alleged to be violating the provisions of this act. Such complaint may be served by certified mail, and return receipt signed by the operator, an officer of a corporate operator, or the designated agent of the operator shall constitute service. The operator shall answer the complaint and request a hearing before a designated hearing officer within thirty (30) days from receipt of the complaint if matters asserted in the complaint are disputed. If the operator fails to answer the complaint and request a hear-

ing, the matters asserted in the complaint shall be deemed admitted by the operator, and the board may proceed to cancel the reclamation plan and forfeit the bond in the amount necessary to reclaim affected lands. Upon request for a hearing by an operator, the board shall schedule a hearing before a hearing officer appointed by the board at a time not less than thirty (30) days after the date the operator requests a hearing. The board shall issue subpoenas at the request of the director of the department of lands and at the request of the charged operator, and the matter shall be otherwise handled and conducted in accordance with chapter 52, title 67, Idaho Code. The hearing officer shall, pursuant to said hearing, enter an order in accordance with chapter 52, title 67, Idaho Code, which, if adverse to the operator, shall designate a time period within which corrective action should be taken. The time period designated shall be long enough to allow the operator, in the exercise of reasonable diligence, to rectify any failure to comply designated in said order. In the event that the operator takes such action as is necessary to comply with the order within the time period designated in said order, no further action shall be taken by the board to compel performance under the act.

(b) Upon request of the board, the attorney general shall institute proceedings to have the bond of an operator forfeited for the violation by the operator of an order entered pursuant to this section.

(c) The forfeiture of such bond shall fully satisfy all obligations of the operator to reclaim the affected land under the provisions of this act. If the violation involves an operator that has not furnished a bond required by this act, or an operator that is not required to furnish a bond pursuant to this act, or an operator who violates this act by performing an act not included in the original approved reclamation plan, and such departure from the plan is not subsequently approved, such operator shall be subject to a civil penalty for his failure to comply with such order in the amount determined by the board to be the anticipated cost of reasonable reclamation of affected lands.

(d) Notwithstanding any other provisions of this act, the board may commence an action without bond or undertaking, in the name of the state of Idaho to enjoin any operator who is conducting operations without an approved reclamation plan required by section 47-1506, Idaho Code, or without the bond required by this act. The court, or a judge thereof at chambers, if satisfied from the complaint or by affidavits that such acts have been or are being committed, shall issue a temporary restraining order without notice or bond, enjoining the defendant, his agents, and employees from conducting such operations without said reclamation plan or bond. Upon a showing of good cause therefor, the temporary restraining order may require the defendant to perform reclamation of the mined area in conformity with sections 47-1509 and 47-1510, Idaho Code, pending final disposition of the action. The action shall then proceed as in other cases for injunctions. If it is established at trial that the defendant has operated without an approved reclamation plan or bond, the court shall enter, in addition to any other order, a decree enjoining the defendant, his agents and employees from thereafter conducting such activities or similar actions in violation of this act. The board may, in conjunction with its injunctive procedures, proceed in the same or in a separate action to recover from an operator who is conducting surface mining or exploration operations without the required plan or bond, the cost of performing the reclamation activities required by

sections 47-1509 and 47-1510, Idaho Code, from any such operator who has not filed a bond to cover the cost of the reclamation required.

(e) Notwithstanding any other provision of this act, the board may, without bond or undertaking and without any administrative action, hearing or decision, commence an action in the name of the state of Idaho (1) to enjoin a permitted surface mining operation when, under an existing approved plan, an operator violates the terms of the plan and where immediate and irreparable injury, loss or damage may result to the state and (2) to recover the penalties and to collect civil damages provided for by law.

(f) In addition to the procedures set forth in subsections (a), (d) and (e) of this section, and in addition to the civil penalty provided in subsection (c) of this section, any operator who violates any of the provisions of this act or rules adopted pursuant thereto, or who fails to perform the duties imposed by these provisions, or who violates any determination or order promulgated pursuant to the provisions of this act, shall be liable to a civil penalty of not less than five hundred dollars ($500) nor more than two thousand five hundred dollars ($2,500) for each day during which such violation continues, and in addition may be enjoined from continuing such violation. Such penalties shall be recoverable in an action brought in the name of the state of Idaho by the attorney general in the district court for the county where the violation, or some part thereof, occurs, or in the district court for the county wherein the defendant resides. All sums recovered shall be placed in the state treasury and credited to the surface mining reclamation fund, which is hereby created, to be used to reclaim affected lands and to administer this act.

(g) Any person who wilfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or wilfully fails, neglects, or refuses to comply with any of the provisions of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) or imprisonment not to exceed one (1) year or both.

(h) Reclamation plans approved by the board as of January 1, 1997, shall be deemed to be in full compliance with the requirements of this act. However, the board may periodically review, and revise if necessary to meet the requirements of sections 47-1506, 47-1509, 47-1510 and 47-1511, Idaho Code, the amount, terms and conditions of any bond when there is a material change in the reclamation plan or a material change in the estimated reasonable costs of reclamation determined pursuant to section 47-1512, Idaho Code. Any revision to the amount, terms and conditions of a bond due to a material change in the reclamation plan shall apply only to the affected lands covered by the material change in the reclamation plan.

SECTION 89. That Section 49-2203, Idaho Code, be, and the same is hereby amended to read as follows:

49-2203. ENDORSEMENT REQUIREMENTS FOR TRANSPORTERS OF HAZARDOUS MATERIALS. (1) Every person, including a private carrier or a common or contract carrier, who operates a vehicle on any highway of this state transporting hazardous material in such quantity and under such conditions that such vehicle is required to be placarded pursuant to title

49, code of federal regulations, part 172, or such vehicle's cargo is regulated by title 49, code of federal regulations, part 171, or is required to meet the manifest requirements as set forth under the rules of the ~~bureau of hazardous materials,~~ department of ~~health--and--welfare~~ environmental quality, shall first procure from the department an annual vehicle registration endorsement or single trip vehicle registration endorsement for each vehicle so driven. This registration endorsement shall be available for examination and shall be displayed in accordance with rules adopted by the department. The provisions of this section shall not apply to vehicles owned by any city, county, state or federal governmental department or agency or special purpose district created pursuant to law.

(2) The fee for an annual vehicle registration endorsement for the transportation of hazardous materials shall be three dollars ($3.00) if purchased at the time of registration or renewal, or five dollars ($5.00) if purchased at any time thereafter and the fee for a single trip vehicle registration endorsement shall be five dollars ($5.00). Any carrier required to pay the fee assessed pursuant to this section is authorized to pass along such fee to the shipping party. Vendors selling endorsements on behalf of the board shall be reimbursed at the rate of forty cents (40¢) per endorsement. No portion of the annual endorsement fee shall be prorated, reduced or transferred to another vehicle.

(3) The operation of a vehicle, which is subject to the endorsement requirements of this section, in a negligent manner is a violation of the provisions of this chapter.

SECTION 90. That Section 50-1326, Idaho Code, be, and the same is hereby amended to read as follows:

50-1326. ALL PLATS TO BEAR A SANITARY RESTRICTION -- SUBMISSION OF PLANS AND SPECIFICATIONS OF WATER AND SEWAGE SYSTEMS TO STATE DEPARTMENT OF ~~HEALTH--AND-WELFARE~~ ENVIRONMENTAL QUALITY -- REMOVAL OR REIMPOSITION OF SANITARY RESTRICTION. For the purposes of sections 50-1326 through 50-1329, Idaho Code, any plat of a subdivision filed in accordance with chapter 13, title 50, Idaho Code, or in accordance with county ordinances adopted pursuant to chapter 38, title 31, Idaho Code, shall be subject to the sanitary restriction. There shall be placed upon the face of every plat prior to it being recorded by the county clerk and recorder, the sanitary restriction, except such sanitary restriction may be omitted from the plat, or if it appears on the plat, may be indorsed by the county clerk and recorder as sanitary restriction satisfied, when there is recorded at the time of the filing of the plat, or at any time subsequent thereto, a duly acknowledged certificate of approval issued by the director of the department of ~~health--and--welfare~~ environmental quality, for either public water and/or public sewer facilities, or individual water and/or sewage facilities for the particular land. The owner shall have the obligation of submitting to the director all information necessary concerning the proposed facilities referred to. Such certificate of approval may be issued for the subdivision or any portion thereof. Until the sanitary restrictions have been satisfied by the filing of said certificate of approval, no owner shall construct any building or shelter on said premises which necessitates the supplying of water or sewage facilities for persons using such premises. The sanitary restrictions shall be reimposed on the plat upon the issuance of a cer-

tificate of disapproval after notice to the responsible party and an opportunity to appeal, if construction is not in compliance with approved plans and specifications, or the facilities do not substantially comply with regulatory standards in effect at the time of facility construction.

SECTION 91. That Section 50-1327, Idaho Code, be, and the same is hereby amended to read as follows:

50-1327. FILING OR RECORDING OF NONCOMPLYING MAP OR PLAT PROHIBITED. No person shall offer for recording, or cause to be recorded, a plat not containing a sanitary restriction, unless there is submitted for record at the same time the certificate of approval from the director of the department of ~~health and welfare~~ environmental quality as required in section 50-1326, Idaho Code. The filing and recording of a noncomplying plat shall in no way invalidate a title conveyed thereunder.

SECTION 92. That Section 50-1328, Idaho Code, be, and the same is hereby amended to read as follows:

50-1328. RULES FOR THE ADMINISTRATION AND ENFORCEMENT OF SANITARY RESTRICTION. The state board of ~~health and welfare~~ environmental quality may adopt rules pursuant to section 39-107(8), Idaho Code, including adoption of sanitary standards necessary for administration and enforcement, pursuant to ~~section~~ 39-108, Idaho Code, of sections 50-1326 through 50-1329, Idaho Code. The rules and standards shall provide the basis for approving subdivision plats for various types of water and sewage facilities, both public and individual, and may be related to size of lots, contour of land, porosity of soil, ground water level, pollution of water, type of construction of water and sewage facilities, and other factors for the protection of the public health or the environment.

SECTION 93. That Section 50-1329, Idaho Code, be, and the same is hereby amended to read as follows:

50-1329. VIOLATION A MISDEMEANOR. Any person, firm or corporation who constructs, or causes to be constructed, a building or shelter prior to the satisfaction of the sanitary restriction, or who installs or causes to be installed water and sewer facilities thereon prior to the issuance of a certificate of approval by the director of the department of ~~health and welfare~~ environmental quality, shall be guilty of a misdemeanor. Each and every day that such activities are carried on in violation of this section shall constitute a separate and distinct offense.

SECTION 94. That Section 50-1703, Idaho Code, be, and the same is hereby amended to read as follows:

50-1703. POWERS CONFERRED. (a) The governing body of any municipality shall have power to make or cause to be made any one (1) or more or combination of the following improvements:

(1) To establish grades and lay out, establish, open, extend and widen any local, collector, arterial or other street, sidewalk, alley or off-street parking facility;
(2) To purchase, acquire, construct, improve, repair, light, grade, pave, repave, surface, resurface, curb, gutter, sewer, drain, landscape and beautify any street, sidewalk or alley;
(3) To purchase, construct, reconstruct, extend, maintain or repair bridges, sidewalks, crosswalks, driveways, culverts, sanitary sewers, storm sewers, ditches, drains, conduits, flood barriers and channels for sanitary and drainage purposes, or either or both thereof, with inlets or outlets, manholes, catch basins, flush tanks, treatment systems and all other sewer and drainage appurtenances necessary for the comfort, convenience, health and well-being of the inhabitants of the municipality; provided, that any improvements for sanitary sewer facilities shall be constructed so as to conform with the general rules of the Idaho department of ~~health and welfare~~ environmental quality;
(4) To construct, reconstruct, extend, maintain, or repair lines, facilities and equipment (other than generating equipment) for street lighting purposes or for the expansion or improvement of a previously established municipally-owned electrical distribution system, to a district within the boundaries of the municipality;
(5) To plant, or cause to be planted, set out, cultivate and maintain lawns, shade trees or other landscaping;
(6) To cover, fence, safeguard or enclose reservoirs, canals, ditches and watercourses and to construct, reconstruct, extend, line or reline, maintain and repair waterworks, reservoirs, canals, ditches, pipes, mains, hydrants, and other water facilities for the purpose of supplying water for domestic, irrigation and fire protection purposes, or any of them; regulating, controlling or distributing the same and regulating and controlling water and watercourses leading into the municipality;
(7) To acquire, construct, reconstruct, extend, maintain or repair parking lots or other facilities for the parking of vehicles on or off streets;
(8) To acquire, construct, reconstruct, extend, maintain or repair parks and other recreational facilities;
(9) To remove any nonconforming existing facility or structure in the areas to be improved;
(10) To construct, reconstruct, extend, maintain or repair optional improvements;
(11) To acquire by purchase, gift, condemnation, or otherwise any real or personal property within the limits of the municipality as in the judgment of the council may be necessary or convenient in order to make any of such improvements or otherwise to carry out the purposes of this chapter;
(12) To make any other improvements now or hereafter authorized by any other law, the cost of which in whole or in part can properly be determined to be of particular benefit to a particular area within the municipality;
(13) To construct and install all such structures, equipment and other items and to do all such other work and to incur any such costs and expenses as may be necessary or appropriate to complete any of such improvements in a proper manner;

(14) To purchase, build, construct, reconstruct or otherwise improve parking facilities and all other appurtenances necessary to provide adequate off-street parking, and to that end may acquire real or personal property by purchase, gift, condemnation or otherwise, and may own, possess and maintain such real or personal property within the limits of the municipality as in the judgment of the council may be necessary and convenient for such purposes; and

(15) To acquire, purchase, build, construct or reconstruct irrigation systems, install underground tiling and cover open irrigation ditches.

(b) For the purpose of making and paying for all or a part of the cost of any of such improvements (including optional improvements), the governing body of a municipality may create local improvement districts within the municipality, levy assessments on the property within such a district which is benefited by the making of the improvements and issue interim or registered warrants and local improvement bonds as provided in this chapter.

SECTION 95. That Section 55-2014, Idaho Code, be, and the same is hereby amended to read as follows:

55-2014. TENANT ACTION FOR DAMAGES -- SPECIFIC PERFORMANCE. (1) A tenant of a mobile home park may file an action against a landlord for damages and specific performance for:

(a) Failure to maintain in good working order, to the terminal point of service, electrical, water or sewer services supplied by the landlord;

(b) Maintaining the premises in a manner hazardous to the health or safety of the tenant, including, but not limited to, a continuing violation of any of the following:

(i) Any rule adopted by the department of ~~health and welfare~~ environmental quality governing public drinking water systems;

(ii) Any rule adopted by the department of ~~health and welfare~~ environmental quality governing hazardous waste;

(iii) Any rule adopted by the public health district in which the mobile home park is located governing waste water and on-site sewage treatment systems;

(iv) Any provision of the uniform fire code, as amended by the provisions of any fire code adopted by the county or municipality in which the mobile home park is located;

(v) Any provision of the uniform building code, as amended by the provisions of any building code adopted by the county or municipality in which the mobile home park is located.

Nothing contained in the provisions of this subsection is intended to extend the application of any such rule or code provision to a previously existing condition which, as of July 1, 1993, was exempt from the enforcement of such rule or code provision.

(c) Failure to return a security deposit as and when required by law;

(d) Breach of any term or provision of the lease or rental agreement materially affecting the health and safety of the tenant, whether explicitly or implicitly a part thereof.

(2) Upon filing the complaint, a summons must be issued, served and returned as in other actions; provided however, that in an action exclu-

sively for specific performance, at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court. If the plaintiff brings an action for damages under this section, or combines this action for damages with an action for specific performance, the early trial provision shall not be applicable, and a summons must be issued returnable as in other cases upon filing the complaint.

(3) In an action under this section, the plaintiff, in his complaint, must set forth the facts on which he seeks to recover, describe the premises, and set forth any circumstances which may have accompanied the failure or breach by the landlord.

(4) If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for such special damages as may be proven. General damages may be awarded but shall not exceed five hundred dollars ($500). Judgment may also be entered requiring specific performance for any breach of agreement shown by the evidence, and for costs and disbursements.

(5) Before a tenant shall have standing to file an action under this section, he must give his landlord three (3) days' written notice, listing each failure or breach upon which his action will be premised and written demand requiring performance or cure. If, within three (3) days after service of the notice, any listed failure or breach has not been performed or cured by the landlord, the tenant may proceed to commence an action for damages and specific performance.

(6) The notice required in subsection (5) of this section shall be served either:

(a) By delivering a copy to the landlord or his agent personally; or

(b) If the landlord or his agent is absent from his usual place of business, by leaving a copy with an employee at the usual place of business of the landlord or his agent; or

(c) By sending a copy of the notice to the landlord or his agent by certified mail, return receipt requested.

SECTION 96. That Section 55-2714, Idaho Code, be, and the same is hereby amended to read as follows:

55-2714. TENANT ACTION FOR DAMAGES — SPECIFIC PERFORMANCE. (1) A tenant of a floating home marina may file an action against a landlord for damages and specific performance for:

(a) Failure to maintain in good working order, to the terminal point of service, electrical, water or sewer services supplied by the landlord;

(b) Maintaining those portions of the premises open to use by the tenant in a manner hazardous to the health or safety of the tenant including, but not limited to, a continuing violation of any of the following:

(i) Any rule adopted by the department of ~~health and welfare~~ environmental quality governing public drinking water systems;

(ii) Any rule adopted by the department of ~~health and welfare~~ environmental quality governing hazardous waste;

(iii) Any rule adopted by the public health district in which the floating home marina is located governing wastewater and on-site sewage treatment systems;

(iv) Any provisions of the uniform fire code, as amended by the provisions of a fire code adopted by the county or municipality in which the floating home marina is located;

(v) Any provisions of the uniform building code, as amended by the provisions of any building code adopted by the state, county or municipality in which the floating home marina is located.

(c) Material breach of any specific term of a rental agreement.

(2) Upon filing the complaint, a summons must be issued, served and returned as in other actions. Provided however, that in an action exclusively for specific performance, at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint, and the service of the summons, complaint and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court. If the plaintiff brings an action for damages with an action for specific performance, the early trial provision shall not be applicable, and a summons must be issued returnable as in other cases upon filing the complaint.

(3) In an action under this section, the plaintiff, in his complaint, must set forth facts on which he seeks to recover, describe the premises, and set forth any circumstances which may have accompanied the failure or breach by the landlord.

(4) If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for such special damages as may be proven. General damages may be awarded but shall not exceed five hundred dollars ($500). Judgment may also be entered requiring specific performance for any breach of agreement shown by the evidence and for costs and disbursements.

(5) Before a tenant shall have standing to file an action under this section, he must give his landlord three (3) days' written notice, listing each failure or breach upon which his action will be premised and written demand requiring performance or cure. If, within three (3) days after service of the notice, any listed failure or breach has not been performed or cured by the landlord, or in the event of damage to the premises or other default not capable of cure within three (3) days and the landlord has not provided written assurance to the tenant that a cure will be effected within a reasonable time, the tenant may proceed to commence an action for damages and specific performance.

(6) The notice required in subsection (5) of this section shall be served either:

(a) By delivering a copy to the landlord or his agent personally; or

(b) By leaving a copy with an employee at the usual place of business of the landlord or his agent if the landlord or his agent is absent from his usual place of business; or

(c) By sending a copy of the notice to the landlord or his agent by certified mail, return receipt requested.

(7) Nothing in this section shall bar either the landlord or the tenant from bringing such civil action for relief to which said party is otherwise entitled.

SECTION 97. That Section 63-3022C, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022C. DEDUCTION FOR ALTERNATIVE ENERGY DEVICE AT RESIDENCE. (1) An individual taxpayer who installs an alternative energy device to serve a place of residence of the individual taxpayer in the state of Idaho may deduct from taxable income the following amounts actually paid or accrued by the individual taxpayer: forty percent (40%) of the amount that is properly attributable to the construction, reconstruction, remodeling, installation or acquisition of the alternative energy device in the year when such device is completed or acquired and is placed in service by the taxpayer; and twenty percent (20%) per year thereafter for a period of three (3) succeeding years; provided, however, that said deduction shall not exceed five thousand dollars ($5,000) in any one (1) taxable year.

(2) An individual taxpayer who purchases a residence in the state of Idaho served by an alternative energy device for which none or less than all of the total deduction allowable under this section has been taken, may take the deduction specified in this section, or the unused balance of the deduction.

(3) As used in this section, "alternative energy device" means any system or mechanism or series of mechanisms using solar radiation, wind or geothermal resource as defined in section 42-4002, Idaho Code, primarily to provide heating, to provide cooling, to produce electrical power, or any combination thereof. Alternative energy device includes a fluid to air heat pump operating on a fluid reservoir heated by solar radiation or geothermal resource. Alternative energy device shall also include either a natural gas heating unit, or a propane heating unit, or a wood burning stove which meets the most current environmental protection agency certification, or a pellet stove which meets the most current industry and state standards, and which natural gas heating unit, or propane heating unit, or wood burning stove which meets the most current environmental protection agency certification, or pellet stove which meets the most current industry and state standards is used to replace during the same tax year a wood burning stove designed for residential heating and that does not meet environmental protection agency requirements for certification, provided the wood burning stove is surrendered to the ~~division~~ department of environmental quality ~~of--the department--of-health-and-welfare~~ or its agent for destruction in accordance with applicable federal and state rules.

SECTION 98. That Section 63-3024B, Idaho Code, be, and the same is hereby amended to read as follows:

63-3024B. INCOME TAX CREDITS. (1) Eligibility for income tax credits. Any owner of real property who undertakes actions approved pursuant to:

(a) A total maximum daily load process or equivalent processes as set forth in chapter 36, title 39, Idaho Code; or

(b) A habitat conservation plan for the management of a species listed as "endangered," "threatened," or a candidate for such listing as set forth in the federal endangered species act and approved as provided in the regulations adopted pursuant to the federal endangered species act; or

(c) A plan to recover a species listed as "threatened" or "endangered" pursuant to the federal endangered species act; or

(d) A plan for fencing recommended for approval by the local soil conservation district that will enhance riparian habitat and water quality shall be eligible for income tax credits against individual or corporate income taxes as set forth in this section.

(2) Expenditures qualifying for income tax credits. Expenditures which are eligible for income tax credits as set forth in this section shall include, but not be limited to, those in the following categories:

(a) Fencing of riparian areas as defined in this chapter to manage livestock grazing;

(b) Control of erosion from natural or human caused sources of sediment which exist and are not otherwise regulated under the provisions of Idaho's water quality management plan;

(c) Removal of barriers to fish passage and installation of devices to prevent fish from entering into areas where their ability to survive is limited;

(d) Gates and fences to control access and which are installed specifically to aid in the management of "endangered," "threatened" or "candidate" species;

(e) Establishment of vegetation designed to improve habitat or food sources for "endangered," "threatened," or "candidate" species;

(f) The mechanical construction or placement of structures to create or improve habitat for "endangered," "threatened," or "candidate" species; or

(g) Other improvements or modifications made in order to comply with any action required as defined in subsection (1) of this section.

The state tax commission, in cooperation with the department of fish and game and other appropriate federal or state agencies, shall develop rules to describe the specific expenditures eligible for the income tax credits for each of the categories described in this section.

(3) Calculation and application of income tax credits. For those expenditures eligible for income tax credits as described in this section, the credit shall be equal to one-half (1/2) of the eligible expenditures made during the course of the taxable year. This amount may be applied as a credit to each person's total income tax liability. In no case shall the sum of these credits exceed two thousand dollars ($2,000) for a single taxable year per person and in no event shall labor be included in determining the amount of the tax credit. In the event of transfer of title to lands where income tax credits have been taken, the application of the annual credits from previous expenditures shall cease, and the new owner of the land shall not be eligible to receive any income tax credits that are based upon the expenditures made by any previous landowner. In no case shall the credit allowed under this section exceed the income tax liability of the claimant. For purposes of this section, a husband and wife filing a single return shall be deemed a single person.

(4) Review and approval of qualified expenditures. All projects and expenditures which may be eligible for tax credits as set forth in this section shall be reviewed by the designated agency as defined in chapter 36, title 39, Idaho Code, and which are appropriate to the nature of the project and expenditures for which approval is sought for the income tax credit provided in this section. That agency will recom-

mend approval or disapproval of the tax credits described in this section to a committee which shall include one (1) representative each from the department of agriculture, the department of fish and game, the soil conservation commission, and the ~~division~~ department of environmental quality, appointed by the administrator or the director of those agencies or entities, and one (1) representative from private industry to be appointed by the governor. This committee, in consultation with the basin advisory groups established in chapter 36, title 39, Idaho Code, shall have the authority, by majority vote, to approve or disapprove all applications for tax credits as described in this section. In approving an application for a tax credit, the committee shall strive to assure a reasonable distribution of approved credits throughout the state and among the parties that are eligible for the tax credits described in this section. In no case shall the committee described in this section approve, during a year, tax credits which exceed two hundred fifty thousand dollars ($250,000) in total. The committee shall transmit its minutes and approvals to the state tax commission. The committee shall notify each owner of real property in writing whether the owner has been approved, or disapproved for an income tax credit pursuant to this section.

SECTION 99. That Section 67-818, Idaho Code, be, and the same is hereby amended 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~~ department 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 100. That Section 67-2917, Idaho Code, be, and the same is hereby amended to read as follows:

67-2917. HAZARDOUS WASTE. Wherever hazardous waste, as defined in section 39-4403, Idaho Code, is being transported within the state, within the state to without the state, or from without the state to within the state, the operator or owner of the motor vehicle or trailer, as defined in chapter 1, title 49, Idaho Code, transporting hazardous waste is hereby required to stop at such ports of entry or checking stations and submit to inspection or weighing for compliance with the laws of the state of Idaho. Additionally, such owner or operator of the motor vehicle or trailer transporting hazardous waste is hereby required and directed to allow employees of the department of ~~health and welfare~~ environmental quality, authorized Idaho transportation department employees or the state police or any peace officer on duty to inspect and review all manifests and bills of lading to ensure that such hazard-

ous waste is being shipped in a manner which will not endanger the health, welfare or safety of the citizens of the state of Idaho and is being shipped in compliance with the laws of the state of Idaho and any rules promulgated pursuant thereto.

SECTION 101. That Section 67-5303, Idaho Code, be, and the same is hereby amended to read as follows:

67-5303. APPLICATION TO STATE EMPLOYEES. All departments of the state of Idaho and all employees in such departments, except those employees specifically defined as nonclassified, shall be classified employees, who are subject to this ~~act~~ chapter and to the system of personnel administration which it prescribes. Nonclassified employees shall be:

(a) Members of the state legislature and all other officers of the state of Idaho elected by popular vote, and persons appointed to fill vacancies in elective offices, and employees of the state legislature.

(b) Members of statutory boards and commissions and heads of departments appointed by and serving at the pleasure of the governor, deputy directors appointed by the director and members of advisory boards and councils appointed by the departments.

(c) All employees and officers in the office, and at the residence, of the governor; and all employees and officers in the offices of the ~~lieutenant-governor~~ lieutenant governor, secretary of state, attorney general, state treasurer, state controller, and state superintendent of public instruction who are appointed on and after the effective date of this ~~act~~ chapter.

(d) Except as otherwise provided by law, not more than one (1) declared position for each board or commission and/or head of a participating department in addition to those declared to be nonclassified by other provisions of law.

(e) Part-time professional consultants who are paid on a fee basis for any form of legal, medical or other professional service, and who are not engaged in the performance of administrative duties for the state.

(f) Judges, temporary referees, receivers and jurors.

(g) All employees of the Idaho supreme court and district courts.

(h) All employees of the Idaho state bar.

(i) Assistant attorneys general attached to the office of the attorney general.

(j) Officers, members of the teaching staffs of state educational institutions, the professional staff of the Idaho department of education administered by the board of regents and the board of education, and the professional staffs of the Idaho division of professional-technical education and vocational rehabilitation administered by the state board for professional-technical education. "Teaching staff" includes teachers, coaches, resident directors, librarians and those principally engaged in academic research. The word "officer" means presidents, vice presidents, deans, directors, or employees in positions designated by the state board who receive an annual salary of not less than step "A" of the pay grade equivalent to three hundred fifty-five (355) Hay points in the state compensation schedule. A nonclassified employee who is designated as an "officer" on July 5, 1991, but does not meet the requirements of this subsection, may make a one (1) time irrev-

ocable election to remain nonclassified. Such an election must be made not later than August 2, 1991. When such positions become vacant, these positions will be reviewed and designated as either classified or nonclassified in accordance with this subsection.

(k) Employees of the military division.

(l) Patients, inmates or students employed in a state institution.

(m) Persons employed in positions established under federal grants, which, by law, restrict employment eligibility to specific individuals or groups on the basis of nonmerit selection requirements. Such employees shall be termed "project exempt" and the tenure of their employment shall be limited to the length of the project grant, or twenty-four (24) months, or four thousand one hundred sixty (4,160) hours of credited state service, whichever is of the shortest duration. No person hired on a project-exempt appointment shall be employed in any position allocated to the classified service.

(n) Temporary employees.

(o) All employees and officers of the following named commodity commissions, and all employees and officers of any commodity commission created hereafter: the Idaho potato commission, as provided in chapter 12, title 22, Idaho Code; the Idaho honey advertising commission, as provided in chapter 28, title 22, Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22, Idaho Code; the Idaho prune commission, as provided in chapter 30, title 22, Idaho Code; the Idaho hop grower's commission, as provided in chapter 31, title 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33, title 22, Idaho Code; the Idaho pea and lentil commission, as provided in chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in chapter 37, title 22, Idaho Code; the Idaho mint grower's commission, as provided in chapter 38, title 22, Idaho Code; the state board of sheep commissioners, as provided in chapter 1, title 25, Idaho Code; the state brand board, as provided in chapter 11, title 25, Idaho Code; the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and the Idaho dairy products commission, as provided in chapter 31, title 25, Idaho Code.

(p) All inspectors of the fresh fruit and vegetable inspection service of the Idaho department of agriculture, except those positions involved in the management of the program.

(q) All employees of the division of correctional industries within the department of correction.

(r) All wardens employed by the department of correction.

(s) All public information positions with the exception of secretarial positions, in any department.

(t) Any division administrator.

(u) Any regional administrator or ~~assistant~~ division administrator in the ~~division~~ department of environmental ~~protection in the department of health and welfare~~ quality.

(v) All employees of the division of financial management.

(w) All employees of the Idaho food quality assurance institute.

(x) The state appellate public defender, deputy state appellate public defenders and all other employees of the office of the state appellate public defender.

(y) All quality assurance specialists or medical investigators of the Idaho board of medicine.

SECTION 102. That Section 67-7502, Idaho Code, be, and the same is hereby amended to read as follows:

67-7502. JURISDICTION AND AUTHORITY. This chapter shall apply to all vessels on the waters of and over which the state of Idaho shall have jurisdiction. The department of ~~health and welfare~~ environmental quality is hereby granted authority to carry out the administration of the provisions of this chapter, and to promulgate rules ~~and regulations~~ in compliance with chapter 52, title 67, Idaho Code, to effectuate that purpose.

Approved March 22, 2001.

CHAPTER 104
(H.B. No. 167)

AN ACT

RELATING TO MOTOR FUELS TAX; AMENDING SECTION 63-2401, IDAHO CODE, TO MODIFY THE DEFINITION OF "HIGHWAY" TO ALLOW CERTAIN OPERATORS TO EXCLUDE CERTAIN ROADS AS HIGHWAYS; AMENDING SECTION 63-2410, IDAHO CODE, TO CLARIFY THE EXEMPTION FOR FUEL USED IN UNLICENSED VEHICLES; AND AMENDING SECTION 63-2436, IDAHO CODE, TO AUTHORIZE THE STATE TAX COMMISSION TO REDUCE INFORMATION REPORTING FROM CERTAIN CARRIERS; AND AMENDING SECTION 63-2437, IDAHO CODE, TO AUTHORIZE THE STATE TAX COMMISSION TO REDUCE INFORMATION REPORTING FROM FUEL TERMINALS.

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

SECTION 1. That Section 63-2401, Idaho Code, be, and the same is hereby amended to read as follows:

63-2401. DEFINITIONS. In this chapter:

(1) "Aircraft engine fuel" means:

(a) Aviation gasoline, defined as any mixture of volatile hydrocarbons used in aircraft reciprocating engines; and

(b) Jet fuel, defined as any mixture of volatile hydrocarbons used in aircraft turbojet and turboprop engines.

(2) "Bond" means:

(a) A surety bond, in an amount required by this chapter, duly executed by a surety company licensed and authorized to do business in this state conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties and other obligations arising out of the provisions of this chapter; or

(b) A deposit with the commission by any person required to be licensed pursuant to this chapter under terms and conditions as the commission may prescribe, of a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Idaho, or any county of the state; or

(c) An irrevocable letter of credit issued to the commission by a bank doing business in this state payable to the state upon failure of the person on whose behalf it is issued to remit any payment due under the provisions of this chapter.

(3) "Commercial motor boat" means any boat, equipped with a motor, which is wholly or partly used in a profit-making enterprise or in an enterprise conducted with the intent of making a profit.

(4) "Commission" means the state tax commission of the state of Idaho.

(5) "Distributor" means any person who receives gasoline, special fuels, and/or aircraft fuel in this state, and includes a special fuels dealer. Any person who sells or receives gaseous fuels will not be considered a distributor unless the gaseous fuel is delivered into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him.

(6) "Dyed fuel" means diesel fuel that is dyed pursuant to requirements of the internal revenue service, or the environmental protection agency.

(7) "Exported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

(8) "Gasohol" means gasoline containing a mixture of no more than ten percent (10%) blend anhydrous ethanol.

(9) "Gasoline" means any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. "Gasoline" also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels.

(10) "Highways" means every place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel which is maintained by the state of Idaho or an agency or taxing subdivision or unit thereof or the federal government or an agency or instrumentality thereof. Provided, however, if the cost of maintaining a roadway is primarily borne by a special fuels user who operates motor vehicles ~~over--twenty-six--thousand-(26,000)-pounds-maximum-gross-weight~~ on that roadway pursuant to a written contract during any period of time that a special fuels tax liability accrues to the user, such a roadway shall not be considered a "highway" for any purpose related to calculating that user's special fuel's tax liability or refund.

(11) "Imported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

(12) "International fuel tax agreement" and "IFTA" mean the international fuel tax agreement required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, including subsequent amendments to that agreement.

(13) "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada.

(14) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code.

(15) "Motor fuel" means gasoline, special fuels, aircraft engine fuels or any other fuels suitable for the operation or propulsion of motor vehicles, motor boats or aircraft.

(16) "Motor vehicle" means every self-propelled vehicle designed for operation, or required to be licensed for operation, upon a highway.

(17) "Person" means any individual, firm, fiduciary, copartnership, association, corporation, governmental instrumentality including the state and all of its agencies and political subdivisions, or any other

group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means the partners or members, and as applied to corporations, the officers.

(18) "Recreational vehicle" means a snowmobile as defined in section 67-7101, Idaho Code; a motor driven cycle or motorcycle as defined in section 49-114, Idaho Code; and any vehicular type unit either as an integral part of, or required for the movement of, units defined in section 39-4105(15), Idaho Code.

(19) "Retail dealer" means any person engaged in the retail sale of motor fuels to the public or for use in the state.

(20) "Special fuels" means:

(a) All fuel suitable as fuel for diesel engines;

(b) A compressed or liquified gas obtained as a byproduct in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and

(c) Natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles.

(21) "Special fuels dealer" means "distributor" under subsection (5) of this section.

(22) "Special fuels user" means any person who uses or consumes special fuels for the operation or propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(23) "Use" means either:

(a) The receipt, delivery or placing of fuels by a licensed distributor or a special fuels dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or

(b) The consumption of fuels in the operation or propulsion of a motor vehicle on the highways of this state.

SECTION 2. That Section 63-2410, Idaho Code, be, and the same is hereby amended to read as follows:

63-2410. REFUND OF GASOLINE TAX PROCEDURE. (1) Any person who shall purchase fifty (50) gallons or more, and use the gasoline in motor vehicles operated on highways outside of the state of Idaho where a duplicate tax is assessed for the same gasoline, shall be entitled to refund when a claim is presented to the commission in the manner required in subsection (5)(c) of this section. Claimant shall present to the commission a statement accompanied by a verification of the use determined by an audit of his operations conducted as prescribed by the tax commission; or his claim may be verified by the filing of a receipt or proof showing the payment of tax on the gasoline used in any other state.

(2) Any person who shall purchase within any one (1) calendar year fifty (50) gallons or more of gasoline used for the purposes described in this subsection shall be entitled to be refunded the amount of gasoline tax previously paid on that gasoline. Exempt uses are:

(a) Operating stationary gasoline engines;

(b) Propelling equipment or vehicles~~, other than motor vehicles,~~ which are not licensed to be operated on a highway; and

(c) Operating commercial motor boats.

(3) No refund of gasoline tax shall be allowed for any gasoline which is:

(a) Used in motor vehicles required to be licensed or used in any motor vehicle exempt from registration by reason of the ownership or residence; or

(b) Aircraft engine fuel placed in aircraft, provided however, if tax has been paid at the rate provided in section 63-2405, Idaho Code, on any motor fuel placed in the fuel supply tank of an aircraft the user of the fuel may apply for a refund of the difference between the tax paid on the fuel and the tax imposed in section 63-2408, Idaho Code; or

(c) Gasoline used in recreational vehicles; or

(d) Gasoline used in noncommercial motor boats or in boats operated by a governmental entity.

(4) Any licensed distributor paying the gasoline tax and/or aircraft engine fuel tax to the state of Idaho erroneously shall be allowed a credit or refund of the amount of tax paid by him if a written claim for refund is filed with the commission within three (3) years after the date those taxes were paid. Such credit or refund shall include interest at the rate established in section 63-3045, Idaho Code, computed from the date taxes to be refunded or credited were paid to the commission.

(5) (a) All claims for refund of gasoline taxes arising under subsection (1), (2) or (3)(b) of this section shall be filed in conjunction with the claimant's income tax return due pursuant to chapter 30, title 63, Idaho Code. The gasoline tax refund claimed shall be tax paid on gasoline actually purchased during the taxable year to which the income tax return relates. The gasoline tax refund due shall be offset against any other taxes, penalties or interest due before any balance is refunded by the commission to the claimant. Subject to a limitation as to the amount of refund to be claimed as the commission may provide by rule, refund claims may be submitted and paid on a monthly basis and reconciled on the income tax return when it is filed.

(b) If a claimant is not required to file an income tax return, the refund claim shall be made on forms and in the manner as the commission may provide. The claim shall relate to taxes paid on gasoline actually purchased in the calendar year preceding the filing and the claim shall be filed on or before April 15 following the close of the calendar year.

(c) Claims for refunds under subsection (1) or (2) of this section shall be filed within the time and in the manner prescribed in section 63-3072, Idaho Code. Such credit or refund shall include interest at the rate established in section 63-3045, Idaho Code, computed from sixty (60) days following the later of the due date of the claimed refund under subsection (5)(a) or (5)(b) of this section or the filing of the claim.

(d) The commission may require that all claims be accompanied by the original signed invoice or invoices issued to the claimant, showing the total amount of gasoline on which a refund is claimed and the reason, the amount of the tax and any additional information required by the commission. Each separate delivery shall constitute a purchase and a separate invoice shall be prepared, at least in duplicate, to cover the delivery. All invoices, except those pre-

pared by a computer or similar machine, shall be prepared in ink or double-spaced carbon shall be used between the original and first duplicate.

(6) (a) Should the commission find that the claim contains errors, it may correct the claim and approve it as corrected, or the commission may require the claimant to file an amended claim. The commission may require any person who makes a claim for refund to furnish a statement under oath, giving his occupation, description of the machine or equipment in which the gasoline was used, the place where used and any other information as the commission may require. If the commission determines that any claim has been fraudulently presented, or is supported by an invoice or invoices fraudulently made or altered, or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the commission may reject the claim in full. If the claim is rejected, the commission may suspend the claimant's right to any refund for purchases made during a period not to exceed one (1) year beginning with the date the rejected claim was filed, and it shall take all other action deemed appropriate.

(b) The commission has authority, in order to establish the validity of any claim, to examine the books and records of the claimant for that purpose, and failure of the claimant to accede to the demand for the examination may constitute a waiver of all rights to the refund claimed.

(7) In the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit a duplicate copy of the invoice certified by the vendor, but payment based on the duplicate invoice shall not be made until one (1) year after the date on which the gasoline was purchased.

SECTION 3. That Section 63-2436, Idaho Code, be, and the same is hereby amended to read as follows:

63-2436. REPORTS OF IMPORTATIONS BY CARRIER -- CONTENTS. The commission may require a~~A~~ny railroad or other common carrier, or contract carrier, or any person, other than a licensee, who makes delivery in this state of any gasoline, aircraft engine fuel or special fuels ~~shall~~ to report in writing to the commission, not later than the last day of each calendar month, all the deliveries for the preceding calendar month. The commission may require information in the reports ~~shall~~ to include the place of origin and place of destination of the gasoline, aircraft engine fuel or special fuels delivered, the names and addresses of consignors and consignees, loading ticket numbers, number of gallons delivered, and any other information the commission may require.

SECTION 4. That Section 63-2437, Idaho Code, be, and the same is hereby amended to read as follows:

63-2437. INSTATE PIPELINE TERMINAL AND STORAGE REPORTS. The commission may require a ~~A~~ monthly report ~~for~~ from each pipeline terminal located in this state ~~shall be submitted to the commission~~ not later than the last day of the ~~same~~ next succeeding calendar month. The commission may require information in the report ~~shall~~ to include the date of withdrawal, bill of lading number, manifest number, or loading ticket

number and the origin, consignee, consignor, transportation company, and number of gallons separately indicated of gasoline, aircraft engine fuel and special fuels and any other information as the commission may require.

Approved March 22, 2001.

CHAPTER 105
(H.B. No. 170)

AN ACT

RELATING TO TAXES IMPOSED UPON WHEAT; AMENDING SECTION 22-3315, IDAHO CODE, TO AUTHORIZE THE IDAHO WHEAT COMMISSION TO ESTABLISH THE RATE OF TAX TO BE IMPOSED NOT TO EXCEED THE EXISTING RATE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 22-3315, Idaho Code, be, and the same is hereby amended to read as follows:

22-3315. IMPOSITION OF TAX AND PROVISION FOR LATE FEES. (1) From and after the first day of July, 1992, there is hereby levied and imposed a tax ~~of~~ not to exceed two cents (2¢) per bushel on all wheat grown in the state of Idaho or given to Idaho growers under a crop reduction program, and sold or contracted through commercial channels, and each and every crop grown or wheat given to growers under a crop reduction program thereafter. The tax shall be due on wheat given to growers under a crop reduction program and sold or contracted through commercial channels, regardless of any deduction of the tax on this same wheat prior to it being given to the grower. The tax shall be due on or before the time when such wheat is first sold or contracted in the commercial channels and shall be paid at such time or times as the commission may, by rule, ~~or regulation,~~ prescribe, as hereinafter provided, but not later than the 15th day of the month next succeeding the three (3) month period in which such wheat is sold or contracted in commercial channels. The commission shall designate the quarters (three (3) month periods) for the purpose of collection of this tax.

(2) The tax shall be levied and assessed to the grower at the time of delivery for sale and shall be deducted by the first purchaser from the price paid to the grower at the time of sale or in case of a lienholder who may possess such wheat under his lien, the tax shall be deducted by the lienholder from the proceeds of the claim secured by such lien at the time the wheat is pledged or mortgaged. The tax shall be deducted as provided in this section whether the wheat is stored in this or any other state. The commission may, however, permit any federal corporation, such as the ~~c~~commodity ~~c~~credit ~~c~~corporation, to waive its responsibility for the collection of the tax, provided the amount of the tax is one dollar ($1.00) or less.

(3) It shall be within the discretion of the commission to establish the amount of the tax to be levied. The amount of the tax to be levied shall not exceed two cents (2¢) per bushel for any fiscal year.

The decision whether to adjust the amount of the tax to be levied and the time for which the adjusted levy shall be in effect shall require the vote of a majority of the commission members.

(4) The tax constitutes a lien prior to all other liens and encumbrances upon such wheat except ~~liens~~ which are declared prior by operation of a statute of this state.

(~~4~~5) Any person or firm who makes payment to the commission at a date later than that prescribed in this section may be subject to a late payment penalty as set forth by the commission by rule. ~~and--regulation.~~ Such penalty shall not exceed the rate of fifteen percent (15%) per annum on the amount due. In addition to the above penalty, the commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in this section.

Approved March 22, 2001.

CHAPTER 106
(H.B. No. 175)

AN ACT

RELATING TO CAMPAIGN CONTRIBUTIONS; AMENDING SECTION 67-6629, IDAHO CODE, TO CLARIFY THE DEFINITION OF A PERSUASIVE POLL AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 67-6625, IDAHO CODE, TO CLARIFY PENALTIES AND VENUE FOR PROSECUTION AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 67-6629, Idaho Code, be, and the same is hereby amended 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~~ designed to advocate the election, approval or defeat of a candidate or measure. 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~~ punishable as provided in section 67-6625, Idaho Code.

SECTION 2. That Section 67-6625, Idaho Code, be, and the same is hereby amended to read as follows:

67-6625. VIOLATIONS -- CIVIL FINE -- MISDEMEANOR PENALTY -- PROSECUTION -- LIMITATION -- VENUE. (a) Any person who violates the provisions of section 67-6603 through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(a), ~~or~~ 67-6624 or 67-6629, Idaho Code, shall be liable for a civil fine not to exceed two hundred fifty dollars ($250) if an individual, and not more than two thousand five hundred dollars ($2,500) if a person other than an individual. The burden of proof for such civil liability shall be met by showing a preponderance of the evidence.

(b) Any person who violates section 67-6605 or 67-6621(b), Idaho Code, and any person who knowingly and willfully violates section 67-6603 through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(a), ~~or~~ 67-6624 or 67-6629, Idaho Code, is guilty of a misdemeanor and, upon conviction, in addition to the fines set forth in subsection (a) of this section, may be imprisoned for not more than six (6) months or be both fined and imprisoned.

(c) The attorney general or the appropriate prosecuting attorney may prosecute any violations of this act.

(d) Prosecution for violation of this act must be commenced within two (2) years after the date on which the violation occurred.

(e) Venue for prosecution under the provisions of this chapter shall be in the county of residence of the defendant if the defendant is a resident of the state of Idaho, otherwise venue shall be in Ada county.

Approved March 22, 2001.

CHAPTER 107
(H.B. No. 185, As Amended)

AN ACT

RELATING TO THE CHILD PROTECTIVE ACT; AMENDING SECTION 16-1601, IDAHO CODE, TO PROVIDE FOR A STATE POLICY INCLUDING THE PERIODIC REVIEW OF CASES IN CHILD PROTECTION PROCEEDINGS, TO PROVIDE FOR CERTAIN COORDINATED EFFORTS AND ACTIONS TO PREVENT HOMELESSNESS FOR CHILDREN, TO PROVIDE CHILDREN WITH PERMANENCY INCLUDING CONCURRENT PLANNING AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1602, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1603, IDAHO CODE, TO PROVIDE FOR JURISDICTION OVER CERTAIN CHILDREN AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1604, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO IMPOSE CERTAIN DUTIES ON THE PARTIES REGARDING OTHER ACTIONS AND ORDERS INVOLVING A CHILD, TO PROVIDE THAT WHERE THERE ARE CERTAIN CONFLICTING ORDERS THE CHILD PROTECTION ORDER SHALL CONTROL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1605, IDAHO CODE, TO PROVIDE FOR PETITIONS IN CASES OF HOMELESSNESS, TO REQUIRE THAT PETITIONS SET FORTH THE FACTS SUPPORTING CERTAIN GROUNDS WHICH BRING A CHILD WITHIN THE JURISDICTION OF THE COURT, TO REQUIRE CERTAIN ASSERTIONS IN A PETITION WHERE A CHILD HAS BEEN OR WILL BE REMOVED FROM THE HOME, TO STRIKE A REFERENCE TO PLACEMENT DUE TO IMMEDIATE

DANGER, TO PROVIDE THAT THE COURT MAY COMBINE PETITIONS AND HEARINGS IN CERTAIN CASES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1606, IDAHO CODE, TO PROVIDE THAT THE CLERK OF THE COURT MAY ISSUE SUMMONS, TO DELETE A REFERENCE TO CERTAIN PERSONS BEING SUMMONED INTO COURT, TO PROVIDE FOR SUMMONS FOR HEARING, TO PROVIDE THAT IN CERTAIN CASES THE COURT MAY ENDORSE UPON THE SUMMONS AN ORDER FOR REMOVAL OF A CHILD FROM HIS PRESENT CONDITION OR SURROUNDINGS AND MAY VEST LEGAL CUSTODY WITH THE DEPARTMENT OF HEALTH AND WELFARE OR OTHER AUTHORIZED AGENCY AND TO PROVIDE CERTAIN REQUIREMENTS FOR THE ENDORSEMENT; AMENDING CHAPTER 16, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 16-1607A, IDAHO CODE, TO PROVIDE FOR HEARINGS UNDER THE CHILD PROTECTIVE ACT; AMENDING SECTION 16-1608, IDAHO CODE, TO PROVIDE FOR PRETRIAL CONFERENCES BEFORE ADJUDICATORY HEARINGS, TO PROVIDE FOR DELIVERY OF INVESTIGATIVE REPORTS, TO PROVIDE FOR A DETERMINATION OF JURISDICTION, TO PROVIDE FOR DECREES OF THE COURT, TO PROVIDE THAT CERTAIN INFORMATION IS TO BE CONSIDERED BY THE COURT AND TO REQUIRE THE COURT TO PLACE THE CHILD, TO REQUIRE SPECIFIED WRITTEN FINDINGS IN CERTAIN CASES, TO PROVIDE FOR THE BINDING EFFECT AND DURATION OF CERTAIN DECREES AND TO REQUIRE WRITTEN CASE PLANS, TO PROVIDE FOR THE DURATION OF CERTAIN DECREES AND TO PROVIDE FOR OTHER TERMS OF A DECREE, TO PROVIDE FOR PROTECTIVE ORDERS IN CERTAIN CASES, TO PROVIDE FOR DISMISSAL OF CERTAIN PETITIONS; AMENDING SECTION 16-1609, IDAHO CODE, TO PROVIDE FOR DELIVERY AND RECEIPT OF THE INVESTIGATIVE REPORT AND TO PROVIDE FOR CONSIDERATION AND USE OF THE REPORT; AMENDING SECTION 16-1609A, IDAHO CODE, TO PROVIDE FOR REVIEW OF A REPRESENTATIVE SELECTION OF CERTAIN CASES BY A MULTIDISCIPLINARY TEAM AND TO PROVIDE THAT LACK OF REVIEW BY A MULTIDISCIPLINARY TEAM WILL NOT DEFEAT THE JURISDICTION OF THE COURT IN ANY PARTICULAR CASE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 16-1610, IDAHO CODE, TO PROVIDE FOR WRITTEN CASE PLANS, TO PROVIDE FOR NOTICE OF THE PLANNING HEARING, TO EXCLUDE FOSTER PARENTS AS PARTIES TO THE ACTION, TO PROVIDE THAT THE CASE PLAN SHALL INCLUDE CERTAIN INFORMATION RELATING TO PLACEMENT AND TO PROVIDE THAT CERTAIN CONNECTIONS OF THE CHILD TO THE COMMUNITY SHALL BE MAINTAINED WHENEVER POSSIBLE, TO PROVIDE FOR ENTRY INTO THE RECORD OF COURT APPROVED CASE PLANS AS ORDERS OF THE COURT AND TO PROVIDE THAT IN CERTAIN CASES THE ORDER WILL REQUIRE REASONABLE EFFORTS TO REUNIFY THE FAMILY OR FINALIZE PLACEMENT OF THE CHILD; AMENDING SECTION 16-1611, IDAHO CODE, TO PROVIDE FOR REVIEW HEARINGS AND PERMANENCY HEARINGS, TO PROVIDE CORRECT TERMINOLOGY, TO PROVIDE CORRECT CODE REFERENCES, TO STRIKE REFERENCE TO PETITIONS FOR REVIEW, TO PROVIDE FOR FILING BY THE DEPARTMENT OF HEALTH AND WELFARE OR ANY PARTY, TO PROHIBIT FILING OF A MOTION BY CERTAIN RESPONDENTS, TO PROVIDE FOR REVIEW OF CERTAIN CASES AND PERMANENCY PLANS, TO PROVIDE A PROCEDURE FOR HEARINGS TO REVIEW PERMANENCY PLANS, TO PROVIDE FOR HEARING OFFICERS, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND WELFARE MAY MOVE THE COURT FOR RELIEF FROM ITS DUTY TO SEEK TERMINATION OF PARENTAL RIGHTS IN CERTAIN CASES AND TO PROVIDE FOR RELIEF FROM THE DUTY IN CERTAIN CASES; AMENDING SECTION 16-1612, IDAHO CODE, TO PROVIDE FOR EMERGENCY REMOVAL, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 16-1613, IDAHO CODE, TO PROVIDE FOR EMERGENCY REMOVAL, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 16-1614, IDAHO CODE, TO PROVIDE CORRECT

TERMINOLOGY, TO PROVIDE FOR THE JURISDICTION OF THE COURT, TO PROVIDE THAT AT HEARING IT MAY BE SHOWN THAT IT IS CONTRARY TO THE WELFARE OF THE CHILD TO REMAIN IN THE HOME AND TO PROVIDE FOR TEMPORARY LEGAL CUSTODY; AMENDING SECTION 16-1615, IDAHO CODE, TO PROVIDE FOR TEMPORARY LEGAL CUSTODY, TO PROVIDE CORRECT CODE REFERENCES AND TO PROVIDE THAT PETITIONS TO TERMINATE PARENTAL RIGHTS SHALL BE FILED AS MOTIONS IN EXISTING CHILD PROTECTION ACTIONS; AMENDING SECTION 16-1617, IDAHO CODE, TO PROVIDE FOR LEGAL CUSTODY; AMENDING SECTION 16-1618, IDAHO CODE, TO REQUIRE THE APPOINTMENT OF COUNSEL FOR THE GUARDIAN AD LITEM IN CERTAIN CHILD PROTECTION ACT CASES AND TO PROVIDE FOR THE APPOINTMENT OF SEPARATE COUNSEL FOR THE CHILD IN CERTAIN CASES, TO STRIKE A REFERENCE TO APPOINTMENT OF COUNSEL FOR PARENTS IN CERTAIN CASES, TO REQUIRE THE APPOINTMENT OF COUNSEL FOR THE CHILD IN CERTAIN CASES AND TO PROVIDE THAT IN CERTAIN CASES THE ATTORNEY FOR THE CHILD SHALL HAVE THE POWERS AND DUTIES OF A GUARDIAN AD LITEM; AMENDING SECTION 16-1623, IDAHO CODE, TO REQUIRE THE DEPARTMENT OF HEALTH AND WELFARE TO FILE A PERMANENCY PLAN AND RECOMMENDATIONS WITH THE COURT WITHIN A SPECIFIED TIME AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 56-204B, IDAHO CODE, TO DELETE A REFERENCE TO THE DESIGNATION OF PLACES OF SHELTER BY THE MAGISTRATE COURTS; AMENDING SECTION 66-317, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 66-324, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 16-1601, Idaho Code, be, and the same is hereby amended to read as follows:

16-1601. POLICY. The policy of the state of Idaho is hereby declared to be the establishment of a legal framework conducive to the judicial processing including periodic review of child abuse, abandonment and neglect cases, and the protection of children whose life, health or welfare is ~~endangered~~. At all times the health and safety of the child shall be the primary concern. Each child coming within the purview of this chapter shall receive, preferably in his own home, the care, guidance and control that will promote his welfare and the best interest of the state of Idaho, and if he is removed from the control of one (1) or more of his parents, guardian or other custodian, the state shall secure adequate care for him; provided, however, that the state of Idaho shall, to the fullest extent possible, seek to preserve, protect, enhance and reunite the family relationship. This chapter seeks to coordinate efforts by state and local public agencies, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

(1) ~~p~~Preserve the privacy and unity of the family whenever possible;

(2) ~~t~~Take such actions as may be necessary and feasible to prevent the abuse, neglect, ~~or~~ abandonment or homelessness of children;

(3) Take such actions as may be necessary to provide the child with permanency including concurrent planning;

(4) ~~C~~Clarify for the purposes of this act the rights and responsibilities of parents with joint legal or joint physical custody of children ~~at risk~~.

SECTION 2. 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~~1) "Abused" means any case in which a child has been the victim of:

(~~1~~a) 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~~b) 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~~2) "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~~3) "Adjudicatory hearing" means a hearing to determine:

(a) Whether the child comes ~~truth of the allegations in the petition filed~~ under the jurisdiction of the court pursuant to the provisions of this chapter;

(b) Whether continuation of the child in the home would be contrary to the child's welfare and whether the best interests of the child require protective supervision or vesting legal custody of the child in an authorized agency;

(c) Whether aggravated circumstances as defined in section 16-1608, Idaho Code, exist.

(~~d~~4) "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~~5) "Child" means an individual who is under the age of eighteen (18) years.

(~~f~~6) "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~~7) "Circumstances of the child" includes, but is not limited to, the joint legal custody or joint physical custody of the child.

(~~h~~8) "Commit" means to transfer legal and physical custody.

(~~i~~9) "Concurrent planning" means a planning model that prepares for and implements different outcomes at the same time.

(10) "Court" means district court or magistrate's division thereof, or if the context requires, a magistrate or judge thereof.

(~~j~~11) "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~~12) "Department" means the department of health and welfare and

its authorized representatives.

~~(i)--"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.~~

(m13) "Family or household member" shall have the same meaning as in section 39-6303(3), Idaho Code.

(n14) "Foster care" means twenty-four (24) hour substitute care for children placed away from their parents or guardians and for whom the state agency has placement and care responsibility.

(15) "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.

(o16) "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.

(p17) "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.

(q18) "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.

(r19) "Legal custody" means a relationship created by order of the court, which vests in a custodian the following duties and rights:

(~~1~~a) To have physical custody and control of the child, and to determine where and with whom the child shall live.

(~~2~~b) To supply the child with food, clothing, shelter and incidental necessities.

(~~3~~c) To provide the child with care, education and discipline.

(~~4~~d) 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~~e) Where the parents share legal custody, the custodian may be vested with the custody previously held by either or both parents.

(s20) "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.

(t21) "Neglected" means a child:

(~~1~~a) 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~~b) 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

(3c) Who has been placed for care or adoption in violation of law.

(22) "Permanency hearing" means a hearing to review, approve, reject or modify the permanency plan of the department, and review reasonable efforts in accomplishing the permanency plan.

(23) "Permanency plan" means a plan for a continuous residence and maintenance of nurturing relationships during the child's minority.

(24) "Planning hearing" means a hearing to:

(a) Review, approve, modify or reject the case plan; and

(b) Review reasonable efforts being made to rehabilitate the family; and

(c) Review reasonable efforts being made to reunify the children with a parent or guardian.

(u25) "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.

(v26) "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.

(w27) "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, the right to consent to adoption, the right to determine religious affiliation, the right to family counseling when beneficial, and the responsibility for support.

(x28) "Shelter care" means places designated by the department for temporary care of children pending court disposition or placement.

SECTION 3. That Section 16-1603, Idaho Code, be, and the same is hereby amended to read as follows:

16-1603. JURISDICTION OF THE COURTS. (1) Except as otherwise provided herein, the court shall have exclusive original jurisdiction in all proceedings under this chapter concerning any child living or found within the state:

(a) wWho is neglected, abused or abandoned by his parents, guardian or other legal custodian, or who is homeless; or

(b) wWhose parents or other legal custodian fails or is unable to provide a stable home environment.

(2) If the court has taken jurisdiction over a child under subsection (1) of this section, it may take jurisdiction over another child living or having custodial visitation in the same household without the filing of a separate petition if it finds all of the following:

(a) The other child is living or is found within the state;

(b) The other child has been exposed to or is at risk of being a victim of abuse, neglect or abandonment;

(c) The other child is listed in the petition or amended petition;

(d) The parents or legal guardians of the other child have notice as provided in section 16-1606, Idaho Code.

SECTION 4. That Section 16-1604, Idaho Code, be, and the same is hereby amended to read as follows:

16-1604. RETENTION OF JURISDICTION. (1) Jurisdiction obtained by the court under this chapter shall be retained until the child's ~~becomes eighteen (18) years of age~~ eighteenth birthday, unless terminated prior thereto. ~~Such--~~Jurisdiction of the court shall not be ~~terminated~~ by an order of termination of parental rights if guardianship and/or custody of the child is placed with the department of health and welfare.

(2) The parties have an ongoing duty to inquire concerning, and inform the court as soon as possible about, any other pending actions or current orders involving the child. In the event there are conflicting orders from Idaho courts concerning the child, the child protection order is controlling.

SECTION 5. That Section 16-1605, Idaho Code, be, and the same is hereby amended to read as follows:

16-1605. PETITION. (a) A petition invoking the jurisdiction of the court under this chapter shall be filed in the manner provided in this section:

(1) A petition must be signed by the prosecutor or deputy attorney general before being filed with the court.

(2) Any person or governmental body of this state having evidence of abuse, abandonment, ~~or~~ neglect or homelessness of a child may request the attorney general or prosecuting attorney to file a petition. The prosecuting attorney of the county where the child resides may file a petition on behalf of any child whose parent, guardian, or custodian has been accused in a criminal complaint of the crime of cruel treatment or neglect as defined in section 18-1501, Idaho Code.

(b) Petitions shall be entitled "In the Matter of ....., a child under the age of eighteen (18) years" and shall be verified and set forth with specificity:

(1) The facts which bring the child within the ~~provisions--of--this chapter~~ jurisdiction of the court upon the grounds set forth in section 16-1603, Idaho Code, with the actions of each parent described therein;

(2) The name, birthdate, sex, and residence address of the child;

(3) The name, birthdate, sex, and residence address of all other children living at or having custodial visitation at the home where the injury to the subject child occurred;

(4) The names and residence addresses of both the mother and father, guardian or other custodian. If neither of his parents, guardian or other custodian resides or can be found within the state, or if their residence addresses are unknown, the name of any known adult relative residing within the state~~.~~;

(5) The names and residence addresses of each person having sole or joint legal custody of the children described in this section~~.~~;

(6) Whether or not there exists a legal document including, but not limited to, a divorce decree, stipulation or parenting agreement controlling the custodial status of the children described in this section~~.~~;

(7) Whether the child is in shelter care, and, if so, the type and nature of the shelter care, the circumstances necessitating such care and the date and time he was placed in such care~~.~~;

(8) When any of the facts required by this section cannot be deter-

mined, the petition shall so state. The petition may be based on information and belief but in such case the petition shall state the basis of such information and belief~~.~~;

(9) If the child has been or will be removed from the home, t~~T~~he petition shall state that:

(i) Remaining in the home was contrary to the welfare of the child; and

(ii) Vesting legal custody of the child in the department or other authorized agency is in the best interests of the child; and

(iii) R~~r~~easonable efforts have been made prior to the placement of the child in care to prevent the removal of the child from ~~his home~~ or, if such efforts were not provided, ~~that--placement was--due--to--immediate-danger-to-the-child,-or~~ that reasonable efforts to prevent placement were not required as the parent subjected the child to aggravated circumstances~~.~~;

(10) The petition shall state with specificity whether a parent with joint legal custody or a noncustodial parent has been notified of placement~~.~~;

(11) The petition shall state whether a court has adjudicated the custodial rights of the parents and shall set forth the custodial status of the child~~.~~;

(12) The court may combine petitions and hearings where multiple petitions have been filed involving related children, parents or guardians.

SECTION 6. That Section 16-1606, Idaho Code, be, and the same is hereby amended to read as follows:

16-1606. SUMMONS. (a) After a petition has been filed, the clerk of the court may issue a summons requiring the person or persons who have custody of the child to bring the child before the court at the adjudicatory hearing held in accordance with section 16-1608, Idaho Code. ~~If-persons-have-joint-custody-of-an-injured,-abandoned--or--abused child,--those--persons--shall--be--summoned-into-court-if-they-are-found within-the-jurisdiction-of-the--court.--If--the--person--or--persons--so summoned--shall--be-other-than-the-parent-or-guardian-of-the-child,-then e~~E~~ach parent or guardian shall also be notified in the manner hereinafter provided of the pendency of the case and the time and place set for the hearing. A summons ~~may~~ shall be issued and served requiring the appearance of each parent and legal guardian, and a summons may be issued and served for any other person whose presence is required by the child, either of his parents or guardian or any other person whose presence, in the opinion of the court, is necessary.

(b) A copy of the petition shall be attached to each summons.

(c) The summons shall notify each of the parents, guardian or legal custodian of their right to retain and be represented by counsel. Each parent or legal guardian of each child named in the petition shall be notified by the court of the case and of the time and place set for the hearing.

(d) If based on facts presented to the court, it appears that the court has jurisdiction upon the grounds set forth in section 16-1603, Idaho Code, and that the child should be removed from his present condition or surroundings ~~in-order-to-protect-his-health-or-welfare~~ because

continuation in such condition or surroundings would be contrary to the welfare of the child and vesting legal custody with the department or other authorized agency would be in the child's best interests, the court may so order by endorsement upon the summons. The endorsement shall specifically state that continuation in the present condition or surroundings is contrary to the welfare of the child and shall require a peace officer or other suitable person to take the child at once to a place of shelter care designated by the ~~court~~ auth~~orized~~ agency which shall provide shelter care for the child.

(e) If it appears that the child is safe in his present condition or surroundings and it is not in his best interest to remove him at this time, the court may issue a protective order based on an affidavit pending the adjudicatory hearing. If the child is in joint custody, the protective order shall state with specificity the rights and responsibilities of each parent. Each parent shall be provided with a copy of the protective order.

SECTION 7. That Chapter 16, 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 16-1607A, Idaho Code, ~~and to read~~ as follows:

16-1607A. HEARINGS UNDER THE CHILD PROTECTIVE ACT. (1) Proceedings under this chapter shall be dealt with by the court at hearings separate from those for adults and without a jury. The hearings shall be conducted in an informal manner and may be adjourned from time to time. The general public shall be excluded, and only such persons shall be admitted as are found by the court to have a direct interest in the case. The child may be excluded from hearings at any time at the discretion of the court. If the parent or guardian is without counsel, the court shall inform them of their right to be represented by counsel and to appeal from any disposition or order of the court.

(2) When a child is summoned as a witness in any hearing under this act, notwithstanding any other statutory provision, parents, a counselor, a friend, or other person having a supportive relationship with the child shall, if available, be permitted to remain in the courtroom at the witness stand with the child during the child's testimony unless, in written findings made and entered, the court finds that the constitutional right of the child's parent(s), guardian(s) or other custodian(s) to a fair hearing will be unduly prejudiced.

(3) At any stage of a proceeding under this chapter, if the court determines that it is in the best interests of the child or society, the court may cause the proceeding to be expanded or altered to include full or partial consideration of the cause under the juvenile corrections act without terminating the original proceeding under this chapter.

SECTION 8. That Section 16-1608, Idaho Code, be, and the same is hereby amended to read as follows:

16-1608. ADJUDICATORY HEARING -- CONDUCT OF HEARING -- CONSOLIDATION. (a) When a petition has been filed, the court shall set an adjudicatory hearing to be held no later than thirty (30) days after the filing of the petition.

(b) ~~Proceedings--under--this--chapter-shall-be-dealt-with-by~~ A pretrial conference shall be held outside the presence of the court ~~at--a~~

within three (3) to five (5) days before the adjudicatory hearing. ~~separate from those for adults and without a jury. The hearing shall be conducted in an informal manner and may be adjourned from time to time. The general--public shall be excluded, and only such persons shall be admitted as--are--found--by~~ Investigative reports required under section 16-1609, Idaho Code, shall be delivered to the court ~~to have a direct interest in the case. The child may be excluded from the hearing at any time--at--the discretion of the court. If the~~ with copies to each of the parents ~~or guardian is without counsel, the court shall inform--them--of their--rights to be represented by counsel and to appeal from any disposition or order of the court~~ and other legal custodians, guardian ad litem and attorney for the child prior to the date set for the pretrial conference.

(c) ~~When a child is summoned as a witness in any~~ If a preponderance of the evidence at the adjudicatory hearing ~~under--this--act,--notwithstanding--any other statutory provision, parents, a counselor, a friend, or other person having a supportive relationship--with~~ shows that the child ~~shall,--if--available, be permitted to remain in the courtroom at the witness stand with the child during the child's testimony unless, in written findings made and entered,~~ comes within the court's ~~finds that the--constitutional right of the child's parent(s), guardian(s) or other custodian(s) to a fair hearing will be--unduly--prejudiced~~ jurisdiction under this chapter upon the grounds set forth in section 16-1603, Idaho Code, the court shall so decree and in its decree shall make a finding on the record of the facts and conclusions of law upon which it exercises jurisdiction over the child.

(d) ~~At any stage of a proceeding under this chapter,--in--the--best interests~~ Upon entering its decree the court shall consider any information relevant to the disposition of the child ~~or society, the court may cause the proceeding to be expanded or altered to include full--or--partial consideration of the cause under the youth rehabilitation act without terminating the original proceeding~~ but in any event shall:

(1) Place the child under protective supervision in his own home for an indeterminate period not to exceed the child's eighteenth birthday; or

(2) Vest legal custody in the department or other authorized agency subject to residual parental rights and subject to full judicial review by the court of all matters relating to the custody of the child by the department or other authorized agency.

(e) If the court vests legal custody in the department or other authorized agency, the court shall make detailed written findings based on facts in the record, that, in addition to the findings required in subsection (c) of this section, continuation of residence in the home would be contrary to the welfare of the child and that vesting legal custody with the department or other authorized agency would be in the best interests of the child. In addition the court shall make detailed written findings based on facts in the record as to whether the department made reasonable efforts to prevent the placement of the child in foster care, including findings, when appropriate, that:

(1) Reasonable efforts were made but were not successful in eliminating the need for foster care placement of the child;

(2) Reasonable efforts were not made because of immediate danger to the child;

(3) Reasonable efforts to temporarily place the child with related

persons were made but were not successful; or

(4) Reasonable efforts were not required as the parent had subjected the child to aggravated circumstances as determined by the court including, but not limited to: abandonment; torture; chronic abuse; sexual abuse; committed murder; committed voluntary manslaughter; aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; committed a felony assault that results in serious bodily injury to any child of the parent; or the parental rights of the parent to a sibling have been terminated involuntarily and that as a result, a hearing to determine the permanent future plan for this child will be held within thirty (30) days of this determination.

(f) A decree vesting legal custody in the department shall be binding upon the department and may continue until the child's eighteenth birthday. The decree shall state that the department shall prepare a written case plan within thirty (30) days of placement.

(g) A decree vesting legal custody in an authorized agency other than the department shall be for a period of time not to exceed the child's eighteenth birthday, and on such other terms as the court shall state in its decree to be in the best interests of the child and which the court finds to be acceptable to such authorized agency.

(h) In order to preserve the unity of the family system and to ensure the best interests of the child whether issuing an order of protective supervision or an order of legal custody, the court may consider extending or initiating a protective order as part of the decree. The protective order shall be determined as in the best interests of the child and upon a showing of continuing danger to the child. The conditions and terms of the protective order shall be clearly stated in the decree.

(i) If the court does not find that the child comes within the jurisdiction of this chapter pursuant to subsection (c) of this section it shall dismiss the petition.

SECTION 9. That Section 16-1609, Idaho Code, be, and the same is hereby amended to read as follows:

16-1609. INVESTIGATION. (a) Where the court has ordered an adjudicatory hearing after the shelter care hearing or when a petition is otherwise filed, the court may order the department to investigate the circumstances of the child and his family and report to the court.

(b) The report shall be delivered to the court with copies to each of the parents or other legal custodian ~~at least five (5) days before the date set~~ prior to the pretrial conference for the adjudicatory hearing. If delivered by mail the report must be ~~mailed at least eight (8) days prior to the date of~~ received by the court prior to the pretrial conference for the adjudicatory hearing. The report shall contain a social evaluation of the child and the parents or other legal custodian and such other information as the court shall require.

(c) The report shall not be considered by the court for purposes of determining whether the child comes within the jurisdiction of the act. The report may be admitted into evidence at the adjudicatory hearing ~~and shall be used by the court only for disposition if the child is found to be within the purview of this chapter~~ for other purposes.

(d) If the court declines to order the department to investigate

pursuant to subsection (a) of this section, the court shall state the reasons for so declining in the record.

SECTION 10. That Section 16-1609A, Idaho Code, be, and the same is hereby amended to read as follows:

16-1609A. INVESTIGATION BY MULTIDISCIPLINARY TEAMS. (1) By January 1, 1997, the prosecuting attorney in each county shall be responsible for the development of an interagency multidisciplinary team or teams for investigation of child abuse and neglect referrals within each county. The teams shall consist of, but not be limited to, law enforcement personnel, department of health and welfare child protection risk assessment staff, a representative of the prosecuting attorney's office, and any other person deemed to be necessary due to ~~their~~ his special training in child abuse investigation. Other persons may participate in investigation of particular cases at the invitation of the team and as determined necessary, such as medical personnel, school officials, mental health workers, personnel from domestic violence programs or the guardian ad litem program.

(2) The teams shall develop a written protocol for investigation of child abuse cases and for interviewing alleged victims of such abuse or neglect. Each team shall develop written agreements signed by member agencies, specifying the role of each agency, procedures to be followed to assess risks to the child and criteria and procedures to be followed to ensure the child victim's safety including removal of the alleged offender.

(3) Each team member shall be trained in risk assessment, dynamics of child abuse and interviewing and investigatory techniques.

(4) Each team shall classify, assess and review ~~all~~ a representative selection of cases referred to either the department or to law enforcement entities for investigation of child abuse or neglect.

(5) Each multidisciplinary team shall develop policies that provide for an independent review of investigation procedures utilized in cases upon completion of any court actions on those cases. The procedures shall include independent citizen input. Nonoffending parents of child abuse victims shall be notified of the review procedure.

(6) Prosecuting attorneys of the various counties may determine that multidisciplinary teams may be most effectively established through the use of joint exercise of powers agreements among more than one (1) county and such agreements are hereby authorized.

(7) Lack of review by a multidisciplinary team of a particular case does not defeat the jurisdiction of the court.

SECTION 11. That Section 16-1610, Idaho Code, be, and the same is hereby amended to read as follows:

16-1610. ~~DECREE----DISPOSITION-HEARING~~ PLANNING HEARING. (a) ~~If--a preponderance-of-the-evidence-of-the-adjudicatory-hearing-shows-that-the child--comes--within--the--purview-of-this-chapter,~~ The department shall prepare a written case plan. The case plan shall be filed with the court ~~shall--so--decree--and--in-its-decree-shall-make-a-finding-of-the facts-and-conclusions-of-law-upon-which-it-exercises--jurisdiction--over the--child~~ no later than sixty (60) days from the date the child was removed from the home or thirty (30) days after the adjudicatory hear-

ing, whichever occurs first. Copies of the case plan shall be delivered to the parents and other legal guardians, the guardian ad litem and attorney for the child. Within five (5) days of filing the plan, the court shall hold a planning hearing to determine whether to adopt, reject or modify the case plan proposed by the department.

(b) ~~Upon--entry--of-its-decree,-the-court-may-consider-any-information-relevant-to-the-disposition-of~~ Notice of the planning hearing shall be provided to the parents, legal guardians, guardians ad litem and foster parents. Although foster parents are provided notice of this hearing, they are not parties to the child~~,-but-in-any-event-shall:~~ protective act action.

~~(1)--Place-the-child-under-protective-supervision-in--his--own--home for-an-indeterminate-period-not-to-exceed-one-(1)-year-from-the-date entered--but--the-court-may-extend-the-period-of-time-upon-a-showing by-the-authorized-agency-that-continued-supervision-is-necessary-for the-best-interests-of-the-child;-or~~

~~(2)--Vest-legal-custody-in-the-department-or-other-authorized-agency subject-to-residual-parental-rights-and--subject--to--full--judicial review--by--the--court-of-all-matters-relating-to-the-custody-of-the child-by-the-department-or-other-authorized-agency.-The-court--shall make--written--findings-as-to-whether-the-department-made-reasonable efforts-to-prevent-the--placement--of--the--child--in--foster--care, including-findings,-when-appropriate,-that:~~

~~(i)---reasonable--efforts--were-made-but-were-not-successful-in eliminating-the-need-for-foster-care-placement-of-the-child;~~

~~(ii)--reasonable-efforts-were-not--made--because--of--immediate danger-to-the-child;~~

~~(iii)-reasonable--efforts--to--temporarily-place-the-child-with related-persons-were-made-but-were-not-successful;-or~~

~~(iv)--reasonable-efforts-were-not-required-as--the--parent--had subjected--the--child-to-aggravated-circumstances-as-determined by-the-court-including,-but-not-limited-to:--abandonment;--torture;--chronic-abuse;-sexual-abuse;-committed-murder;-committed voluntary-manslaughter;-aided-or-abetted,-attempted,--conspired or-solicited-to-commit-such-a-murder-or-voluntary-manslaughter; committed--a--felony--assault--that--results--in-serious-bodily injury-to-any-child-of-the-parent;-or-the--parental--rights--of the--parent-to-a-sibling-have-been-terminated-involuntarily-and that-as-a-result,-a-hearing-to-determine-the--permanent--future plan--for--this--child--will-be-held-within-thirty-(30)-days-of this-determination.-Reasonable-efforts-shall-be-made--to--place the--child-in-a-timely-manner-in-accordance-with-the-permanency plan-and-to-complete-whatever-steps-are-necessary--to--finalize the--permanent--placement--of-the-child.-Whenever-possible,-the child's-connections-to--the--community,--including--individuals with-a-significant-relationship-to-the-child,-religious-organizations--and--community--activities,-will-be-maintained-through the-transition.~~

~~(3)--The-court-shall-make-written-findings-that--reasonable--efforts to-reunify-are-not-required-as-the-parent-had-subjected-the-child-to aggravated-circumstances-including,-but-not-limited-to:-abandonment; torture;--chronic--abuse;--sexual-abuse;-committed-murder;-committed voluntary-manslaughter;-aided-or-abetted,--attempted,--conspired--or solicited-to-commit-such-a-murder-or-voluntary-manslaughter;-commit-~~

~~ted--a--felony--assault-that-results-in-serious-bodily-injury-to-the child-or-another-child-of-the-parent;-or-the-parental-rights-of--the parent-to-a-sibling-have-been-terminated-involuntarily.~~

(c) ~~A--decree-vesting-legal-custody-in-the-department~~ The case plan shall ~~be-binding-upon~~ set forth reasonable efforts which will be made to make it possible for the child to return to his home and shall concurrently include a plan setting forth reasonable efforts to place the child for adoption with a legal guardian or in another approved permanent placement. Whenever possible, the child's connections to the community, including individuals with a significant relationship to the child, religious organizations and community activities, will be maintained through the transition. The plan shall state with specificity the role of the department~~,-and-shall-state-the-department-shall-prepare-a written-case-plan-within-thirty-(30)-days-of-placement-designed-to--make it-possible-for-the-child-to-return-to-his-home-or-may-concurrently-contain--reasonable-efforts-to-place-the-child-for-adoption-or-with-a-legal guardian;-shall-state-with-specificity-the-role-of-the-department-toward each-parent;-and-shall-be-for-an-indeterminate-period-not-to-exceed--one (1)--year--from--the-date-entered,-except-that-the-department-may-file-a petition-with-the-court-requesting-renewal-of-the-order-and--the--court, after-notice-to-the-parties-and-hearing-and-finding,-may-renew-the-order if--it--finds--such-renewal-necessary-to-safeguard-the-best-interests-of the-child.-Renewals-may-be-made-during-minority,-but-no-order-shall-have any-force-or-effect-beyond-minority.-The--department--may--petition--the court--at-any-time-to-vacate-any-order-placing-a-child-in-its-custody-or under-its-protective-supervision,-but-must-provide-notice-of-hearing--to each--parent--having--joint--custody.-Upon-such-renewal,-the-court-shall expressly-include-in-its-order-determination-of-the-permanency-plan--for the--child-that-includes-whether,-and-if-applicable-when,-the-child-will be-returned-to-the-parent,-placed-for-adoption-and-the-state-will-file-a petition-for-termination-of--parental--rights,--or--referred--for--legal guardianship--or,--in-cases-where-compelling-reasons-exist-that-it-would not-be-in-the-best-interest-of-the-child-to-terminate--parental--rights, placed--in--another--permanent-living-arrangement~~ toward each parent and shall be for an indeterminate period not to exceed the child's eighteenth birthday.

(d) ~~A--decree--vesting--legal-custody-in-an-authorized-agency-other than-the-department-shall-be,-for-an-indeterminate-period-of-time-not-to exceed-one-(1)-year-from-the--date--entered,--but~~ The case plan, as approved by the court, ~~may-extend-the-period-of-time-during-the-child's minority-upon-a-showing-by-the-authorized-agency-that-continued--custody or--supervision-is-necessary-for-the-best-interests-of-the-child,-and-on such-other-terms-as~~ shall be entered into the record as an order of the court. ~~shall--state--in--its--decree-to-be-in-the-best-interests-of-the child-and-which-the-court-finds-to--be--acceptable--to--such--authorized agency~~ In the absence of a finding of aggravated circumstances as provided for in section 16-1608(e)(4), Idaho Code, the court's order shall provide that reasonable efforts shall be made to reunify the family in a timely manner in accordance with the case plan or in the alternative to complete the steps necessary to finalize the permanent placement of the child.

~~(e)--In--order--to--preserve--the--unity-of-the-family-system-and-to ensure-the-best-interests-of-the-child-whether-issuing-an-order-of--protective-supervision-or-an-order-of-legal-custody,-the-court-may-consider~~

~~extending--or--initiating--a-protective-order-as-part-of-the-decree.-The protective-order-shall-be-determined-as-in-the--best--interests--of--the child--and--upon-a-showing-of-continuing-danger-to-the-child.-The-conditions-and-terms-of-the-protective-order-shall-be-clearly-stated--in--the decree.~~

~~(f)--If-the-court-does-not-find-that-the-child-comes-within-the-purview-of-this-chapter-pursuant-to-subsection-(a)-of-this-section-it-shall dismiss-the-petition.~~

SECTION 12. That Section 16-1611, Idaho Code, be, and the same is hereby amended to read as follows:

16-1611. ~~MODIFICATION--OR--REVOCATION~~ REVIEW AND PERMANENCY HEARINGS. (a) A ~~petition~~ motion for revocation or modification of an order issued under section ~~16-1608~~, Idaho Code, ~~or--a--petition--for review--of--the-child's-case~~ may be filed by ~~either-of-the-child's-parents-or-guardian-ad-litem~~ the department or any party; provided that no ~~petition~~ motion may be filed by the respondents under this section within three (3) months of a prior hearing on care and placement of the child. All persons required to be summoned or notified of the original petition pursuant to section 16-1606, Idaho Code, shall be served with notice of a ~~petition~~ motion for review of a child's case.

(b) If the ~~petition~~ motion filed under subsection (a) of this section alleges that the child's best interests are no longer served by carrying out the order issued under section ~~16-1608~~, Idaho Code, or the department or other authorized agency has failed to provide adequate care for the child, the court shall hold a hearing on the ~~petition~~ motion.

(c) ~~At-a~~ hearing ~~to-consider~~ for review of the ~~petition filed-under subsection--(a)-of-this-section-the-court-shall-proceed-according-to-the provisions-of-subsection-(b)-of-section-16-1608,-Idaho-Code.--The--court may--dismiss--the--petition--or--it--may--revoke--or-modify-the-order-as required-by-the-best-interests-of-the-child~~ child's case and permanency plan shall be held no later than six (6) months after entry of the court's order taking jurisdiction under the act, and every six (6) months thereafter, so long as the child is in the custody of the department or authorized agency.

(d) A hearing shall be held to review the permanency plan of the department prior to twelve (12) months from the date the child is removed from the home or the date of the court's order taking jurisdiction under this chapter, whichever occurs first. The court shall review, approve, reject or modify the permanency plan of the department and review progress in accomplishing the permanency plan. This permanency hearing may be combined with the review hearing required under subsection (c) of this section.

(e) By order of the court a hearing officer may be appointed to conduct hearings under this section.

(f) The department or authorized agency may ~~petition~~ move the court at any time to vacate any ~~order placing~~ a child in its custody or under its protective supervision.

(g) The department or any party may move the court requesting relief from the duty imposed on the department pursuant to the provisions of section 16-1623(1), Idaho Code, that it seek termination of parental rights. The court may grant the department's motion if it

appears based on compelling reasons in the record that the presumption has been rebutted.

SECTION 13. That Section 16-1612, Idaho Code, be, and the same is hereby amended to read as follows:

16-1612. ~~CUSTODY----TIME-FOR-HEARING~~ EMERGENCY REMOVAL.
(a) (1) A child may be taken into ~~custody~~ shelter care by a peace officer or other person appointed by the court without an order issued pursuant to subsection (d) of section ~~16-1606~~ or section 16-16~~1~~08, Idaho Code, only where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury to the child.
(2) An alleged offender may be removed from the home of the victim of abuse or neglect by a peace officer or other person appointed by the court without an order, issued pursuant to subsection (e) of section 16-1606, Idaho Code, only where the child is endangered and prompt removal of an alleged offender is necessary to prevent serious physical or mental injury to the child.
(b) When a child is taken into ~~custody~~ shelter care under subsection (a) of this section, he may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, unless a shelter care hearing has been held pursuant to section 16-1614, Idaho Code, and the court orders an adjudicatory hearing.
(c) When an alleged offender is removed from the home under subsection (a) (2) of this section, a motion based on a sworn affidavit by the department must be filed simultaneously with the petition and the court shall determine at a shelter care hearing, held within a maximum of twenty-four (24) hours, excluding Saturdays, Sundays and holidays, whether the relief sought shall be granted, pending an adjudicatory hearing. Notice of such hearing shall be served upon the alleged offender at the time of removal or other protective relief.

SECTION 14. That Section 16-1613, Idaho Code, be, and the same is hereby amended to read as follows:

16-1613. EMERGENCY REMOVAL -- NOTICE. ~~---PLACEMENT----IMMUNITY.~~ (a) A peace officer or other person appointed by the court who takes a child into ~~custody~~ shelter care under section 16-1612, Idaho Code, shall immediately:
(1) ~~t~~Take the child to a place of shelter, and
(2) ~~n~~Notify the court of the action taken and the place to which the child was taken, and~~;~~
(3) ~~n~~Notify each of the parents, guardian or other legal custodian that the child has been taken into ~~custody~~ shelter care, the type and nature of shelter care, and that the child may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays and holidays, within which time there must be a shelter care hearing.
(b) A peace officer or other person appointed by the court who takes a child into ~~custody~~ shelter care under section 16-1612, Idaho Code, shall not be held liable either criminally or civilly unless the action of taking the child ~~was exer~~cised in bad faith and/or the requirements of subsection (a) of this section are not complied with.

SECTION 15. That Section 16-1614, Idaho Code, be, and the same is hereby amended to read as follows:

16-1614. SHELTER CARE HEARING. (a) Notwithstanding any other provision of this chapter, when a child is taken into ~~custody~~ shelter care pursuant to section 16-1612, Idaho Code, a hearing to determine whether the child should be released shall be held according to the pro~~visions~~ of this section.

(b) Each of the parents or custodian from whom the child was removed shall be given notice of the shelter care hearing. Such notice shall include the time, place, and purpose of the hearing; and, that such person is entitled to be represented by legal counsel. Notice as required by this subsection shall be given at least twenty-four (24) hours before the shelter care hearing.

(c) Notice of the shelter care hearing shall be given to the parents or custodian from whom the child was removed by personal service and the return of service shall be filed with the court and to any person having joint legal or physical custody of the subject child. Provided, however, that such service need not be made where the undelivered notice is returned to the court along with an affidavit stating that such parents or custodian could not be located or were out of the state.

(d) The shelter care hearing may be continued for a reasonable time upon request by the parent, custodian or counsel for the child.

(e) If, upon the completion of the shelter care hearing, it is shown that:

(1) ~~a~~A petition has been filed; and

(2) ~~t~~There is reasonable cause to believe the child comes within the ~~purview~~ jurisdiction of the court under this chapter and that reasonable efforts to prevent the placement of the child in shelter care could not be provided because of the immediate danger to the child or were provided but were not successful in eliminating the need for foster care placement of the child; and

(3) ~~t~~The child could not be placed in the temporary sole custody of a parent having joint legal or physical custody; and

(4) It is contrary to the welfare of the child to remain in the home; and

~~(5) I~~~~t~~ is in the best interests of the child to remain in temporary shelter care pending the conclusion of the adjudicatory hearing; or

(~~5~~6) ~~t~~There is reasonable cause to believe that the child comes within the ~~purview~~ jurisdiction of the court under this chapter, but a reasonable effort to prevent placement of the child outside the home could be affected by a protective order safeguarding the child's welfare and maintaining the child in his present surroundings; the court shall issue, within twenty-four (24) hours of such hearing, an order of temporary legal custody and/or a protective order. Any evidence may be considered by the court which is of the type which reasonable people may rely upon.

(f) Upon ordering ~~temporary custody~~ shelter care pursuant to subsection (e) of this section, the court shall also order an adjudicatory hearing to be held as soon as possible, but in no event later than thirty (30) days from the date the petition was filed.

(g) If the court does not find that the child should remain in shelter care under subsection (e) of this section, the child shall be

released and the court may dismiss the petition.

SECTION 16. 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 legal custody of the department or under its protective supervision pursuant to section 16-16~~1~~08, 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 16-16~~1~~08(be)~~(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. A petition to terminate parental rights shall be filed as a motion in the existing child protective action.

SECTION 17. That Section 16-1617, Idaho Code, be, and the same is hereby amended to read as follows:

16-1617. APPEAL -- EFFECT ON CUSTODY. An interested party aggrieved by any order or decree of the court may appeal to the district court within thirty (30) days of the filing of such order or decree. Where the order affects the custody of a child, the appeal shall be heard at the earliest practicable time. The pendency of an appeal shall not suspend the order of the court regarding a child, and it shall not discharge the child from the legal custody of the authorized agency to whose care he has been committed, unless otherwise ordered by the district court. No bond or undertaking shall be required of any party appealing to the district court under the provisions of this section. Any final order or judgment of the district court shall be appealable to the supreme court of the state of Idaho in the same manner as appeals in other civil actions. The filing of the notice of appeal shall not, unless otherwise ordered, stay the order of the district court.

SECTION 18. That Section 16-1618, Idaho Code, be, and the same is hereby amended to read as follows:

16-1618. RIGHT TO COUNSEL -- GUARDIAN AD LITEM. (a) In any proceeding under this chapter the court shall appoint a guardian ad litem for the child or children to serve at each stage of the proceeding and in appropriate cases ~~may~~ shall appoint counsel to represent the ~~child--or~~ guardian~~.--The court may appoint independent counsel for a parent if the proceedings are complex, counsel is necessary to--protect--the--parent's interests--adequately--and such interests are not represented adequately by another party~~, and in appropriate cases, may appoint separate counsel for the child.

(b) If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court ~~may~~ shall appoint separate counsel for the child. For a child under the age of twelve (12) years the attorney will have the powers and duties of a guardian ad litem. For a child twelve (12) years of age or older, the court may order that the counsel act with or without the powers and duties of a guardian ad litem.

(c) Counsel appointed for the child under the provisions of this section shall be paid for by the county unless the party for whom counsel is appointed has an independent estate sufficient to pay such costs.

SECTION 19. 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, 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~~ prognoses 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. The department shall file with the court at least five (5) days prior to the permanency hearing under section 16-1611, Idaho Code, the permanency plan and recommendations of the department. 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 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 pro-

cedures 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 the 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 20. That Section 56-204B, Idaho Code, be, and the same is hereby amended to read as follows:

56-204B. TEMPORARY SHELTER CARE. The state department shall provide places of shelter ~~which may be designated by the magistrate courts~~ as authorized by law for the placement of children for temporary care who have been brought into the custody of the magistrate courts or who have been taken into custody for their protection by peace officers. Such places of shelter may be maintained by the state department or may be licensed foster family homes or licensed foster institutional facilities employed or retained for shelter care by the state department.

SECTION 21. That Section 66-317, Idaho Code, be, and the same is hereby amended to read as follows:

66-317. DEFINITIONS. As used in this chapter, terms shall have the following meanings:

(a) "Department director" means the director of the state department of health and welfare.

(b) "Voluntary patient" means an individual admitted to a facility for evaluation pursuant to section 18-211 or 20-520, Idaho Code, or admitted to a facility for treatment pursuant to section 66-318, Idaho Code.

(c) "Involuntary patient" means an individual committed pursuant to section 18-212, 18-214, 66-329 or 66-1201, Idaho Code, or committed pursuant to section 16-16~~10~~08 or 20-520, Idaho Code, and admitted to a facility for the treatment of minors.

(d) "Licensed physician" means an individual licensed under the laws of this state to practice medicine or a medical officer of the government of the United States while in this state in the performance of his official duties.

(e) "Designated examiner" means any person designated by the department director as specially qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions. Such persons shall be psychiatrists, licensed psychologists, licensed physicians, a holder of an earned masters level or higher degree in social work from an accredited program, a registered nurse with an earned masters level or higher degree in psychiatric nursing from an accredited program, or a holder of an earned masters level or higher degree in psychology from an accredited program.

(f) "Dispositioner" means a designated examiner employed by or under contract with the department of health and welfare and designated by the department director to determine the appropriate location for care and treatment of involuntary patients.

(g) "Facility" means any public or private hospital, sanatorium,

institution, mental health center or other organization designated in accordance with rules adopted by the board of health and welfare as equipped to initially hold, evaluate, rehabilitate or to provide care or treatment, or both, for the mentally ill.

(h) "Lacks capacity to make informed decisions about treatment" means the inability, by reason of mental illness, to achieve a rudimentary understanding after conscientious efforts at explanation of the purpose, nature, and possible significant risks and benefits of treatment.

(i) "Inpatient treatment facility" means a facility in which an individual receives medical and mental treatment for not less than a continuous twenty-four (24) hour period.

(j) "Supervised residential facility" means a facility, other than the individual's home, in which the individual lives and in which there lives, or are otherwise on duty during the times that the individual's presence is expected, persons who are employed to supervise, direct, treat or monitor the individual.

(k) "Likely to injure himself or others" means either:

(1) A substantial risk that physical harm will be inflicted by the proposed patient upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or

(2) A substantial risk that physical harm will be inflicted by the proposed patient upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm.

(l) "Mentally ill" means a person, who as a result of a substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality, requires care and treatment at a facility.

(m) "Gravely disabled" means a person who, as the result of mental illness, is in danger of serious physical harm due to the person's inability to provide for his essential needs.

(n) "Outpatient commitment" means a court order directing a person to comply with specified mental health treatment requirements, not involving the continuous supervision of a person in an inpatient setting, that are reasonably designed to alleviate or to reduce a person's illness or disability, or to maintain or prevent deterioration of the person's mental or emotional functioning. The specified requirements may include, but need not be limited to, taking prescribed medication, reporting to a facility to permit monitoring of the person's condition, or participating in individual or group therapy or in educational or vocational programs. Outpatient commitment may be up to one (1) year.

SECTION 22. That Section 66-324, Idaho Code, be, and the same is hereby amended to read as follows:

66-324. AUTHORITY TO RECEIVE INVOLUNTARY PATIENTS. The director of any facility is authorized to receive therein for observation, diagnosis, care and treatment any individual committed to the department director pursuant to sections 16-1608, ~~16-1814~~ 20-520, 18-212, 18-214 or 66-329, or transferred pursuant to section 66-1201, Idaho Code.

Approved March 22, 2001.

CHAPTER 108
(H.B. No. 188)

AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION; AMENDING SECTION 61-206, IDAHO CODE, TO PROVIDE THAT THE PIPELINE SAFETY SPECIALIST OF THE PUBLIC UTILITIES COMMISSION SHALL BE A NONCLASSIFIED EMPLOYEE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 61-206, Idaho Code, be, and the same is hereby amended to read as follows:

61-206. EMPLOYEES. (1) The commission shall have power to employ, during its pleasure, such officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees as it may deem necessary to carry out the provisions of this act or to perform the duties and exercise the powers conferred by law upon the commission.

(2) In addition to the number of nonclassified employees provided by other provisions of law, the commission shall have the authority to employ not more than three (3) nonclassified employees as regulatory policy strategists reporting directly to the commission and one (1) nonclassified pipeline safety specialist.

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 22, 2001.

CHAPTER 109
(H.B. No. 193)

AN ACT

RELATING TO THE ELECTION OF COMMISSIONERS OF A FIRE PROTECTION DISTRICT; AMENDING SECTION 31-1408A, IDAHO CODE, TO GOVERN THE ELECTION OF COMMISSIONERS FROM EXPANDED BOARDS OF FIRE PROTECTION DISTRICTS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 31-1408A, Idaho Code, be, and the same is hereby amended to read as follows:

31-1408A. DECISION TO INCREASE THE SIZE OF THE BOARD. Subsequent to the creation of a fire protection district and the appointment of the first board of fire protection commissioners, the fire protection board may, by a majority vote of all of the fire protection district board members elect to increase the size of the board to five (5) members.

If the board of fire protection commissioners elect to expand the

board to five (5) members, the existing board members shall subdivide the district into five (5) subdivisions as nearly equal in population, area and mileage as practicable to be known as subdistricts one, two, three, four and five.

At the first election following the decision of the board of fire protection commissioners to expand the board from three (3) to five (5) members, five (5) commissioners shall be elected. The c~~C~~ommissioners from fire protection subdistricts one~~,~~ shall be elected for a term of one (1) year; the commissioner from subdistrict two for two (2) years; the commissioner from subdistrict three for three (3) years; and the commissioners from subdistricts four and five shall be elected for terms of four (4) years. ~~and the commissioners from subdistricts two (2) and four (4) shall be elected for a term of two (2) years.~~ Thereafter, the term of all commissioners shall be four (4) years.

A fire district which, prior to the effective date of this section, had elected to expand a board from three (3) to five (5) members shall, prior to the next election of the district, adopt a transition schedule as nearly reflecting the schedule provided in this section as possible so that one (1) commissioner is elected each year except that in one (1) year, two (2) commissioners are elected.

Approved March 22, 2001.

CHAPTER 110
(H.B. No. 198)

AN ACT

RELATING TO THE DEPARTMENT OF HEALTH AND WELFARE; REPEALING SECTION 39-3015, IDAHO CODE; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1009, IDAHO CODE, TO PROVIDE AUTHORITY FOR THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND WELFARE OR THE DIRECTOR'S DESIGNEE TO CONDUCT INVESTIGATIONS AND INSPECTIONS UNDER CERTAIN CONDITIONS, TO PROVIDE FOR THE RIGHT OF ENTRY BY THE DIRECTOR OR THE DIRECTOR'S DESIGNEE, TO PROVIDE FOR ADMINISTRATIVE AND CIVIL ENFORCEMENT ACTIONS WITHIN A SPECIFIED TIME PERIOD, TO PROVIDE FOR MONETARY PENALTIES, TO PROVIDE FOR THE PAYMENT OF EXPENSES INCURRED BY THE STATE, TO PROVIDE THAT ACTIONS TAKEN PURSUANT TO CHAPTER 10, TITLE 56, IDAHO CODE, SHALL NOT RELIEVE PERSONS OF LIABILITY FOR CERTAIN INJURIES OR DAMAGE AND TO PROVIDE FOR INJUNCTIONS; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1010, IDAHO CODE, TO PROVIDE FOR CIVIL AND CRIMINAL ENFORCEMENT ACTIONS, TO PROVIDE FOR PRIVATE COUNSEL AND TO PROVIDE THAT THE ATTORNEY GENERAL MAY DELEGATE CERTAIN AUTHORITY AND DUTIES; AMENDING SECTIONS 39-139 AND 39-140, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-141, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTIONS 39-142, 39-143, 39-144, 39-145, 39-146, 39-146A AND 39-146B, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-147, IDAHO CODE, TO REDESIGNATE THE SECTION; AMENDING SECTIONS 39-150, 39-151 AND 39-152, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 39-153, 39-154, 39-155, 39-156, 39-157, 39-158 AND 39-159,

IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTIONS 39-160, 39-161, 39-162, 39-163, 39-164, 39-165, 39-166 AND 39-167, IDAHO CODE, TO REDESIGNATE THE SECTIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTIONS 39-168 AND 39-169, IDAHO CODE, TO REDESIGNATE THE SECTIONS; AMENDING SECTION 39-170, IDAHO CODE, TO REDESIGNATE THE SECTION AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-3030, IDAHO CODE, TO REDESIGNATE THE SECTION, TO DELETE REFERENCE TO A DATE, TO DELETE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1041, IDAHO CODE, TO DESIGNATE THE DEPARTMENT OF HEALTH AND WELFARE AS THE STATE AGENCY WITH RESPONSIBILITY FOR REGULATION OF X-RAY PRODUCING MACHINES AND TO PROVIDE FOR POWERS AND DUTIES OF THE DEPARTMENT; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1042, IDAHO CODE, TO DEFINE TERMS; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1043, IDAHO CODE, TO PROVIDE FOR RULES, TO PROVIDE LICENSING REQUIREMENTS AND PROCEDURES FOR LICENSING, TO PROVIDE FOR REGISTRATION OF X-RAY PRODUCING MACHINES AND TO PROVIDE FOR EXEMPTIONS FROM REGISTRATION OR LICENSING; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1045, IDAHO CODE, TO PROVIDE FOR INSPECTION BY THE DEPARTMENT OR ITS REPRESENTATIVE; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1046, IDAHO CODE, TO REQUIRE THE MAINTENANCE OF CERTAIN RECORDS AND TO PROVIDE FOR RULES ESTABLISHING STANDARDS RELATING TO PERSONNEL MONITORING AND REPORTING; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1047, IDAHO CODE, TO PROVIDE THAT THE STATE MAY ENTER INTO CERTAIN AGREEMENTS WITH THE FEDERAL GOVERNMENT RELATING TO X-RAY PRODUCING MACHINES AND TO PROVIDE FOR THE RECOGNITION OF FEDERAL LICENSES; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1048, IDAHO CODE, TO PROVIDE FOR INSPECTION AGREEMENTS AND TRAINING PROGRAMS; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1049, IDAHO CODE, TO PROVIDE FOR ADMINISTRATIVE PROCEDURES; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1050, IDAHO CODE, TO PROVIDE FOR INJUNCTION PROCEEDINGS; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1051, IDAHO CODE, TO PROHIBIT CERTAIN USES OF X-RAY PRODUCING MACHINES; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1052, IDAHO CODE, TO PROVIDE FOR THE IMPOUNDING OF CERTAIN X-RAY PRODUCING MACHINES; AMENDING CHAPTER 10, TITLE 56, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 56-1053, IDAHO CODE, TO PROVIDE FOR PENALTIES; AMENDING SECTION 49-306, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 49-452, IDAHO CODE, TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 39-3015, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1009, Idaho Code, and to read as follows:

56-1009. INVESTIGATION -- INSPECTION -- RIGHT OF ENTRY -- VIOLATION -- ENFORCEMENT -- PENALTY -- INJUNCTIONS. (1) The director shall cause investigations to be made upon receipt of information concerning an alleged violation of this chapter or of any rule, 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 hazards;

(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 chapter or of rules, 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 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 chapter or any rule, permit or order issued or promulgated pursuant to this chapter, 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 chapter, 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 pursuant to 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 56-1010, 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 chapter or any rule, permit or order which has become effective pursuant to this chapter. Such action may be brought to compel compliance with any provision of this chapter or with any rule, permit or order promulgated hereunder and for any relief or remedies authorized in this chapter. 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, 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 chapter or any rule, permit or order promulgated pursuant to this chapter 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. 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 chapter 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 and any good faith efforts by the person to comply with the law.

(6) In addition to such civil penalties, any person who has been determined to have violated the provisions of this chapter or the rules, permits or orders promulgated thereunder, shall be liable for any expense incurred by the state in enforcing the chapter, or in enforcing or terminating any nuisance, cause of sickness or health hazard.

(7) No action taken pursuant to the provisions of this chapter or of any other 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 chapter or of the rules, permits and orders promulgated thereunder.

(8) In addition to, and notwithstanding other provisions of this chapter, in circumstances of emergency creating conditions of imminent and substantial danger to the public health, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt any activity in violation of the provisions of this chapter or rules, permits and orders promulgated thereunder. In such action the court may issue an ex parte restraining order.

SECTION 3. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1010, Idaho Code, and to read as follows:

56-1010. COMMENCEMENT OF CIVIL ENFORCEMENT ACTIONS -- CRIMINAL ACTIONS AUTHORIZED -- DUTIES OF ATTORNEY GENERAL. Upon request of 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 56-1009, 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 4. That Section 39-139, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-13~~956-1011. EMERGENCY MEDICAL SERVICES -- STATEMENT OF INTENT. It is the purpose of the legislature of the state of Idaho in the adoption of ~~this act~~ sections 56-1011 through 56-1018B, Idaho Code, to recognize the importance of the delivery of emergency medical services and to provide reasonable regulation of the same. For t~~his pur~~pose, ~~this act specifically states that~~ the provisions of section 54-1803, Idaho Code, shall not be so construed as to prohibit or penalize emergency medical services rendered by a person authorized to render emergency medical services by ~~this act~~ sections 56-1011 through 56-1018B, Idaho Code, if such emergency medical service is rendered under the responsible super-

vision and control of a licensed physician.

SECTION 5. That Section 39-140, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-1401~~56-1012. DEFINITIONS. As used in ~~this act~~ sections 56-1011 through 56-1018B, Idaho Code:

(1) "Ambulance" means any privately or publicly owned ground vehicle, nautical vessel, fixed wing aircraft or rotary wing aircraft used for, or intended to be used for the transportation of sick or injured persons who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with ~~the provisions of this act~~ sections 56-1011 through 56-1018B, Idaho Code, and specifications established by the board of health and welfare.

(2) "Board of ~~h~~Health and ~~w~~Welfare" means the Idaho board of health and welfare.

(3) "Board of ~~m~~Medicine" means the Idaho board of medicine as provided in chapter 18, title 54, Idaho Code.

(4) "Certified Personnel" means individuals who have completed training and successfully passed examinations for training and skills proficiency in one (1) or several levels as certified by the department of health and welfare. These several levels of certified personnel shall include:

(a) FR -- "First Responder" (hereafter FR) means an individual certified by the EMS bureau of the Idaho department of health and welfare as an FR on the basis of successful completion of an FR course approved by the board of health and welfare and subsequent required continuing training.

(b) EMT-B -- "Emergency Medical Technician-Basic" (hereafter EMT-B) means an individual certified by the EMS bureau of the Idaho department of health and welfare on the basis of successful completion of an EMT-B course approved by the board of health and welfare and subsequent required continuing training.

(c) "Ambulance Rating" means a certification issued by the EMS bureau of the Idaho department of health and welfare to an EMT-B on the basis of successful completion of supervised infield ambulance experience as defined by the board of health and welfare.

(d) "Advanced Emergency Medical Technician-Ambulance" (hereafter advanced EMT-A) means a person who:

(i) Is certified by the EMS bureau of the Idaho department of health and welfare on the basis of successful completion of EMT-A training and in addition, has completed at least fifty (50) hours of advanced training in such techniques as intravenous fluid therapy, antishock trouser application, airway management, and subsequent required continued training; and

(ii) Has received additional training by a licensed physician:

(A) To administer drugs under written or oral authorization of a licensed physician; and

(B) To perform such other acts under written or oral authorization of a licensed physician as shall be authorized by the board of medicine; and

(iii) Has been examined and certified as an advanced EMT-A by an authorized representative of the department.

(e) "Emergency Medical Technician-Intermediate" (hereafter EMT-I)

means a person who:

(i) Has completed all the requirements for certification as an EMT-I; and

(ii) Has successfully completed a course in patient care including the required training under the supervision of a licensed physician covering the scope of practice defined by the board of medicine; and

(iii) Has been examined and certified as an EMT-I by an authorized representative of the department.

(f) "Emergency Medical Technician-Paramedic" (hereafter EMT-P) means a person who:

(i) Has completed all the requirements for certification as an EMT-P; and

(ii) Has successfully completed a course in intensive patient care including the required training under the supervision of a licensed physician, including training in cardiac defibrillation, cardiac monitoring, endotracheal intubation and drug administration; and

(iii) Has been examined and certified as an EMT-P by an authorized representative of the department.

(5) "Department" means the Idaho department of health and welfare.

(6) "Emergency Medical Services" means the services utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

(7) "Non-Transport Service" means a service licensed by the department of health and welfare, EMS bureau, operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended to be the service that will actually transport sick or injured persons.

(8) "Non-Transport Vehicle" means any vehicle licensed by the department of health and welfare, EMS bureau, operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended as the vehicle that will actually transport sick or injured persons.

(9) "Supervision" means the medical direction by a licensed physician of activities provided by certified personnel affiliated with a licensed ambulance or non-transport service, including, but not limited to: establishing standing orders and protocols, reviewing performance of certified personnel, providing instructions for patient care via radio or telephone, and other oversight.

(10) "Transfer" means the transportation of a patient from one (1) medical care facility to another.

SECTION 6. That Section 39-141, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-141~~56-1013. AUTHORIZED ACTIONS. Persons certified by the department shall be authorized to perform such acts under written or oral authorization of a licensed physician as shall be established by rules of the board of medicine, including, but not limited to, administration of intravenous solutions and drugs, cardiac defibrillation, antishock trouser application, airway management, endotracheal intubation, and other patient care.

SECTION 7. That Section 39-142, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-142~~56-1014. LIABILITY. No act or omission of any person who is duly certified under ~~this act~~ sections 56-1011 through 56-1018B, Idaho Code, ~~by the de~~partment of health and welfare done or omitted in good faith while rendering emergency medical services to a person or persons who are perceived to need immediate care in order to prevent loss of life or aggravation of physiological or psychological illness or injury shall impose any liability upon those personnel, the supervising physician, the hospital, the organization providing the service, or upon a federal, state, county, city or other local governmental unit, or upon employees of such governmental unit, unless such provider of care or such personnel be shown to have caused injury and damages to such person or persons as a proximate result of his, her or their reckless or grossly negligent misconduct, which shall be the sole grounds for civil liability of such persons in the provision of care or assistance under ~~this act~~ sections 56-1011 through 56-1018B, Idaho Code, regardless of the circumstance under which such care or assistance may be provided. This section shall not relieve the organization or agency operating the service from the duty of securing, maintaining and operating, the equipment designated for use in performing the emergency medical services.

SECTION 8. That Section 39-143, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-143~~56-1015. FAILURE TO OBTAIN CONSENT. No person certified under ~~this act sections~~ 56-1011 through 56-1018B, Idaho Code, or physician or hospital licensed in this state shall be subject to civil liability, based sol~~ely upon~~ failure to obtain consent in rendering emergency medical, surgical, hospital or health services to any individual regardless of age where that individual is unable to give this consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care, provided, however, that such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent. The provision or refusal of consent under ~~this act~~ sections 56-1011 through 56-1018B, Idaho Code, shall be governed by chapter 43, title 39, Idaho Code.

SECTION 9. That Section 39-144, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-144~~56-1016. AMBULANCE MINIMUM STANDARDS. Each ambulance service and ~~non-transport~~ service shall be licensed by the department and shall meet the following standards:

(1) Ambulance vehicles -- Each new ambulance vehicle purchased after the effective date of these standards shall conform to the ambulance vehicle specifications for that type established by the board of health and welfare. The patient compartment of each ambulance vehicle shall be maintained in a clean and sanitary condition.

(2) Ambulance equipment -- Each ambulance shall be equipped with the patient care items deemed essential for that type of ambulance by the board of health and welfare.

(3) Ambulance personnel -- There shall be at least two (2) ambu-

lance crew members on each patient transport, with the crew member delivering patient care being, at a minimum, a state certified emergency medical technician (EMT), except that with the patient's and the patient's physician's permission, an EMT attendant shall not be required on routine, nonemergency transfer calls.

(4) Ambulance dispatch -- Each ambulance service shall have a twenty-four (24) hour dispatch arrangement and shall respond to calls on a twenty-four (24) hour basis.

(5) Ambulance inspections and licensing -- The department of health and welfare, EMS bureau, shall conduct inspections at least annually related to ambulance service licensing or shall contract to have the inspections carried out. Each ambulance and non-transport vehicle shall have a current state license in order to operate.

(6) Ambulance minimum standards waiver -- The controlling authority providing ambulance services may petition the board of health and welfare for waiver of the ambulance standards of ~~this act~~ sections 56-1011 through 56-1018B, Idaho Code, if compliance with these standards would cause undue hardship on the community being served, or would result in abandonment of ambulance services.

(7) All ambulances in service on the effective date of ~~this act~~ sections 56-1011 through 56-1018B, Idaho Code, are accorded "grandfather rights," and are therefore exempt from the ambulance vehicle specifications established ~~by the board~~ of health and welfare, whether or not such ambulances continue under the control of the same authority.

SECTION 10. That Section 39-145, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-145~~56-1017. RULES. (1) The board of medicine is authorized and directed to adopt appropriate rules defining the allowable scope of practice and acts and duties which can be performed by persons certified by the department and the required level of supervision by a licensed physician.

(2) The board of health and welfare is authorized and directed to adopt appropriate rules and standards concerning the administration of ~~this act~~ sections 56-1011 through 56-1018B, Idaho Code, including criteria for training programs, certification of personnel, licensure of ambulances and non-transport services, licensure of ambulance and non-transport vehicles, establishment of fees for training, inspections, and certifications, and appropriate requirements for recertification of personnel and equipment. The rules of the board of health and welfare must be consistent with the rules adopted by the board of medicine.

(3) Additionally, the department shall develop guidelines, standards and procedures for reducing exposure to pathogens from human blood, tissue or fluids. Such guidelines, standards and procedures shall be made available to all law enforcement personnel, all emergency medical services personnel, and such other emergency personnel as request such information.

SECTION 11. That Section 39-146, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-146~~56-1018. EMERGENCY MEDICAL SERVICES ~~ACCOUNT~~ FUND. There is here~~by created in~~ the dedicated fund of the state treasury ~~an account~~ a

fund known as the "Emergency Medical Services ~~Account~~ Fund." Subject to appropriation by the legislature, moneys in the ~~account~~ fund shall be used exclusively for the purposes of emergency medical services training, communications, vehicle and equipment grants, and other programs furthering the goals of highway safety and emergency response providing medical services at motor vehicle accidents.

SECTION 12. That Section 39-146A, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-146A~~56-1018A. EMERGENCY MEDICAL SERVICES ~~ACCOUNT~~ FUND II. There is ~~hereby created in~~ the dedicated fund of the state treasury ~~an account~~ a fund known as the emergency medical services ~~account~~ fund II. Subject to appropriation by the legislature, moneys in the ~~account~~ fund shall be used exclusively for the purposes of emergency medical services.

SECTION 13. That Section 39-146B, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-146B~~56-1018B. EMERGENCY MEDICAL SERVICES ~~ACCOUNT~~ FUND III. (1) There ~~is hereby cre~~ated in the dedicated fund of the state treasury ~~an account~~ a fund known as the emergency medical services ~~account~~ fund III. Subject to appropriation by the legislature, moneys in the ~~account~~ fund shall be used exclusively for the purpose of acquiring vehicles and equipment for use by emergency medical services personnel in the performance of their duties which include highway safety and emergency response to motor vehicle accidents.

(2) The bureau of emergency medical services of the department of health and welfare shall be responsible for distributing moneys from the ~~account~~ fund to qualifying nonprofit and governmental entities that submit an application for a grant from the ~~account~~ fund. The bureau shall approve grants based on the following criteria:

(a) The requesting entity is a nonprofit or governmental entity which holds a current license as an ambulance or nontransport service issued by the state of Idaho;

(b) The requesting entity has demonstrated need based on criteria established by the bureau;

(c) The requesting entity has provided verification that it has received the approval and endorsement of a city or county within its service area;

(d) The requesting entity has certified that the title to any vehicle purchased with funds from the ~~account~~ fund shall be in the name of the city or county which endorsed the application and shall submit proof of titling as soon as practicable;

(e) The state of Idaho shall retain a security interest in the vehicle to secure the performance of the grant recipient to utilize the vehicle consistent with the intent described in the application.

(3) Notwithstanding the requirements of subsections (2)(c) and (2)(d) of this section, the bureau of emergency medical services is authorized to approve and issue a grant to an applicant in the absence of an endorsement if the endorsement is withheld without adequate justification.

SECTION 14. That Section 39-147, Idaho Code, be, and the same is

hereby amended to read as follows:

~~39-1475~~6-1019. SERVICES TO VICTIMS OF CYSTIC FIBROSIS. The department of health and welfare shall establish, through the crippled children's program, a program of services to persons suffering from cystic fibrosis who are twenty-one (21) years or more of age. The department shall establish uniform standards of financial eligibility for services provided under this section.

SECTION 15. That Section 39-150, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-150~~56-1020. LEGISLATIVE INTENT. It is the legislative intent to recognize the fundamental right of a person to control the decisions relative to ~~the rendering or~~ withholding of their medical care. ~~This act~~ Sections 56-1020 through 56-1035, Idaho Code, in keeping with sections 39-4501 through 39-4509, Idaho Code, ~~applies~~ apply to noninstitutional situations.

It is the purpose of this legislation to establish rules and procedures allowing the physician of a terminally ill person, with the authorization of the person or their legal representative, to be able to issue a directive, in advance, instructing emergency medical services personnel not to perform resuscitation if called to attend to those persons. A method of identification is defined and correct procedures outlined for emergency medical services personnel to properly respond to these situations.

SECTION 16. That Section 39-151, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-151~~56-1021. DEFINITIONS. As used in ~~this act~~ sections 56-1020 through 56-1035, Idaho Code:

(1) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient, including the physician responsible for monitoring and directing the activities of emergency medical services personnel.

(2) "Cardiopulmonary resuscitation" or "CPR" means measures to restore cardiac function or to support breathing in the event of cardiac or respiratory arrest or malfunction. "CPR" includes, but is not limited to, chest compression, delivering electric shock to the chest, or placing tubes in the airway to assist breathing.

(3) "Comfort care" means treatment given in an attempt to protect and enhance quality of life without artificially prolonging that life.

(4) "Decisional capacity" means the ability to provide informed consent to or refusal of medical treatment.

(5) "Department" means the department of health and welfare.

(6) "Do not resuscitate identification" or "DNR identification" means a standardized form of identification approved by the department, that signifies that the possessor has a DNR order that has not been revoked or that the possessor's attending physician has issued a DNR order for the possessor and has documented the order in the possessor's medical file.

(7) "Do not resuscitate order" or "DNR order" means a documented directive from a licensed physician that emergency life-sustaining pro-

cedures should not be administered to a particular person.

(8) "Do not resuscitate protocol" or "DNR protocol" means a standardized method of procedure, approved by the board of health and welfare and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(9) "Emergency medical services personnel" means the personnel of a service engaged in providing initial emergency medical assistance including, but not limited to, first responders, emergency medical technicians, advanced emergency medical technicians, and paramedics.

(10) "Health care provider" or "provider" means any person licensed, certified, or otherwise authorized by law to administer health care in the ordinary course of business or practice of a profession, including emergency medical personnel.

(11) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(12) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time.

SECTION 17. That Section 39-152, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-152~~56-1022. EUTHANASIA, MERCY KILLING OR ASSISTED SUICIDE. ~~This act does~~ Sections 56-1020 through 56-1035, Idaho Code, do not make legal and in no way condone~~s~~ mercy killing, assisted suicide or euthanasia.

SECTION 18. That Section 39-153, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-153~~56-1023. DECLARATION RELATING TO USE OF LIFE-SUSTAINING PROCEDURES. ~~(1)~~ A person in a terminal condition has a right to a DNR order governing the withholding of life-sustaining procedures.

(2) A DNR order has operative effect only when:

(a) The request for the DNR order is communicated to the attending physician by the patient or his legal representative; and

(b) The recipient is determined by the attending physician to be in a terminal condition.

SECTION 19. That Section 39-154, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-154~~56-1024. REVOCATION. A person may, at any time, revoke his or her consent to an order not to resuscitate himself or herself by making either a written or an oral declaration to a health care provider or by any other act evidencing a specific intent to revoke such consent.

SECTION 20. That Section 39-155, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-155~~56-1025. CONFLICTING DNR ORDERS. If there are conflicts among the provisions of valid DNR orders, the most recent DNR order is deemed to represent the wishes of the patient.

SECTION 21. That Section 39-156, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-156~~56-1026. ADHERENCE TO DNR PROTOCOL. (1) Emergency medical ~~services personnel~~ shall comply with the DNR protocol when presented with either DNR identification, or, upon transfer, a written DNR order issued directly by the attending physician and shall provide comfort care to the person.

(2) An attending physician shall take all reasonable steps to comply with the intent of the DNR identification.

SECTION 22. That Section 39-157, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-157~~56-1027. DISREGARDING OF DNR ORDER. Emergency medical services ~~personnel may~~ disregard the DNR order:

(1) If they believe in good faith that the order has been revoked; or

(2) To avoid verbal or physical confrontation; or

(3) If ordered to do so by the attending physician.

SECTION 23. That Section 39-158, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-158~~56-1028. ABSENCE OF DNR ORDER. In the absence of DNR identification there is a presumption in favor of resuscitation.

SECTION 24. That Section 39-159, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-159~~56-1029. IMMUNITY. (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person and compliance with the DNR order:

(a) A physician who causes the withholding or withdrawal of life-sustaining procedures from that person;

(b) A person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) Emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person; or

(d) Physicians, persons under the direction or authorization of a physician, or emergency medical services personnel that provide life-sustaining procedures pursuant to an oral or written revocation communicated to them by a person who possesses DNR identification.

(2) The provisions of subsections (1)(a) through (1)(d) of this section apply when a life-sustaining procedure is withheld or withdrawn in accordance with a DNR protocol.

(3) Emergency medical services personnel, coroners and deputy coroners who follow a DNR order from a licensed physician are not subject to civil or criminal liability and are not guilty of unprofessional conduct.

SECTION 25. That Section 39-160, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-160~~56-1030. PENALTIES. (1) A physician who willfully or negligent~~ly disregards~~ the intent of the DNR identification is guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500) or imprisonment in the county jail for a term not to exceed six (6) months, or both.

(2) Except as provided in section ~~39-157~~ 56-1027, Idaho Code, a person who purposely disregards a DNR order ~~or who~~ conceals, cancels, defaces, or obliterates the DNR identification of another without the consent of the possessor or who falsifies or forges a revocation of the DNR identification of another is guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500) or imprisonment in the county jail for a term not to exceed six (6) months, or both.

(3) A person who falsifies or forges the DNR identification of another or purposely conceals or withholds personal knowledge of a revocation of DNR identification with the intent to cause the use, withholding, or withdrawal of life-sustaining procedures is guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500) or imprisonment in the county jail for a term not to exceed one (1) year, or both.

SECTION 26. That Section 39-161, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-161~~56-1031. EFFECT ON INSURANCE -- PATIENT'S DECISION. (1) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the DNR protocol and in accordance with ~~this act~~ sections 56-1020 through 56-1035, Idaho Code, is not, for any purpose, a suicide or homicide.

(2) The possession of DNR identification pursuant to ~~this act~~ sections 56-1020 through 56-1035, Idaho Code, does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR identification, notwithstanding any term of the policy to the contrary.

(3) A physician, health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess DNR identification as a condition for being insured for or receiving health care services.

(4) ~~This act does~~ Sections 56-1020 through 56-1035, Idaho Code, do not create a presumption concerning the intention of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of emergency life-sustaining procedures.

(5) ~~This act does~~ Sections 56-1020 through 56-1035, Idaho Code, do not increase or decrease the right of a patient to make decisions regarding the use of emergency life-sustaining procedures if the patient is able to do so, nor do~~es this act~~ sections 56-1020 through 56-1035, Idaho Code, impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in any

lawful manner. In that respect ~~the provisions of this act~~ sections 56-1020 through 56-1035, Idaho Code, are cumulative.

SECTION 27. That Section 39-162, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-162~~56-1032. PRESERVATION OF EXISTING RIGHTS. ~~The provisions of this act~~ Sections 56-1020 through 56-1035, Idaho Code, are cumulative to the existing law regarding an individual's right to consent, or refusal to consent, to medical treatment and do not impair any existing rights or responsibilities which a health care provider, a patient, including a minor, competent or incompetent person, or a patient's family may have in regard to the withholding or withdrawal of life-prolonging medical procedures or any other health care decision-making under the common law or statutes of this state.

SECTION 28. That Section 39-163, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-163~~56-1033. PRIOR AND OUT-OF-STATE DNR ORDERS AND IDENTIFICATION -- VALIDITY. A DNR order or identification prepared before the effective date of ~~this act~~ sections 56-1020 through 56-1035, Idaho Code, or prepared in another state, district, or territory of the United States, is valid in this state.

SECTION 29. That Section 39-164, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-164~~56-1034. APPLICATION TO MASS CASUALTIES. ~~This act does~~ Sections 56-1020 through 56-1035, Idaho Code, do not apply to situations involving mass casualties.

SECTION 30. That Section 39-165, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-165~~56-1035. RULEMAKING AUTHORITY. (1) The department shall adopt only those rules necessary to administer the provisions of ~~this act~~ sections 56-1020 through 56-1035, Idaho Code, including appropriate protocols.

(2) Upon the adoption of a DNR protocol, the department shall adopt a standard form of DNR identification to be used statewide.

SECTION 31. That Section 39-166, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-166~~56-1036. LEGISLATIVE INTENT. (1) The legislature finds that accidental poisoning is a serious public health problem in the state of Idaho and is a problem that disproportionately affects Idaho's children. It further finds that a significant reduction in the morbidity and mortality resulting from such accidental poisonings has occurred as a result of the services provided by the poison control center.

(2) The purpose of ~~this act~~ sections 56-1036 through 56-1040, Idaho Code, is to declare legislative support for the important work of the poison control center and to assure, by statute, the continued ~~existence~~

of the poison control center.

(3) The legislature finds that the poison control center has saved lives and reduced suffering associated with poisoning by providing emergency telephone assistance and treatment referral to victims of such incidents, by providing immediate treatment information to health care professionals, and by providing public education and prevention programs.

(4) The legislature recognizes that enhanced cooperation between the emergency medical system and poison control centers will aid in responding to emergencies resulting from exposure to poisons and that, by providing telephone assistance to individuals with possible exposure to poisons, the need for emergency room and professional office visits will be reduced. As a result, the cost of health care to those who may have been poisoned will be avoided or reduced and appropriate treatment will be assured.

SECTION 32. That Section 39-167, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-167~~56-1037. POISON CONTROL CENTER ESTABLISHED -- SERVICES OFFERED. The director of the department of health and welfare (for purposes of ~~this act~~ sections 56-1036 through 56-1040, Idaho Code, "director") shall establish, and provide support in a manner consistent with ~~this act~~ sections 56-1036 through 56-1040, Idaho Code, a statewide poison control center. The poison control center shall offer the following services:

(1) Provide twenty-four (24) hour emergency telephone management and treatment referral of victims of poisoning to include determining whether treatment can be accomplished at the scene of the incident or transport to an emergency treatment or other facility is required, and carrying out telephone follow-up to families and other individuals to assure that adequate care is provided;

(2) Provide information to health professionals involved in management of poisoning and overdose victims; and

(3) Provide coordination and development of community education programs designed to inform the public and members of the health professions of poison prevention and treatment methods and to improve awareness of poisoning problems, occupational risks and environmental exposures.

SECTION 33. That Section 39-168, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-168~~56-1038. COORDINATION WITH OTHER AGENCIES. The director shall establish a system for consulting with other state agency programs concerned with poisons and poisonings, incidents involving exposures to potentially poisonous substances, and other toxicological matters to develop the most coordinated and consistent response to such situations as is reasonably possible.

SECTION 34. That Section 39-169, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-169~~56-1039. POWER TO ACCEPT FEDERAL FUNDS AND GIFTS. The direc-

tor may accept federal funds granted by congress or executive order, as well as gifts, grants, endowments and/or donations from individuals and private organizations or foundations for all or any of the purposes of the poison control center.

SECTION 35. That Section 39-170, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-17~~056-1040. RULEMAKING AUTHORITY. The director shall adopt rules necessary to administer ~~the--provisions--of-this-act~~ sections 56-1036 through 56-1040, Idaho Code, pursuant to chapter 52, title 67, Idaho Code.

SECTION 36. That Section 39-3030, Idaho Code, be, and the same is hereby amended to read as follows:

~~39-303~~056-1044. RADIATION MACHINES USED TO PERFORM MAMMOGRAPHY. (1) ~~Beginning-January-1,-1993,-a~~ No person shall ~~not~~ use a radiation machine to perform mammography unless the radiation machine is registered with the department of health and welfare under department rules for registration of radiation machines and is specifically authorized under this section for use for mammography.

(2) The department shall authorize a radiation machine for use for mammography if the radiation machine meets the current criteria of the American college of radiology mammography accreditation program, published by the American college of radiology, or meets an equivalent standard adopted by the department. The department shall make copies of those criteria available to the public.

(3) The department may withdraw the mammography authorization for a radiation machine if it does not meet the standards set forth in subsection (2) of this section.

(4) The department shall provide an opportunity for a hearing in connection with a denial or withdrawal of mammography authorization.

(5) Upon a finding that a deficiency in a radiation machine used for mammography or a violation of the rules promulgated under this section seriously affects the health, safety, and welfare of individuals upon whom the radiation machine is used for mammography, the department may issue an emergency order summarily withdrawing the mammography authorization of the radiation machine. The department shall incorporate its findings in the order and shall provide an opportunity for a hearing within five (5) working days after issuance of the order. The order shall be effective during the proceedings.

(6) If the department withdraws the mammography authorization of a radiation machine, the radiation machine shall not be used for mammography until reauthorized by the department.

(7) If a person violates the provisions of subsection (1) of this section, the department shall post a conspicuous notice on the unauthorized radiation machine and at the entry to the facility where the radiation machine is located warning the public that the facility is performing mammography using a radiation machine that is a substantial hazard to the public health.

~~(8)--As-used-in-this-section:~~

~~(a)--"Radiation-machine"-means-a-machine,-other-than-those--exempted by-department-rule,-that-emits-ionizing-radiation.~~

~~(b)--"Mammography--system"--means--the--radiation--machine--used-for mammography,-automatic-exposure-control-devices,-films,-screens--and cassettes,-image-processor,-darkrooms-and-viewboxes.~~

SECTION 37. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1041, Idaho Code, and to read as follows:

56-1041. STATE X-RAY CONTROL AGENCY. (1) The state department of health and welfare is designated as the state agency having the responsibility for administration of the regulatory, licensing and radiation control provisions associated with x-ray producing machines, as defined in section 56-1042, Idaho Code.

(2) The director of the department of health and welfare shall be administrator of the agency, hereinafter referred to as the director, who shall perform the functions vested in the agency pursuant to the provisions of sections 56-1041 through 56-1053, Idaho Code.

(3) In accordance with the laws of the state, the director may appoint, fix the compensation, and prescribe the powers and duties of such individuals, including consultants, advisory councils, emergency teams and committees as may be necessary to carry out the provisions of sections 56-1041 through 56-1053, Idaho Code. The personnel engaged in field activities of evaluation and inspection shall at least have a baccalaureate degree in the physical and/or life sciences, or the equivalent, and be trained in health physics.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of radiation;

(b) Formulate and recommend that the board of health and welfare adopt, promulgate and repeal codes, rules and standards relating to control of x-ray producing machines;

(c) Advise, consult, and cooperate with other agencies of the state, and federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of x-ray producing machines;

(d) Encourage, participate in, or conduct studies, investigations, training, research and demonstrations relating to x-ray producing machines;

(e) Collect and disseminate information relating to control of x-ray producing machines~~;~~, including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations; and

(ii) Maintenance of a file of registrants possessing x-ray producing machines requiring registration under the provisions of sections 56-1041 through 56-1053, Idaho Code, and any administrative or judicial action pertaining thereto~~.~~;

(f) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions from the federal government and from other sources, public or private~~.~~;

(g) Issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records and documents.

SECTION 38. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1042, Idaho Code, and to read as follows:

56-1042. DEFINITIONS. As used in sections 56-1041 through 56-1053, Idaho Code:

(1) "Board" means the Idaho board of health and welfare.

(2) "Department" means the Idaho department of health and welfare.

(3) "Electronic product" means any manufactured product or device or component part of such a product or device that has an electronic circuit which during operation can generate or emit a physical field of radiation.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent or agency of the foregoing.

(5) "Registration" means registration by any person possessing an x-ray producing machine in accordance with rules and standards adopted by the state board of health and welfare.

(6) "X-ray producing machine" means any type of device which is capable of producing or emitting x-rays.

SECTION 39. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1043, Idaho Code, and to read as follows:

56-1043. RULES -- LICENSING REQUIREMENTS AND PROCEDURE -- REGISTRATION OF X-RAY PRODUCING MACHINES -- EXEMPTIONS FROM REGISTRATION OR LICENSING. (1) The board of health and welfare shall provide, by rule, for general or specific licensing of x-ray producing machines. Such rule shall provide for amendment, suspension or revocation of licenses. Such rule shall provide that:

(a) Each application for a specific license shall be in writing and shall state such information as the board, by rule, may determine to be necessary to decide the technical, insurance and financial qualifications, or any other qualification of the applicant as the department may deem reasonable and necessary to protect the occupational and public health and safety. The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the department deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended or revoked. In no event shall the department grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the department has conducted an inspection or review which insures that the applicant can meet the rules and standards adopted pursuant to sections 56-1041 through 56-1053, Idaho Code. All applications and statements shall be signed by the applicant or licensee. The department may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the board may by rule prescribe;

(c) No license issued under the authority of sections 56-1041 through 56-1053, Idaho Code, and no right to process or utilize x-ray producing machines granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision or modification by rules or orders issued in accordance with the provisions of sections 56-1041 through 56-1053, Idaho Code.

(2) The board of health and welfare may require licensing of those persons installing or repairing x-ray producing machines which the board has determined to present a potential hazard to the occupational and public health and safety. Such licensing requirements shall provide that:

(a) Each application for a license shall be in writing and shall state such information as the board, by rule, may determine to be necessary to decide the technical, insurance and financial qualifications, or any other qualification of the applicant as the department may deem reasonable and necessary. The department may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the department deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the board of health and welfare may by rule prescribe;

(c) No license issued under the authority of sections 56-1041 through 56-1053, Idaho Code, and no right to possess or utilize x-ray producing machines granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision or modification by rules or orders issued in accordance with the provisions of sections 56-1041 through 56-1053, Idaho Code.

(3) The board of health and welfare may require registration of all x-ray producing machines which the department has determined to present a potential hazard to the occupational and public health and safety.

(4) The board of health and welfare may exempt certain x-ray producing machines or kinds of uses or users from the registration or licensing requirements set forth in this section when the department makes a finding that the exemption of such x-ray producing machines or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(5) In promulgating rules pursuant to sections 56-1041 through 56-1053, Idaho Code, the board of health and welfare shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the department shall deem desirable, subject to such registration requirements as the board of health and welfare may prescribe.

SECTION 40. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known

and designated as Section 56-1045, Idaho Code, and to read as follows:

56-1045. INSPECTION. The department or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of sections 56-1041 through 56-1053, Idaho Code, and rules issued thereunder, except that entry into areas under the exclusive jurisdiction of the federal government, or security areas under the direct or indirect jurisdiction of the federal government, shall be effected only with the concurrence of the federal government or its duly designated representative.

SECTION 41. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1046, Idaho Code, and to read as follows:

56-1046. RECORDS. (1) The department shall require each person who possesses or uses an x-ray producing machine to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the department may require which will permit the determination of the extent of occupational and public exposure from the x-ray producing machine. Copies of these records shall be submitted to the department on request. These requirements are subject to such exemptions as may be provided by rule.

(2) The department may by rule establish standards requiring that personnel monitoring be provided for any employee potentially exposed to x-rays and may provide for the reporting to any employee of his x-ray exposure record.

SECTION 42. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1047, Idaho Code, and to read as follows:

56-1047. FEDERAL-STATE AGREEMENTS -- AUTHORIZED -- EFFECT AS TO FEDERAL LICENSES. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to x-ray producing machines and the assumption thereof by this state pursuant to sections 56-1041 through 56-1053, Idaho Code.

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government, shall be deemed to possess the same pursuant to a license issued under sections 56-1041 through 56-1053, Idaho Code, which shall expire either ninety (90) days after the receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

SECTION 43. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1048, Idaho Code, and to read as follows:

56-1048. INSPECTION AGREEMENTS AND TRAINING PROGRAMS. (1) The department is authorized to enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby

this state will perform on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of x-ray producing machines.

(2) The department may institute training programs for the purpose of qualifying personnel to carry out the provisions of sections 56-1041 through 56-1053, Idaho Code, and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of such sections.

SECTION 44. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1049, Idaho Code, and to read as follows:

56-1049. ADMINISTRATIVE PROCEDURE. In any proceeding under sections 56-1041 through 56-1053, Idaho Code, for the issuance or modification or repeal of rules relating to control of x-ray producing machines, the department shall comply with the requirements of chapter 52, title 67, Idaho Code.

Notwithstanding any other provision of sections 56-1041 through 56-1053, Idaho Code, whenever the department finds that an emergency exists requiring immediate action to protect the public health, safety or general welfare, the department may, without notice or hearing, issue a rule or order reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. Such rules or orders shall be effective immediately.

SECTION 45. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1050, Idaho Code, and to read as follows:

56-1050. INJUNCTION PROCEEDINGS. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of sections 56-1041 through 56-1053, Idaho Code, or any rule or order issued thereunder, the attorney general, upon the request of the department, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the department that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

SECTION 46. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1051, Idaho Code, and to read as follows:

56-1051. PROHIBITED USES. (1) It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own or possess any x-ray producing machine unless licensed by or registered with, or exempted by the department in accordance with the provisions of sections 56-1041 through 56-1053, Idaho Code.

(2) It shall be unlawful for any person to use, manufacture, pro-

duce, transport, transfer, receive, acquire, own or possess any other x-ray producing machine that has been identified by the department as presenting a potential hazard unless such x-ray producing machine is licensed by or registered by the department in accordance with the provisions of sections 56-1041 through 56-1053, Idaho Code.

SECTION 47. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1052, Idaho Code, and to read as follows:

56-1052. IMPOUNDING OF MATERIALS. The department shall have the authority in the event of an emergency to impound or order the impounding of x-ray producing machines in the possession of any person who is not equipped to observe or fails to observe the provisions of sections 56-1041 through 56-1053, Idaho Code, or any rules issued thereunder.

SECTION 48. That Chapter 10, Title 56, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 56-1053, Idaho Code, and to read as follows:

56-1053. PENALTIES. Any person who violates any of the provisions of sections 56-1041 through 56-1053, Idaho Code, or rules or orders in effect pursuant thereto shall be guilty of a misdemeanor.

SECTION 49. That Section 49-306, Idaho Code, be, and the same is hereby amended to read as follows:

49-306. APPLICATION FOR DRIVER'S LICENSE OR INSTRUCTION PERMIT. (1) Every application for 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 (4-year) license with endorsements - age 21 years and older $28.50
(b) Class A, B, C (3-year) license with endorsements - 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
(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
(g) Four-year Class D license - age 21 years and older $24.50
(~~h~~f) Eight-year Class D license - ages 21 to 63 years $41.00
(~~i~~g) Class A, B, C instruction permit $19.50
(~~j~~h) Class D instruction permit or supervised instruction permit $11.50
(~~k~~i) Duplicate driver's license or permit issued under section 49-318, Idaho Code $11.50
(~~l~~j) Driver's license extension issued under section 49-319, Idaho Code ..... $ 6.50

(mk) License classification change (upgrade) $15.50
(nl) Endorsement addition $11.50
(om) Class A, B, C skills tests ..... not more than $55.00
(pn) Class D skills test $15.00
(qo) Motorcycle endorsement skills test .....$ 5.00
(rp) Knowledge test ..... $ 3.00
(sq) Seasonal driver's license $27.50
(tr) One time motorcycle "M" endorsement $11.50
(us) Motorcycle endorsement instruction permit $11.50
(vt) 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 any 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~~ canceled 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 driver's license except an eight-year class D license, or any class D 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), (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~~ fund II created in section ~~39-146A~~ 56-1018A, Idaho Code, and four dollars ($4.00) of each fee charged pursuant to subsections (1)(a), (g) and (s) of this section shall be deposited in the emergency medical services ~~account~~ fund III created in section ~~39-146B~~ 56-1018B, 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 sec-

tion shall be deposited in the state highway ~~account~~ fund; 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~~ fund; 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~~ fund III created in section ~~39-146B~~ 56-1018B, 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~~ fund; 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~~ fund; 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)(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~~ fund; 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)(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~~ fund; 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~~ fund; 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~~ fund; 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~~ fund; and

(l) One dollar ($1.00) of each fee for a class A, B, C 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), (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~~ fund.

(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~~ fund.

(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~~ applicable federal regulations;

(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 50. That Section 49-452, Idaho Code, be, and the same is hereby amended to read as follows:

49-452. EMERGENCY MEDICAL SERVICES FEE. (1) An emergency medical services fee of one dollar and twenty-five cents ($1.25) shall be collected in addition to each motor vehicle registration fee amount collected under the provisions of this chapter, with the exception of those vehicles proportionally registered under section 49-435, Idaho Code. Twenty-five cents (~~$.~~25¢) of the fee shall be retained by the county of residence for use in funding local emergency medical service costs. One dollar ($1.00) of the fee shall be transmitted to the state treasurer for deposit in the emergency medical services ~~account~~ fund established in section ~~39-146~~ 56-1018, Idaho Code.

(2) For vehicles registered under the provisions of section 49-402B, Idaho Code, the fee shall be two dollars and fifty cents ($2.50). Fifty cents (~~$.~~50¢) of the fee shall be retained by the county of residence for use in funding local emergency medical services costs. Two dollars ($2.00) of the fee shall be transmitted to the state treasurer for deposit in the emergency medical services ~~account~~ fund established in section ~~39-146~~ 56-1018, Idaho Code.

Approved March 22, 2001.

CHAPTER 111
(H.B. No. 201)

AN ACT

RELATING TO THE INSURANCE PREMIUM TAX; AMENDING SECTION 41-402, IDAHO CODE, TO REMOVE THE TERM "DOMESTIC" FROM THE EXEMPTION RELATING TO INSURERS DOING EXCLUSIVELY WORKER'S COMPENSATION BUSINESS, TO REMOVE THE TERM "DOMESTIC" FROM THE EXEMPTION RELATING TO INSURERS WHICH EXCLUSIVELY INSURE GOVERNMENTAL ENTITIES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-402, Idaho Code, be, and the same is hereby amended to read as follows:

41-402. PREMIUM TAX. (1) Each authorized insurer, and each formerly authorized insurer with respect to insurance transacted while an authorized insurer, shall file with the director on or before the dates in each year set forth in subsections (3) and (4) of this section, a statement (on forms as prescribed and furnished by the director) under oath for the period set forth in subsections (3) and (4) of this section, and pay the director a tax at the rate set forth in subsection (2) of this section, on the following amounts:

(a) As to life insurers, the amount of all gross premiums received by the insurer on direct risks resident in this state, and also, if a domestic insurer, on direct risks resident in any other jurisdiction or jurisdictions in which the insurer is not licensed and upon which no premium tax is otherwise paid or payable, less returned coupons and dividends paid to or credited to policyholders.

(b) As to all insurers other than life insurers, the amount of gross direct premiums written on policies covering subjects of insurance resident, located or performed in this state, and also, if a domestic insurer, on such premiums in any other jurisdiction or jurisdictions in which the insurer is not licensed and upon which no premium tax is otherwise paid or payable, less returned premiums, premiums on policies not taken and dividends paid or credited to policyholders. As to title insurance "gross premium" means the insurance risk portion of the amount charged for title insurance.

(2) Subject to section 41-403, Idaho Code, the rate of tax shall be as follows:

(a) As to title insurance, the rate of tax shall be one and five-tenths ~~per cent~~ percent (1.5%).

(b) As to all other kinds of insurance, the rate of tax shall be two and seventy-fi~~ve hun~~dredths ~~per cent~~ percent (2.75%).

(3) (a) Every insurer with a tax obligation under this section shall make prepayment of the tax obligations for the current calendar year's business, if the sum of the tax obligations for the preceding calendar year's business is four hundred dollars ($400) or more.

(b) The director shall credit the prepayments toward the appropriate tax obligations of the insurer for the current calendar year.

(c) The minimum amounts of the prepayments shall be percentages of the insurer's tax obligation based on the preceding calendar year's

business and the current year's rate, and shall be paid to the director's office by the due dates and in the following amounts:

(i) On or before June 15, sixty ~~per cent~~ percent (60%);

(ii) On or before September 15, twenty ~~per cent~~ percent (20%); and

(iii) On or before December 15, fifteen ~~per cent~~ percent (15%).

(4) On or before March 1, any balance of tax due for the preceding calendar year shall be paid to the director.

(5) The effect of transferring policies of insurance from one insurer to another insurer is to transfer the tax prepayment obligation with respect to the policies.

(6) This section shall not apply as to any ~~domestic~~ reciprocal insurer doing exclusively a ~~workmen's~~ worker's compensation business and complying with the provisions of the ~~workmen's~~ worker's compensation law of this state and writing ~~workmen's~~ worker's compensation only for members under that law, if its representatives or agents or the attorney in fact executing such contracts are not compensated on a commission basis.

(7) This section shall not apply as to life insurance policies issued under pension plans or profit-sharing plans exempt or qualified under sections 401(a), 403, 404, 408~~,~~ or 501(a) of the United States ~~i~~Internal ~~r~~Revenue ~~c~~Code, as hereafter amended or renumbered from time to time, nor to annuity contracts in general.

(8) This section shall not apply to any ~~domestic~~ reciprocal insurer which exclusively insures members who are governmental entities, as defined by section 6-902(1), (2) and (3), Idaho Code.

(9) The amount of tax due for the current year shall be paid in full in the manner and at the times required in this section without any credit or offset for refunds or other amounts due or claimed to be due by the insurer.

Approved March 22, 2001.

CHAPTER 112
(H.B. No. 244)

AN ACT

RELATING TO THEFT; AMENDING SECTION 18-2403, IDAHO CODE, TO STRIKE SUPERFLUOUS LANGUAGE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 18-2408, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 18-2403, Idaho Code, be, and the same is hereby amended to read as follows:

18-2403. THEFT. (1) A person steals property and commits theft when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

(2) Theft includes a wrongful taking, obtaining or withholding of another's property, with the intent prescribed in subsection (1) of this

section, committed in any of the following ways:

(a) By deception obtains or exerts control over property of the owner;

(b) By conduct heretofore defined or known as larceny; common law larceny by trick; embezzlement; extortion; obtaining property, money or labor under false pretenses; or receiving stolen goods;

(c) By acquiring lost property. A person acquires lost property when he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner; or a person commits theft of lost or mislaid property when he:

1. Knows or learns the identity of the owner or knows, or is aware of, or learns of a reasonable method of identifying the owner; and

2. Fails to take reasonable measures to restore the property to the owner; and

3. Intends to deprive the owner permanently of the use or benefit of the property.

(d) By false promise:

1. A person obtains property by false promise when pursuant to a scheme to defraud, he obtains property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

2. In any prosecution for theft based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are consistent with guilty intent or belief and inconsistent with innocent intent or belief, and excluding to a moral certainty every reasonable hypothesis except that of the defendant's intention or belief that the promise would not be performed;

(e) By extortion. A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

1. Cause physical injury to some person in the future; or

2. Cause damage to property; or

3. Engage in other conduct constituting a crime; or

4. Accuse some person of a crime or cause criminal charges to be instituted against him; or

5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose

interest the actor purports to act; or

7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

8. Use or abuse his position as a public servant by performing some act 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; or

9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

(3) A person commits theft when he knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the intent of depriving the owner thereof.

(4) A person commits theft when he knowingly receives, retains, conceals, obtains control over, possesses, or disposes of stolen property, knowing the property to have been stolen ~~by another~~ or under such circumstances as would reasonably induce him to believe that the property was stolen, and

(a) Intends to deprive the owner permanently of the use or benefit of the property; or

(b) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or

(c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(5) Theft of labor or services or use of property.

(a) A person commits theft when he obtains the temporary use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services.

(b) A person commits theft when after renting or leasing a motor vehicle under an agreement in writing which provides for the return of the vehicle to a particular place at a particular time, he ~~wilfully~~ willfully or intentionally fails to return the vehicle to that place within forty-eight (48) hours after the time specified.

(c) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto.

SECTION 2. That Section 18-2408, Idaho Code, be, and the same is hereby amended to read as follows:

18-2408. PUNISHMENT FOR THEFT. (1) Grand theft committed in a manner prescribed in subsection (1)(a) of section 18-2407, Idaho Code, is a felony punishable by fine not exceeding ten thousand dollars ($10,000) or imprisonment in the state prison for not less than one (1) year nor more than twenty (20) years, or by both such fine and imprisonment.

(2) (a) Grand theft committed in a manner prescribed in subsection

(1)(b)1., 2., 3., 4., 5., 6., or 8. or 9. of section 18-2407, Idaho Code, is a felony punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both such fine and imprisonment.

(b) Grand theft committed in a manner prescribed in subsection (1)(b)7. of section 18-2407, Idaho Code, is a felony punishable by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), and the minimum fine shall not be suspended or withheld, or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both such fine and imprisonment. In addition, the court shall assess civil damages as provided in section 25-1910, Idaho Code.

(3) Petit theft is a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one (1) year or by both.

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 22, 2001.

CHAPTER 113
(H.B. No. 245)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTION 49-1405, IDAHO CODE, TO PROVIDE AUTHORITY TO MAKE AN ARREST WHEN A PERSON IS CHARGED WITH OPERATING A VESSEL UNDER THE INFLUENCE OF ALCOHOL, INTOXICATING BEVERAGES OR DRUGS OR UPON FAILURE TO STOP OR GIVE INFORMATION AFTER AN ACCIDENT CAUSING DAMAGE TO A VESSEL OR OTHER PROPERTY, TO DEFINE THE TERM "VESSEL" AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 49-1405, Idaho Code, be, and the same is hereby amended to read as follows:

49-1405. ARRESTS FOR SERIOUS OFFENSES. (1) The authority to make an arrest is the same as upon an arrest for a felony when any person is charged with any of the following offenses:

(a) Negligent homicide.

(b) Driving, or being in actual physical control, of a vehicle or operating a vessel while under the influence of alcohol or other intoxicating beverage.

(c) Driving a vehicle or operating a vessel while under the influence of any narcotic drug, or driving a vehicle or operating a vessel while under the influence of any other drug to a degree which renders the person incapable of safely driving a vehicle.

(d) Failure to stop, or failure to give information, or failure to render reasonable assistance, in the event of an accident resulting

in death or personal injuries.

(e) Failure to stop, or failure to give information, in the event of an accident resulting in damage to a vehicle or vessel or to fixtures or other property legally upon or adjacent to a highway or waterway.

(f) Reckless driving.

(g) Fleeing or attempting to elude a peace officer.

(2) Whenever any person is arrested as authorized in this section, he shall be taken without unnecessary delay before the proper magistrate as provided by law, except that in the case of either of the offenses designated in paragraphs (1)(e), (f) and (g) of this section, a peace officer shall have the same discretion as is provided by law.

(3) As used in this section, the term "vessel" shall be as defined in section 67-7003, Idaho Code.

Approved March 22, 2001.

CHAPTER 114
(H.B. No. 278)

AN ACT
RELATING TO CHARTER SCHOOL FINANCIAL SUPPORT; AMENDING SECTION 33-5208, IDAHO CODE, TO AUTHORIZE ADVANCE PAYMENT UNDER SPECIFIED CONDITIONS.

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

SECTION 1. That Section 33-5208, Idaho Code, be, and the same is hereby amended to read as follows:

33-5208. CHARTER SCHOOL FINANCIAL SUPPORT. From the state educational support program the state department of education shall make the following apportionment to each charter school for each fiscal year based on attendance figures submitted in a manner and time as required by the department of education:

(1) Per student support. Computation of support units for each charter school shall be calculated as if it were a separate school according to the schedules in section 33-1002 6., Idaho Code, except that charter schools with fewer than one hundred (100) secondary ADA shall use a divisor of twelve (12) and the minimum units shall not apply. Funding from the state educational support program shall be equal to the total distribution factor, plus the salary-based apportionment provided in chapter 10, title 33, Idaho Code.

(2) Special education. For each student enrolled in the charter school who is entitled to special education services, the state and federal funds from the exceptional child education program for that student that would have been apportioned for that student to the school district in which the charter school is located.

(3) Alternative school support. Charter schools may qualify under the provisions of sections 33-1002 and 33-1002C, Idaho Code, provided the charter school meets the necessary statutory requirements, and students qualify for attendance at an alternative school as provided by rule of the state board of education.

(4) Transportation support. Support shall be paid to the charter school as provided in chapter 15, title 33, Idaho Code, and section 33-1006, Idaho Code. Each charter school shall furnish the department with an enrollment count as of the first Friday in November, of charter school students living more than one and one-half (1 1/2) miles from the school.

(5) Payment schedule. The state department of education is authorized to make an ~~one-time~~ advance payment of twenty-five percent (25%) of a charter school's estimated annual apportionment for its first year of operation, and each year thereafter, provided the charter school has an increase of student population in any given year of twenty (20) students or more, to assist the school with initial start-up costs or payroll obligations.

(a) For a state charter school to receive the advance payment, the school shall submit its anticipated fall membership for each grade level to the state department of education by June 1.

(b) Using the figures provided by the school, the state department of education shall determine an estimated annual apportionment from which the amount of the advance payment shall be calculated. Advance payment shall be made to the school on or after July 1 but no later than July 31.

(c) All subsequent payments, taking into account the one-time advance payment made for the first year of operation, shall be made to the charter school in the same manner as other public schools in accordance with the provisions of section 33-1009, Idaho Code.

A charter school shall comply with all applicable fiscal requirements of law, except that the following provisions shall not be applicable to charter schools: section 33-1003B, Idaho Code, relating to guaranteed minimum support; that portion of section 33-1004, Idaho Code, relating to reduction of the instructional staff allowance when there is a discrepancy between the number allowed and the number actually employed; and section 33-1004E, Idaho Code, for calculation of district staff indices.

(6) Nothing in this chapter shall be construed to prohibit any private person or organization from providing funding or other financial assistance to the establishment or operation of a charter school.

(7) Nothing in this chapter shall prevent a charter school from applying for federal grant moneys.

Approved March 22, 2001.

CHAPTER 115
(H.B. No. 302)

AN ACT

APPROPRIATING MONEYS TO THE DIVISION OF HUMAN RESOURCES FOR FISCAL YEAR 2002; 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 Gover-

nor for the Division of Human Resources the following amounts, to be expended according to the designated expense classes from the listed funds for the period July 1, 2001, through June 30, 2002:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
DIVISION OF HUMAN RESOURCES:				
FROM:				
Division of Human Resources Fund	$2,004,700	$673,100	$125,000	$2,802,800
Seminars and Publications Fund		101,400		101,400
TOTAL	$2,004,700	$774,500	$125,000	$2,904,200

SECTION 2. In accordance with Section 67-3519, Idaho Code, the Division of Human Resources is authorized no more than thirty-seven (37) full-time equivalent positions at any point during the period July 1, 2001, through June 30, 2002, 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, 2001.

CHAPTER 116
(H.B. No. 304)

AN ACT

APPROPRIATING MONEYS FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM FOR FISCAL YEAR 2002; CLARIFYING THE APPROPRIATION FOR THE PORTFOLIO INVESTMENT PROGRAM; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

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

SECTION 1. There is hereby appropriated to the Office of the Governor for the Public Employee Retirement System the following amounts to be expended for the named programs according to the designated expense classes from the listed funds for the period July 1, 2001, through June 30, 2002:

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
I. RETIREMENT ADMINISTRATION:				
FROM:				
Public Employee Retirement System Fund	$2,718,000	$2,449,600	$ 93,000	$5,260,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
II. PORTFOLIO INVESTMENT:				
FROM:				
Public Employee Retirement System Fund	$ 354,800	$ 199,300	$ 18,500	$ 572,600
III. 401(k) ADMINISTRATION:				
FROM:				
PERSI 401(k) Administration Fund		$ 7,700		$ 7,700
GRAND TOTAL	$3,072,800	$2,656,600	$111,500	$5,840,900

SECTION 2. Notwithstanding Section 59-1311(4)(d), Idaho Code, moneys appropriated in Section 1 of this act for the Portfolio Investment Program are for administrative costs of the Portfolio Investment Program as provided in Section 59-1311(3), Idaho Code. Amounts necessary to pay all other investment expenses related to the Portfolio Investment Program are perpetually appropriated to the Public Employee Retirement System Board as provided in Section 59-1311(4)(a), (b) and (c), Idaho Code.

SECTION 3. In accordance with Section 67-3519, Idaho Code, the Public Employee Retirement System is authorized no more than sixty-two (62) full-time equivalent positions at any point during the period July 1, 2001, through June 30, 2002, 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, 2001.

CHAPTER 117
(H.B. No. 313)

AN ACT

APPROPRIATING MONEYS TO THE LIEUTENANT GOVERNOR FOR FISCAL YEAR 2002; 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 the designated expense classes from the listed fund for the period July 1, 2001, through June 30, 2002:

FOR:	
Personnel Costs	$103,200
Operating Expenditures	9,500
TOTAL	$112,700
FROM:	
General Fund	$112,700

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, 2001, through June 30, 2002, 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, 2001.

CHAPTER 118
(H.B. No. 318)

AN ACT

RELATING TO THE APPROPRIATION FOR THE DEPARTMENT OF CORRECTION; REPEALING CHAPTER 408, LAWS OF 2000; REPEALING SECTION 7, CHAPTER 481, LAWS OF 2000; AMENDING SECTION 1, CHAPTER 394, LAWS OF 2000, TO APPROPRIATE ADDITIONAL MONEYS TO THE DEPARTMENT OF CORRECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 408, Laws of 2000, is hereby repealed.

SECTION 2. That Section 7, Chapter 481, Laws of 2000, is hereby repealed.

SECTION 3. That Section 1, Chapter 394, Laws of 2000, be, and the same is hereby amended to read as follows:

SECTION 1. There is hereby appropriated to the Department of Correction 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. ADMINISTRATION DIVISION:					
FROM:					
General Fund	$ 3,080,300	$ ~~2,210,400~~ 2,298,300	$ 240,200		$ ~~5,530,900~~ 5,618,800
Parolee Supervision Fund	55,200	~~14,700~~ 23,700	100,000		~~169,900~~ 178,900
Federal Grant Fund		180,500		$901,700	1,082,200
Miscellaneous Revenue Fund	50,200	7,200			57,400
TOTAL	$ 3,185,700	$ ~~2,412,800~~ 2,509,700	$ 340,200	$901,700	$ ~~6,840,400~~ 6,937,300
II. PRISONS DIVISION:					
A. PRISONS ADMINISTRATION:					
FROM:					
General Fund	$ 806,200	$ ~~3,873,900~~ 4,574,800			$ ~~4,680,100~~ 5,381,000
Miscellaneous Revenue Fund	48,500	99,200			147,700
Federal Grant Fund		~~990,600~~ 1,240,600			~~990,600~~ 1,240,600
TOTAL	$ 854,700	$ ~~4,963,700~~ 5,914,600			$ ~~5,818,400~~ 6,769,300
B. IDAHO STATE CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General Fund	$14,850,000	$ 2,435,500	$ 120,700		$ 17,406,200
Penitentiary Endowment Fund		1,193,900	158,700		1,352,600
Federal Grant Fund		7,000			7,000
Miscellaneous Revenue Fund	279,000	70,300	44,400		393,700
TOTAL	$15,129,000	$ 3,706,700	$ 323,800		$ 19,159,500
C. IDAHO CORRECTIONAL INSTITUTION - OROFINO:					
FROM:					
General Fund	$ 4,421,200	$ 1,303,100	$ 164,400		$ 5,888,700
Inmate Labor Fund	~~351,800~~ 538,800	341,300	59,300		~~752,400~~ 939,400

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund	85,400	31,800	16,500		133,700
TOTAL	$ ~~4,858,400~~	$ 1,676,200	$ 240,200		$ ~~6,774,800~~
	5,045,400				6,961,800
D. NORTH IDAHO CORRECTIONAL INSTITUTION - COTTONWOOD:					
FROM:					
General Fund	$ 2,019,700	$ 803,600	$ 130,500		$ 2,953,800
Miscellaneous Revenue Fund	37,600	118,200	9,100		164,900
TOTAL	$ 2,057,300	$ 921,800	$ 139,600		$ 3,118,700
E. SOUTH IDAHO CORRECTIONAL INSTITUTION - BOISE:					
FROM:					
General Fund	$ ~~4,153,400~~	$ ~~1,496,600~~	$ ~~228,100~~		$ ~~5,878,100~~
	3,861,700	1,204,100	81,800		5,147,600
Inmate Labor Fund	703,300	400,200	69,000		1,172,500
Miscellaneous Revenue Fund	~~43,600~~	~~34,900~~			~~97,800~~
	49,600	40,900	19,300		109,800
TOTAL	$ ~~4,900,300~~	$ ~~1,931,700~~	$ ~~316,400~~		$ ~~7,148,400~~
	4,614,600	1,645,200	170,100		6,429,900
F. IDAHO MAXIMUM SECURITY INSTITUTION - BOISE:					
FROM:					
General Fund	$ 6,572,900	$ 1,735,500	$ 87,100		$ 8,395,500
Miscellaneous Revenue Fund	39,100	53,600	19,800		112,500
TOTAL	$ 6,612,000	$ 1,789,100	$ 106,900		$ 8,508,000
G. ST. ANTHONY WORK CAMP:					
FROM:					
General Fund	$ 1,346,900	$ 222,600	$ 23,000		$ 1,592,500
Inmate Labor Fund	~~322,700~~	~~464,300~~	~~79,500~~		~~866,500~~
	382,700	564,300	119,500		1,066,500
Miscellaneous Revenue Fund		6,200	3,700		9,900
TOTAL	$ ~~1,669,600~~	$ ~~693,100~~	$ ~~106,200~~		$ ~~2,468,900~~
	1,729,600	793,100	146,200		2,668,900
H. POCATELLO WOMEN'S CORRECTIONAL CENTER:					
FROM:					
General Fund	$ 2,862,300	$ 937,000	$ 38,500		$ 3,837,800

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Federal Grant Fund		~~52,300~~			~~52,300~~
		83,900			83,900
Inmate Labor Fund	178,900	21,000	61,900		261,800
Miscellaneous Revenue Fund	153,200	14,800	8,600		176,600
TOTAL	$ 3,194,400	$ ~~1,025,100~~	$ 109,000		$ ~~4,328,500~~
		1,056,700			4,360,100
DIVISION TOTAL	$~~39,275,700~~	$~~16,707,400~~	$~~1,342,100~~		$ ~~57,325,200~~
	39,237,000	17,503,400	1,235,800		57,976,200
III. INSTITUTIONAL SUPPORT:					
FROM:					
General Fund	$ 1,913,200	$ ~~9,042,100~~	$ 2,700		$ ~~10,958,000~~
		9,542,100			11,458,000
Federal Grant Fund	669,500	783,000			1,452,500
Miscellaneous Revenue Fund		66,000			66,000
TOTAL	$ 2,582,700	$ ~~9,891,100~~	$ 2,700		$ ~~12,476,500~~
		10,391,100			12,976,500
IV. FIELD AND COMMUNITY SERVICES:					
FROM:					
General Fund	$11,132,800	$ 886,300			$ 12,019,100
Parolee Supervision Fund	1,552,600	695,000			2,247,600
Inmate Labor Fund	135,800	1,473,100	$ 518,700		2,127,600
Miscellaneous Revenue Fund		20,400			20,400
TOTAL	$12,821,200	$ 3,074,800	$ 518,700		$ 16,414,700
V. PRIVATELY-OPERATED STATE PRISON:					
FROM:					
General Fund		$~~12,403,100~~	$ 813,500		$ ~~13,216,600~~
		14,623,500			15,437,000
VI. COMMISSION FOR PARDONS AND PAROLE:					
FROM:					
General Fund	$ 847,200	$ 219,700	$ 5,700		$ 1,072,600

	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	FOR TRUSTEE AND BENEFIT PAYMENTS	TOTAL
Miscellaneous Revenue Fund		20,000			20,000
TOTAL	$ 847,200	$ 239,700	$ 5,700		$ 1,092,600
GRAND TOTAL	~~$58,712,500~~	~~$44,728,900~~	~~$3,022,900~~	$901,700	~~$107,366,000~~
	58,673,800	48,342,200	2,916,600		110,834,300

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

Approved March 22, 2001.

CHAPTER 119
(S.B. No. 1012)

AN ACT

RELATING TO ACCESSORIES TO CRIMES; AMENDING SECTION 18-205, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY.

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

SECTION 1. That Section 18-205, Idaho Code, be, and the same is hereby amended to read as follows:

18-205. ACCESSORIES DEFINED. All persons who, having knowledge that a felony has been committed, willfully withhold or conceal it from a peace officer, judge, magistrate, grand jury or ~~petit~~ trial jury, or harbor and protect the person charged with or convicted thereof, are accessories.

Approved March 23, 2001.

CHAPTER 120
(S.B. No. 1011)

AN ACT

RELATING TO JURY SELECTION AND SERVICE; AMENDING SECTION 2-210, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AND AMENDING SECTIONS 2-213 AND 2-216, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 2-210, Idaho Code, be, and the same is hereby amended to read as follows:

2-210. NAMES PLACED IN QUALIFIED JURY WHEEL -- DRAWING PANELS -- NOTICE TO PERSONS DRAWN -- SUMMONING ADDITIONAL ~~PETIT~~ TRIAL JURORS -- NAMES DRAWN TO BE PUBLIC -- EXCEPTION. (1) The jury commission shall maintain a qualified jury wheel and shall place therein the names or identifying numbers of all prospective jurors drawn from the master jury wheel who are not disqualified under section 2-209, Idaho Code.

(2) The court or any other state or county official having authority to conduct a trial or hearing with a jury within the county may direct the jury commission to draw and assign to that court or official the number of qualified jurors he deems necessary for one (1) or more jury panels or as required by law for a grand jury. Upon receipt of the direction and in a manner prescribed by the court, the jury commission shall publicly draw at random from the qualified jury wheel the number of qualified jurors specified. The qualified jurors drawn for jury service shall be assigned at random by the clerk to each jury panel in a manner prescribed by the court.

(3) If a grand, ~~petit~~ trial, or other jury is ordered to be drawn, the clerk thereafter shall cause each person drawn for jury service to be served with a summons either personally or by first class mail or certified mail, return receipt requested, addressed to him at his usual residence, business, or post-office address, requiring him to report for jury service at a specified time and place.

(4) If there is an unanticipated shortage of available ~~petit~~ trial jurors drawn from a qualified jury wheel, the court may require the sheriff to summon a sufficient number of ~~petit~~ trial jurors selected at random by the clerk from the qualified jury wheel in a manner prescribed by the court.

(5) The names of qualified jurors drawn from the qualified jury wheel and the contents of jury qualification forms completed by those jurors shall be made available to the public and shall be subject to disclosure according to chapter 3, title 9, Idaho Code.

SECTION 2. That Section 2-213, Idaho Code, be, and the same is hereby amended to read as follows:

2-213. STAY OF PROCEEDINGS OR QUASHING INDICTMENT FOR IRREGULARITY IN SELECTING JURY -- EVIDENCE IN SUPPORT OF MOTION -- REMEDIES EXCLUSIVE -- CONTENTS OF RECORDS NOT TO BE DISCLOSED. (1) Within seven (7) days after the moving party discovered or by the exercise of diligence could have discovered the ~~gounds~~ grounds therefor, and in any event before the ~~petit~~ trial jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case to quash the indictment, or for other appropriate relief, on the ground of substantial failure to comply with this act in selecting the grand or ~~petit~~ trial jury.

(2) Upon motion filed under subsection (1) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this act, the moving party is entitled to present in support of the motion the testimony of the jury commissioner or the clerk, any ~~relevent~~ relevant records and papers not public or otherwise available used by the jury commissioner or the clerk, and any other relevant evidence. If the court determines that in selecting

either a grand jury or a ~~petit~~ trial jury there has been a substantial failure to comply with this act, the court shall stay the proceedings pending the selection of the jury in conformity with this act, quash an indictment, or grant other appropriate relief.

(3) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the state, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this act.

(4) The contents of any records or papers used by the jury commissioner or the clerk in connection with the selection process and not made public under subsection (3) of section 2-206, Idaho Code, and subsection (5) of section 2-210, Idaho Code, shall not be disclosed, except in connection with the preparation or presentation of a motion under subsection (1) of this section, until after the master jury wheel has been emptied and refilled (section 2-207, Idaho Code) and all persons selected to serve as jurors before the master jury wheel was emptied have been discharged. The parties in a case may inspect, reproduce, and copy the records or papers at all reasonable times during the preparation and pendency of a motion under subsection (1) of this section.

SECTION 3. That Section 2-216, Idaho Code, be, and the same is hereby amended to read as follows:

2-216. LIMITATION ON REQUIRED JURY SERVICE. In any two (2) year period a person shall not be required:

(1) To serve or attend court for prospective service as a ~~petit~~ trial juror more than ten (10) court days, except if necessary to complete service in a particular case~~:~~;

(2) To be available for jury service for a period to exceed six (6) months; provided however, that the administrative district judge for the judicial district in which a county is located may by order specify a shorter term of required availability for jury service;

(3) To serve on more than one (1) grand jury; or

(4) To serve as both a grand and ~~petit~~ trial juror.

Appearance for jury service, whether or not the roll is called, shall be credited toward required jury service.

Approved March 23, 2001.

CHAPTER 121
(S.B. No. 1047)

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-305, IDAHO CODE, TO PROVIDE THAT IF A MISDEMEANOR OR INFRACTION IS COMMITTED IN A CITY WHICH IS LOCATED IN TWO COUNTIES, THE VENUE IS IN EITHER COUNTY AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 19-305, Idaho Code, be, and the same is hereby amended to read as follows:

19-305. OFFENSES COMMITTED ON OR NEAR COUNTY BOUNDARIES. When a public offense is committed on the boundary of two (2) or more counties, or within five hundred (500) yards thereof, if the place where the crime is committed cannot be ascertained with reasonable certainty by the law enforcing officers of either county, or if a misdemeanor or infraction is committed in a city which is located in two (2) counties, then in any such event the venue is in either county. Provided, however, that a prosecution in one (1) county shall be a bar to a prosecution for the same act or offense in the other county.

Approved March 23, 2001.

CHAPTER 122
(S.B. No. 1050)

AN ACT

RELATING TO REAL ESTATE BROKERS AND SALESPERSONS; AMENDING SECTION 54-2020, IDAHO CODE, TO INCREASE THE MAXIMUM FEE THAT MAY BE CHARGED FOR THE ISSUANCE OR RENEWAL OF AN IDAHO REAL ESTATE LICENSE.

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

SECTION 1. That Section 54-2020, Idaho Code, be, and the same is hereby amended to read as follows:

54-2020. FEES. The Idaho real estate commission shall establish fees which, in its discretion, are sufficient, when added to the other fees authorized by this chapter, or any other law or rule, to raise that revenue required to administer the provisions of this chapter.

Each person seeking any type of Idaho real estate license shall pay the following fees, in addition to any other fees established in this chapter or by rule:

(1) For each year or portion thereof for which an active or inactive license is issued or renewed, a license fee in an amount not to exceed one hundred fifty dollars ($1~~0~~50), the exact fee to be determined by administrative rule of the commission. Fees so established shall remain effective from year to year unless changed through the rules promulgation process prescribed in chapter 52, title 67, Idaho Code;

(2) A tuition or registration fee for real estate education courses, course materials and any course exam fee. These fees shall be established based upon the total annual costs involved in the provision of all real estate education courses, course materials and course exam fees;

(3) A fee in the amount of twenty-five dollars ($25.00) for late license renewal;

(4) A fee in the amount of fifteen dollars ($15.00) for any license change that necessitates the printing of a new license certificate;

(5) A fee in the amount allowed by law for insufficient funds checks or other types of insufficient payment;

(6) A fee in the amount of ten dollars ($10.00) for each certified copy of a licensee's education history or license history;

(7) A fee in the amount of fifty dollars ($50.00) for issuance or renewal of a branch office license.

Approved March 23, 2001.

CHAPTER 123
(S.B. No. 1051, As Amended)

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2004, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2012, IDAHO CODE, TO REVISE MINIMUM REQUIREMENTS FOR INDIVIDUAL PRIMARY IDAHO REAL ESTATE LICENSES; AMENDING SECTION 54-2014, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-2015, IDAHO CODE, TO REVISE THE PROCEDURE FOR WAIVER REQUESTS, TO PROVIDE CORRECT TERMINOLOGY AND TO PROVIDE A CORRECT CODE CITATION; AMENDING SECTION 54-2016, IDAHO CODE, TO REVISE REQUIREMENTS FOR PRIMARY IDAHO REAL ESTATE LICENSES FOR LEGAL BUSINESS ENTITIES, SOLE PROPRIETORSHIPS AND BRANCH OFFICES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-2018, IDAHO CODE, TO DELETE REFERENCE TO POSTMARK, TO PROVIDE THAT CERTAIN EXPIRED LICENSES SHALL BE AUTOMATICALLY TERMINATED AND MAY NOT BE RENEWED, TO PROVIDE FOR THE PLACEMENT OF LICENSES ON INACTIVE STATUS, TO PROVIDE FOR THE RECEIPT BY INACTIVE LICENSEES OF CERTAIN REFERRAL FEES, TO PROVIDE FOR THE REACTIVATION OF INACTIVE LICENSES, TO PROVIDE FOR NOTICE BY THE LICENSEE TO THE COMMISSION OF CERTAIN CHANGES, TO PROVIDE THAT ONLY LICENSES SIGNED BY LICENSEES SHALL BE VALID, TO PROVIDE FOR THE EFFECTIVE DATE FOR APPLICATION REQUESTS FOR LICENSURE AND LICENSE CHANGES AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-2019, IDAHO CODE, TO REVISE GROUNDS FOR DENIAL OR NONRENEWAL OF LICENSE AND TO PROVIDE THAT THE DISCOVERY OF CERTAIN FACTS AFTER A LICENSE HAS BEEN ISSUED MAY BE GROUNDS FOR THE EXPIRATION, TERMINATION, SUSPENSION OR REVOCATION OF A LICENSE; AMENDING SECTION 54-2020, IDAHO CODE, TO PROVIDE THAT THE COMMISSION SHALL ASSESS FEES; AMENDING SECTION 54-2022, IDAHO CODE, TO PROVIDE THAT THE COMMISSION MAY WAIVE OR MODIFY ONE OR MORE PRELICENSE COURSE REQUIREMENTS UNDER CERTAIN CONDITIONS; AMENDING SECTION 54-2023, IDAHO CODE, TO REVISE CONTINUING EDUCATION REQUIREMENTS; AMENDING SECTION 54-2025, IDAHO CODE, TO REVISE CERTIFICATION REQUIREMENTS; AMENDING SECTION 54-2027, IDAHO CODE, TO PROVIDE FOR THE DISCLOSURE OF FEES BY COURSE PROVIDERS, TO PROVIDE FOR NOTICE TO THE COMMISSION OF COURSE CHANGES, TO PROVIDE THAT THE COMMISSION MAY REQUIRE COURSE PROVIDERS TO PAY A NONREFUNDABLE POSTING AND RECORDING FEE; AMENDING SECTION 54-2036, IDAHO CODE, TO PROVIDE THAT THE COMMISSION MAY ADOPT NATIONAL STANDARDS AND REQUIRE NATIONAL CERTIFICATION FOR CERTAIN COURSES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2039, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-2040, IDAHO CODE, TO PROVIDE THAT WALL LICENSES REQUIRING CHANGES SHALL BE RETURNED TO THE COMMISSION WITH A FEE FOR PRINTING AND ISSUANCE OF A NEW LICENSE, TO PROVIDE FOR THE RETURN TO THE COMMISSION OF CERTAIN WALL LICENSES, TO PROVIDE CORRECT TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-2041, IDAHO

CODE, TO PROHIBIT THE COMMINGLING OF ENTRUSTED MONEYS WITH CERTAIN OTHER MONEYS AND TO PROVIDE CORRECT TERMINOLOGY; AMENDING SECTION 54-2042, IDAHO CODE, TO PROVIDE THAT THE COMMISSION MAY APPROVE CERTAIN ENTITIES AS ESCROW DEPOSITORIES UPON DISCLOSURE OF SPECIFIED INFORMATION; AMENDING SECTION 54-2046, IDAHO CODE, TO PROVIDE FOR THE DISBURSEMENT OF FUNDS TO ESCROW AGENTS; AMENDING SECTION 54-2050, IDAHO CODE, TO PROVIDE THAT PARTIES MAY AGREE IN WRITING THAT CERTAIN COPIES AND ELECTRONICALLY GENERATED AGREEMENTS SHALL BE ENFORCEABLE AS ORIGINALS; AMENDING SECTION 54-2052, IDAHO CODE, TO PROVIDE THAT PARTIES MAY AGREE IN WRITING THAT ELECTRONICALLY GENERATED AGREEMENTS SHALL BE ENFORCEABLE AS ORIGINALS; AMENDING SECTION 54-2056, IDAHO CODE, TO PROVIDE THAT A BROKER WHO TERMINATES THE ASSOCIATION OF A SALES ASSOCIATE FOR CERTAIN VIOLATIONS SHALL PROMPTLY NOTIFY THE COMMISSION IN WRITING; AMENDING SECTION 54-2058, IDAHO CODE, TO PROVIDE THAT CERTAIN RECORDS SHALL BE MADE AVAILABLE TO THE COMMISSION FOR INVESTIGATORY PURPOSES; AMENDING SECTION 54-2061, IDAHO CODE, TO PROVIDE THAT LICENSEES SHALL REPORT CONVICTIONS, INCOMPETENCY DECLARATIONS AND ADVERSE CIVIL JUDGMENTS TO THE COMMISSION WITHIN TWENTY DAYS; AMENDING SECTION 54-2062, IDAHO CODE, TO PROVIDE THAT LICENSEES SHALL REPORT ADVERSE FINAL ADMINISTRATIVE ACTIONS TO THE COMMISSION WITHIN TWENTY DAYS; AMENDING SECTION 54-2085, IDAHO CODE, TO REVISE DISCLOSURE AND WRITING REQUIREMENTS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 54-2087, IDAHO CODE, TO REVISE DUTIES AND OBLIGATIONS OF BROKERAGES AND LICENSEES TO CLIENTS.

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

SECTION 1. That Section 54-2004, Idaho Code, be, and the same is hereby amended to read as follows:

54-2004. DEFINITIONS. As used in this chapter:

(1) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any acts ~~requiring a real estate license in Idaho~~ described in subsection (25) of this section.

(2) ~~"Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land, including, but not limited to, an assignment of a lease, is involved in the transaction~~ "Branch office" means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(3) "Brokerage agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction.

(~~3~~4) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(5) "Business name" means the name that appears on the real estate

broker's license issued by the commission.

(6) "Business opportunity" means and includes an established business, good will of an established business, or any interest therein, or any one (1) or combination thereof, where a sale or transfer of an interest in land including, but not limited to, an assignment of a lease, is involved in the transaction.

(~~4~~7) "Commission" means the Idaho real estate commission, unless the context clearly indicates ~~a different~~ meaning.

(~~5~~8) "Convicted" means a plea of nolo contendere or guilty, a jury verdict of guilty or a court decision of guilt whether or not a judgment or sentence has been imposed, withheld or suspended.

(9) "Cooperative sale" means a transaction involving two (2) or more brokers.

(~~6~~10) "Council" means the Idaho real estate education council.

(~~7~~11) "Dealer in options" means any person, firm, partnership, association or corporation who shall directly or indirectly take, obtain or use options to purchase, exchange, lease option or lease purchase real property or any interest therein for another or others whether or not the options shall be in his or its name and whether or not title to the property shall pass through the name of the person, firm, partnership, association or corporation in connection with the purchase, sale, exchange, lease option or lease purchase of the real property, or interest therein.

(12) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.

(13) "Distance learning course" means, in relation to a real estate course offering, a real estate course that is delivered, not as a live course, but through a medium in which the instructor and student are separated by distance or time.

(~~8~~14) "Double contract" means two (2) or more written or unwritten contracts of sale, purchase and sale agreements, loan applications, or any other agreements, one (1) of which is not made known to the prospective loan underwriter or the loan guarantor, to enable the buyer to obtain a larger loan than the true sales price would allow, or to enable the buyer to qualify for a loan which he or she otherwise could not obtain. An agreement or loan application is not made known unless it is disclosed in writing to the prospective loan underwriter or loan guarantor.

~~(9) "Designated broker" means an individual who is licensed as a real estate broker in Idaho and who is designated by the brokerage company to be responsible for the supervision of the brokerage company and the activities of any associated licensees in accordance with this chapter.~~

(~~10~~5) "Executive director" means the executive director of the Idaho real estate commission.

(16) "Fee or commission" means a payment, actual, promised or expected, as compensation for the performance of any act requiring a real estate license.

(~~11~~17) "Legal business entity" means and includes any type of corporation, partnership, limited liability company or limited liability partnership, a governmental entity, trust or other entity capable of

conducting business.

(~~18~~) "Licensee" means any person who is licensed in accordance with this chapter to engage in the business or act in the capacity of real estate broker, associate broker or real estate salesperson.

(~~19~~) "Limited broker" means a broker individually qualified to do business in Idaho, but who may not have associate brokers or salespersons licensed with that broker.

(20) "Live presentation" means, in reference to a real estate course offering, a real estate course that is personally presented by the instructor and personally attended by the student at the same facility.

(21) "Main office" means the principal location where the real estate broker is licensed to transact business.

(~~14~~22) "Person" means and includes an individual, or any legal business entity.

(~~15~~23) "Primary Idaho license" means an Idaho real estate license ~~not obtained by reciprocal agreement~~ that is not contingent upon continuance of a license in another state or jurisdiction.

(~~16~~24) "Provisional license" means an extension of the period of active licensure, beyond the licensee's expiration date, granted by the commission for the purpose of allowing the licensee to complete the continuing education requirements set forth in section 54-2023, Idaho Code, or for any other purpose allowed by this chapter.

(~~17~~25) "Real estate broker" means and includes:

(a) Any person other than a real estate salesperson, who, directly or indirectly, while acting for another, for compensation or a promise or an expectation thereof, engages in any of the following: sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate or any interest therein or business opportunity or interest therein for others~~.~~;

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth~~.~~;

(e) A dealer in options as defined in this section.

(~~18~~26) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any acts ~~requiring a real estate license in Idaho~~ described in subsection (25) of this section.

(~~19~~27) "Reciprocal license" means an Idaho real estate license that is issued ~~to any person based upon~~ pursuant to the terms of a specific, written reciprocal agreement between Idaho and another state ~~where the person holds a primary license~~ or jurisdiction, and that is contingent upon the licensee's maintaining a license in the other state or jurisdiction.

(~~20~~28) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

(~~21~~9) "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

(~~22~~30) "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

(~~23~~31) "State or jurisdiction" means and includes any of the fifty (50) states and any foreign jurisdiction that issue real estate licenses substantially similar to those provided for in this chapter.

(32) "Successfully completed" means, in reference to a real estate course offering, completing all required course hours and, except where the licensee seeks continuing education credit for having regularly attended the live presentation of a course, passing a commission-approved final examination.

(~~24~~33) "Wall license" means the certificate of license issued by the commission.

SECTION 2. That Section 54-2012, Idaho Code, be, and the same is hereby amended to read as follows:

54-2012. MINIMUM REQUIREMENTS FOR AN INDIVIDUAL PRIMARY IDAHO LICENSE. (1) Requirements for all individual primary licenses. Unless a qualification is waived or modified by the commission for good cause and upon special consideration, and except as provided in section 54-2015, Idaho Code, each person seeking a primary Idaho real estate license as a salesperson, associate broker or designated~~ broker ~~shall meet all of the following minimum qualifications:

(a) Be an individual;

(b) Be eighteen (18) years of age or older;

(c) Furnish satisfactory proof that the applicant graduated from an accredited high school or its equivalent or holds a certificate of general education;

(d) Not have had a real estate or other professional or occupational license revoked, suspended, or surrendered, or the renewal refused, for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(e) Not have been convicted, issued any fine, placed on probation, received a withheld judgment or completed any sentence of confinement for or on account of any felony, or any misdemeanor involving fraud, misrepresentation or dishonest or dishonorable dealing, in a state or federal court, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(f) Complete all prelicense education requirements as provided for in section 54-2022, Idaho Code, for a salesperson's or broker's license;

(g) Pass the commission-approved real estate licensing exam for a sales or broker license in the time and manner stated in section 54-2014, Idaho Code, and pay the required exam fees;

(h) Be fingerprinted by an authorized law enforcement agency, and file these fingerprints with the commission for the purpose of determining whether the qualifications for licensure are fulfilled; the fingerprints will be forwarded to the federal bureau of investi-

gation or the Idaho department of law enforcement; all fees charged by the commission and the law enforcement agency for fingerprint services shall be paid by the applicant;

(i) Sign and file with the commission an irrevocable consent to service, appointing the commission's executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served, and consenting that any lawful process against the licensee that is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice, the executive director shall immediately mail a copy of the same by certified mail to the last known business address of the licensee. All licensees shall provide the commission a full and current mailing address and shall immediately notify the commission in writing of any change in mailing address;

(j) If licensing as an active salesperson or associate broker, provide the name and physical address of the main business location of the designated broker with whom the applicant will be licensed, and the signature of that broker; or, if licensing as a designated broker, provide the name and physical address of the main business location. No Idaho sales associate may be licensed under or associated with more than one (1) Idaho broker at a time;

(k) Submit a properly completed application and all license, application and other fees listed in section 54-2020, Idaho Code, or as otherwise required by statute or rule; and

(l) Provide satisfactory proof of meeting the mandatory errors and omissions insurance requirement for real estate licensees, as stated in section 54-2013, Idaho Code.

(2) Additional requirements for broker and associate broker licenses. Applicants seeking a primary Idaho license as a broker or associate broker shall meet the additional following qualifications:

(a) Provide satisfactory evidence of having been actively engaged, on a full-time basis, for two (2) years as a licensed real estate salesperson within five (5) years immediately prior to the date upon which the individual makes application~~:~~. Such evidence shall demonstrate the productiveness of the licensed activity to have been generally commensurate with that of other licensees practicing in a similar capacity. Listings, sales, options or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification.

(i) A broker or associate broker applicant may be required to furnish a report of listings and sales accomplished by the applicant during two (2) or more years within the last five (5) years of licensure immediately prior to the application date;

(ii) This report shall be certified as correct by the broker or brokers with whom the applicant has been associated;

(iii) The broker experience requirement may be modified or reduced, in whole or in part, at the discretion of the commission, based upon the applicant's educational background, or experience in related or affiliated business activities;

(iv) The commission in its discretion may make such additional investigation and inquiry relative to the applicant as it shall

deem advisable;

(b) Designate a physical office location and a business name. The commission may refuse to issue a license to any person if the business name is the same as that of any person whose license has been suspended or revoked or is so similar as to be easily confused with another licensee's name by members of the general public. However, nothing in this subsection shall restrict an individual from obtaining a license in his or her own legal name.

(c) If currently licensed in Idaho as a salesperson and applying for a license as an Idaho broker or associate broker, the individual shall submit a new fingerprint card for processing with the application and pay associated fees.

SECTION 3. That Section 54-2014, Idaho Code, be, and the same is hereby amended to read as follows:

54-2014. LICENSE EXAMS. (1) Exam required. Unless a written certificate of waiver is obtained from the commission and submitted with the application, an individual applicant seeking a primary Idaho real estate license shall take and pass the national portion and the Idaho state portion of an approved exam administered by or through the commission. The license applicant shall take and pass the required portion or portions of the exam within no more than twelve (12) months immediately preceding the date of the license application.

(2) Preregistration for the exam. An ~~applicant~~ individual may preregister to sit and take the exam by submitting a completed preregistration exam application form and a nonrefundable exam fee in an amount established by motion of the commission, not to exceed one hundred dollars ($100). The exam application and fee shall be submitted directly to the testing company administering the exam, or to the commission, as specified by the commission~~, and shall be postmarked in the manner and time specified by the commission~~. Failure to appear for any reason for the exam shall cancel the exam application. A new exam application and fee shall be required to take the exam at a future time.

(3) Walk-in registration for the exam. An ~~applicant~~ individual may appear at a testing center and take the exam without having preregistered so long as seating remains available at the center. The ~~applicant~~ individual shall submit a completed exam application and a walk-in exam fee in an amount established by motion of the commission, not to exceed one hundred ten dollars ($110), at the time the ~~applicant~~ individual is admitted to take the exam.

(4) Waiver of national portion of exam. An ~~applicant~~ individual who has obtained a written certificate from the commission waiving the national portion of the exam shall be required to take and pass the Idaho state portion of the exam only. The certificate of waiver and exam fee shall be submitted with the application for exam.

(5) Failure to pass the exam. An ~~applicant~~ individual who fails to pass the exam may reapply to take another exam. The ~~applicant~~ individual must complete a new exam application and submit a new exam fee.

(6) The commission shall establish, by motion, fees for the exam which, in its discretion, are sufficient to raise the revenue required to administer the exam. Fees so established shall remain effective from year to year and may be altered only upon proper motion by the commission.

SECTION 4. That Section 54-2015, Idaho Code, be, and the same is hereby amended to read as follows:

54-2015. INDIVIDUALS ACTIVELY LICENSED IN ANOTHER STATE OR JURISDICTION SEEKING PRIMARY IDAHO LICENSURE. (1) An individual who is currently and actively licensed as a real estate broker or salesperson in another state or jurisdiction at the time of application for a primary Idaho real estate license shall meet all qualifications listed in section 54-2012, Idaho Code, for the type of license sought, except that the applicant shall not be required to furnish proof of the educational prerequisites described in subsections~~--(1)(c)--and~~ (1)(f) of section 54-2012, Idaho Code. In addition, such applicant shall provide a current, certified license history from the other licensing state or jurisdiction, which history shall indicate any disciplinary action taken against the applicant's license by the other licensing state or jurisdiction, and the status and standing of the applicant's license in the other state or jurisdiction.

(2) An ~~applicant~~ individual who holds an active license~~,~~ in good standing~~,~~ in another state or jurisdiction may, upon written request from the commission, obtain a certificate of waiver of the national portion of the exam required for Idaho licensure. ~~To have the national portion--of--the--exam--waived,--a~~ A request for waiver shall indicate the individual's mailing address to which the commission is to deliver the certificate of waiver. The certificate of waiver ~~must be obtained from the Idaho real estate commission and shall~~ be submitted with the application ~~for exam as provided in subsection (4)~~ of section 54-2014, Idaho Code.

(3) An individual who is currently and actively licensed in another state or jurisdiction that administers a real estate exam may be issued a primary Idaho license without further exam or proof of educational prerequisites pursuant to written agreement between Idaho and the other state or jurisdiction, provided that such other state or jurisdiction allows the issuance of real estate licenses in substantially the same manner as set forth in this subsection.

SECTION 5. That Section 54-2016, Idaho Code, be, and the same is hereby amended to read as follows:

54-2016. PRIMARY IDAHO LICENSES FOR LEGAL BUSINESS ENTITIES, SOLE PROPRIETORSHIPS AND BRANCH OFFICES -- ADDITIONAL REQUIREMENTS. (1) Legal business entities. Each legal business entity, as defined in section 54-2004, Idaho Code, shall be licensed by the Idaho real estate commission to engage in the real estate business in Idaho and shall make proper application, pay all required fees, and meet all requirements listed below.

(a) Each legal business entity shall have a properly licensed individual designated broker, who shall be held responsible for the activities of the licensed entity. The individual designated broker shall also hold the following legal position within the licensed entity:

(i) Corporation -- an officer;

(ii) Partnership or limited partnership -- a general partner;

(iii) Limited liability company -- a member or manager.

~~It is the intent of the law that in these and in any other instance,~~

~~t~~The individual designated broker for any business entity shall have full authority to act on behalf of the licensed business entity, and shall submit sufficient and satisfactory proof thereof with the application for license. Such proof shall include a list of the entity's officers, directors, members or managers, as reflected in the minutes, resolutions or other similar business documents of the entity. All acts of that individual as designated broker shall be considered acts of the licensed business entity. Nothing in this section is intended to create liability to a legal business entity for illegal or fraudulent acts by the individual broker performed solely on his own account.

(b) A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required above, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(c) One (1) individual may act as designated broker for more than one (1) licensed business entity, however, all entities shall have their main offices in the same physical location.

(d) Satisfactory proof of mandatory errors and omissions insurance shall be provided for both the individual designated broker and the licensed business entity.

(e) A legal business entity doing business under an assumed name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state.

(2) Sole proprietorships. An individual designated broker not licensed with a legal business entity, as defined in section 54-2004~~(11)~~, Idaho Code, shall be licensed as a sole proprietor. Each sole proprietorship seeking a real estate license shall meet all of the following requirements:

(a) A licensed sole proprietor doing business under an assumed business name shall provide satisfactory proof of having legally filed a certificate of assumed name with the Idaho secretary of state;

(b) Satisfactory proof of mandatory errors and omissions insurance shall be provided for the licensed designated broker of a sole proprietorship.

(3) Multiple business names prohibited. A legal business entity or sole proprietorship shall be licensed under only one (1) business name.

(4) Branch offices. Each b~~B~~ranch offices in which trust funds ~~or~~ and original transaction files are maintained shall be separately licensed ~~by application and payment of fifty dollars ($50.00) for the issuance and renewal of each branch office license. Such branch office~~ in accordance with the following:

(a) The designated broker establishing the branch office shall submit an application, along with the required fee for the issuance or renewal of the branch office license.

(b) The broker shall designate in the application a branch manager,

who shall be a salesperson with at least two (2) years' experience or an associate broker, to regularly occupy and be responsible for the supervision of the branch office. When a branch manager is a regular full-time employee or is engaged in a full-time activity at a location other than the place he is licensed to do business, a presumption will be made that the branch manager is unable to responsibly supervise the branch; provided however, the presumption may be overcome by evidence to the contrary which the commission determines to be satisfactory.

(c) A branch manager shall not be licensed to manage more than one (1) branch office at a time.

(d) A license issued to a branch office is valid and in effect only as long as the license of the designated individual remains in active status. The wall license of the branch office shall be signed by the designated broker.

(e) No separate branch office license or manager is required for business locations ~~other~~ than the main office unless trust funds or original transaction records are kept at the branch.

(f) If a separate real estate trust account is maintained for a branch office, all records and related files for that account shall be maintained at the branch office.

(g) Each branch office or business location, whether separately licensed or not, shall conduct ~~business~~ only in the licensed name of the legal entity or sole proprietor.

SECTION 6. That Section 54-2018, Idaho Code, be, and the same is hereby amended to read as follows:

54-2018. LICENSE RENEWALS -- INACTIVE LICENSES STATUS -- PERSONAL CHANGES -- EFFECTIVE DATES. (1) Each new or reactivated license shall be for a period of one (1) year plus the months up to and including the next birth date of the licensee, not to exceed a period of two (2) years, and shall expire on a date to coincide with the last day of the month of the birth date of the licensee. Corporations, partnerships, limited liability companies and other entities defined as "persons" in this chapter shall have established as the equivalent of a birth date, the birth date of its designated broker. Licensed branch offices shall have established as the equivalent of a birth date, the birth date of the real estate broker establishing the branch office.

(2) Each license shall be renewable for a period of two (2) years by submitting a properly completed application, including evidence of having met the commission's continuing education requirements as set forth in section 54-2023, Idaho Code, and all renewal fees established by this chapter or by the commission, on or before 5 p.m. of the last day of the birth month of the licensee. ~~If mailed, the application and fee shall be postmarked by that same date and time.~~

(3) If the licensee fails to submit a proper application or pay the renewal fee on or before the last day of the birth month of the licensee, the commission may accept a later payment, subject to such conditions as the commission may require including, but not limited to, the assessment of a late fee; provided that between the last day of the month of the licensee's birth date and the date of renewal of the license, the rights of the licensee under such license shall be ~~suspended~~ expired, and during such period of ~~suspension~~ expiration it shall

be unlawful for any licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions of real estate broker or real estate salesperson in section 54-2004, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not renewed within one (1) year of the expiration date shall be automatically terminated by the commission and may not be renewed.

(4) A licensee who has paid all applicable fees, who is not affiliated with a designated broker and who holds a current license that is not revoked or suspended may place his license on inactive status. ~~The holder of an inactive license~~ During the period that his license is inactive, the licensee shall not engage in the business or act in the capacity of real estate broker, associate broker or salesperson. ~~An inactive license may be reactivated as provided in this chapter and the rules of the commission~~ However, an inactive licensee may receive a referral fee for any referral made during the period his license was active. A licensee may reactivate an inactive license by meeting each of the following:

(a) Making proper application and paying the required fee;

(b) Licensing under an Idaho broker as a sales associate or, if licensing as a broker, establishing an office and making proper application and paying the required fee;

(c) Providing evidence of having errors or omissions insurance in the manner required by section 54-2013, Idaho Code, and in accordance with the rules of the commission; and

(d) Providing evidence of having successfully completed the continuing education requirements or their equivalent, as prescribed in section 54-2023, Idaho Code. A continuing education course taken to make up a deficiency of the requirements from the previous renewal period may be applied toward the continuing education requirements for the current period.

(5) An individual licensee, whether active or inactive, shall provide written notice to the commission of any change of his personal name, address of personal residence or personal telephone number. Notice shall be provided within ten (10) days of the change. If the licensee has changed his personal name, he shall also submit legal proof of the change and the fee for printing a new license and, if an active licensee, he shall return the wall license bearing his former name.

(6) No license shall be valid unless signed by the licensee.

(7) Application requests for licensure and for license changes shall become effective when the properly completed forms, attachments and required fees are received at and approved by the commission. Applications which are incomplete or lacking proper fees shall be returned to the applicant and no license shall be issued until a completed application and proper fees are physically received at and actually approved by the commission.

SECTION 7. That Section 54-2019, Idaho Code, be, and the same is hereby amended to read as follows:

54-2019. DENIAL OF LICENSE APPLICATIONS. (1) The commission may deny any license application, including an application for license renewal, upon the commission's determination of any of the following:

(~~1~~a) The applicant does not possess all of the qualifications

required for the license sought;

(~~2~~b) The applicant employed fraud, deception, misrepresentation, misstatement or omission or any unlawful means in applying for a license or taking the exam;

(~~3~~c) Within the five-year period immediately preceding the application, the applicant committed any act for which a real estate license in Idaho may be revoked or suspended;

(d) Payment of any licensing fee by check that is returned by the banking institution due to insufficient funds, unless the reason for not paying on the check is the fault of the banking institution; or

(~~4~~e) There exist any other specific facts about the applicant that cause the commission to reasonably conclude that granting the applicant's request for Idaho licensure is not in the best interests of the citizens of the state of Idaho.

(2) Where any of the facts referenced above warranting denial of the application are not discovered or determined by the commission until after the license has been issued, such facts may be grounds for the expiration, termination, suspension or revocation of the license.

SECTION 8. That Section 54-2020, Idaho Code, be, and the same is hereby amended to read as follows:

54-2020. FEES. The Idaho real estate commission shall establish fees which, in its discretion, are sufficient, when added to the other fees authorized by this chapter, or any other law or rule, to raise that revenue required to administer the provisions of this chapter.

~~Each--person-seeking-any-type-of-Idaho-real-estate-license-shall-pay~~ The commission shall assess the following fees, in addition to any other fees established in this chapter or by rule:

(1) For each year or portion thereof for which an active or inactive license is issued or renewed, a license fee in an amount not to exceed one hundred dollars ($100), the exact fee to be determined by administrative rule of the commission. Fees so established shall remain effective from year to year unless changed through the rules promulgation process prescribed in chapter 52, title 67, Idaho Code;

(2) A tuition or registration fee for real estate education courses, course materials and any course exam fee. These fees shall be established based upon the total annual costs involved in the provision of all real estate education courses, course materials and course exam fees;

(3) A fee in the amount of twenty-five dollars ($25.00) for late license renewal;

(4) A fee in the amount of fifteen dollars ($15.00) for any license change that necessitates the printing of a new license certificate;

(5) A fee in the amount allowed by law for insufficient funds checks or other types of insufficient payment;

(6) A fee in the amount of ten dollars ($10.00) for each certified copy of a licensee's education history or license history;

(7) A fee in the amount of fifty dollars ($50.00) for issuance or renewal of a branch office license.

SECTION 9. That Section 54-2022, Idaho Code, be, and the same is hereby amended to read as follows:

54-2022. REAL ESTATE EDUCATION -- PRELICENSE REQUIREMENTS. (1) Except as provided in section 54-2015, Idaho Code, an applicant seeking a primary Idaho license as a real estate salesperson, broker or associate broker shall furnish satisfactory proof to the commission that the applicant has successfully completed current commission-approved and accredited courses of real estate study as follows:

(a) Salesperson's license. For a salesperson's license, the applicant shall complete a total of ninety (90) classroom hours, or the equivalent in available correspondence hours;

(b) Broker's or associate broker's license. Applicants seeking a broker's or associate broker's license shall, in addition to meeting the requirements for a salesperson's license, successfully complete four (4) specified courses in advanced real estate study, for a minimum of ninety (90) additional classroom hours, or the equivalent in available correspondence hours.

(2) Each applicant shall successfully complete all prelicense real estate courses within no more than five (5) years prior to the date of the license application. However, upon written request for special consideration by the license applicant, the commission may waive or modify the five-year requirement at its discretion, based on the applicant's experience or additional education. Each waiver request shall be submitted with a current certified license history from Idaho or the applicant's other licensing jurisdiction, which history shall indicate all disciplinary actions taken against the applicant's license and the status and standing of such license in such licensing state or jurisdiction, along with sufficient proof of education completion.

(3) To receive credit for prelicense real estate courses, a student must regularly attend and complete the course, and such course must meet all requirements set forth in section 54-2036, Idaho Code.

(4) No credit will be given for courses taken for audit.

(5) Credit for completion of approved prelicense education course work will not be granted when the content of a course repeats that for which credit has been previously received.

(6) Upon written request from a license applicant, the commission may waive or modify one (1) or more prelicense course requirements based upon the applicant's satisfactory completion of similar real estate courses in Idaho or another state or jurisdiction. The request for waiver shall be accompanied by an official transcript from the institution that provided the course of instruction, along with a description of the subjects covered in the course and the number of classroom hours involved in the instruction. "Satisfactory completion" means the applicant regularly attended the course and received a final grade of "C" or better.

SECTION 10. That Section 54-2023, Idaho Code, be, and the same is hereby amended to read as follows:

54-2023. CONTINUING EDUCATION REQUIREMENTS. Each licensee seeking renewal of an Idaho real estate license on active status, and each Idaho licensee seeking to change from inactive to active license status, shall submit satisfactory proof to the commission of having successfully completed at least twelve (12) classroom hours of commission-approved and certified continuing education course work. Failure to provide proof of meeting the continuing education requirements as set forth in this chap-

ter constitutes an incomplete application for a renewal of an active license or for a change in license status from inactive to active, and, as such, constitutes grounds for denial of those applications.

(1) Renewing active license. Licensees renewing on active status must successfully complete the continuing education requirement on or before the license expiration date, in the manner stated in section 54-2018, Idaho Code.

(2) Change from inactive to active. Licensees changing from inactive to active status must successfully complete one (1) continuing education requirement offered during their current inactive license period.

(3) No duplicate credit. Credit for completion of any approved continuing education course will not be granted twice.

(4) Excess credits. The twelve (12) hours of course work shall apply to the license period in which such course work is completed; hours completed in excess of those required for the license period shall not accumulate or be credited for the purposes of subsequent license renewal periods.

(5) Challenge exams. The commission may substitute all or a portion of the continuing education course work required when a licensee shows evidence of passing an approved challenge exam or of completing equivalent education determined by the commission to be in full compliance with such continuing education requirements.

(6) No exam for live courses. A licensee may receive continuing education course credit without having to take or pass an exam if the licensee personally attends the entire live presentation of an approved course.

(7) Provisional license -- Extension of time. A three-month extension of time for completing the education requirements may be obtained by submitting with the renewal application, or application to activate, satisfactory evidence showing that the applicant was unable to comply with such education requirements. Such evidence may be:

(a) Bona fide hardship preventing completion of the reinstatement requirements of an inactive license;

(b) Health reasons preventing attendance or completion;

(c) Active duty in the military service with assignment to a permanent duty station outside of the state during the last twelve (12) months of a license period; or

(d) Other compelling cause beyond the control of the applicant while engaged in the real estate business.

If such an extension is granted, the licensee shall receive a provisional license for a period of time not to exceed three (3) months. No further extension of time may be granted. A license issued or renewed after an extension of time has been granted shall be dated effective as of the original license expiration date and not the extended date. Failure to satisfy the continuing education requirement within the time granted shall result in the automatic inactivation of the license.

SECTION 11. That Section 54-2025, Idaho Code, be, and the same is hereby amended to read as follows:

54-2025. CERTIFICATION REQUIREMENTS. (1) Certification required. Certification must be obtained by all course providers, course instructors and for all course content in order for the course to be credited toward prelicense or continuing education requirements in Idaho under

this chapter.

(2) Courses, instructors and providers monitored. The commission or its representative may monitor any course for the purpose of course, instructor or provider certification.

(3) If the commission at any time determines that an instructor, course or provider is not meeting the requirements for continued commission approval or certification, written notification detailing the deficiencies requiring correction shall be made immediately to the appropriate person. The commission shall take no action to withdraw the certification for thirty (30) days from the date of the written notice. At the expiration of this period, if the deficiencies have not been corrected to the commission's satisfaction, the commission may take action to withdraw certification. Withdrawal of certification shall be governed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and the rules of the commission.

SECTION 12. That Section 54-2027, Idaho Code, be, and the same is hereby amended to read as follows:

54-2027. DUTIES AND REQUIREMENTS OF ALL CERTIFIED COURSE PROVIDERS. Failure of a certified course provider to comply with the following duties and requirements shall be grounds for the commission to withdraw or cancel the provider's certification for cause.

(1) Discrimination prohibited. Each certified course provider shall at all times be in compliance with state and federal laws, rules and regulations regarding all aspects of equal opportunity and protection of civil rights. No course provider shall engage in discriminatory practices, nor allow their course instructor, or method of delivery to violate laws prohibiting discrimination. Each course provider will fully comply with any requirements of the Americans with disabilities act regarding access to and delivery of its courses, including the provision of accessible facilities and reasonable accommodations for students.

(2) Open access to course offerings. Registration and attendance at all certified courses offered for prelicense or continuing education credit shall be open to all persons meeting normal course prerequisites. A certified course provider located in or affiliated with a licensed real estate brokerage company may not refuse reasonable access to any licensee based on that licensee's affiliation with another organization or brokerage company, or the licensee's membership status in any professional organization. However, a course provider is not prohibited from charging a separate and reasonable course fee to nonaffiliated or nonmember licensees.

(3) Disclosure of fees. All fees charged to a student by a course provider shall be specified separately in writing. If additional fees are charged for supplies, materials or books required for course work, such fees shall be itemized by the provider and, upon payment of such fees, the supplies, materials or books shall become the property of the student. All fees and the manner in which they are to be paid shall be stated in a student contract, in a form approved by the commission. The student contract shall expressly include the provider's policy regarding the return of fees in the instance where the student is dismissed or voluntarily withdraws from the course.

(4) Facilities and supportive personnel. The provider shall provide the facilities and all supportive qualified personnel or approved

proctors necessary to adequately implement its real estate program.

(~~4~~5) Student records and other requirements. Each Idaho certified course provider shall comply with the following requirements:

(a) Records. Maintain for each individual student a complete, accurate and detailed record which shall include the total number of hours of instruction undertaken and satisfactorily or unsatisfactorily completed in the area of study;

(b) Course completion lists. Within five (5) working days after conclusion of each course of instruction, the provider shall submit to the council or commission an alphabetical list which shall include the names, addresses and social security numbers of the students completing the course of instruction, the name of the course, the name of the instructor, the number of hours included in the course, the date of the course and the location. The list shall be certified by the instructor from whom the students received instruction and an authorized representative of the provider;

(c) Grades. The provider will provide written notification to students who successfully or unsuccessfully complete a course within thirty (30) days of the course completion date;

(d) Evaluations. Each provider shall submit acceptable student evaluations for each course and instructor, which must be on commission-approved forms. The use of the commission evaluation form is recommended;

(e) Course schedules. Each provider shall submit schedules of courses and instructors as requested by the commission and submit changes promptly as they occur. Whenever there is a change in a course including, but not limited to, a change in curriculum, course length or instructor, the provider shall promptly notify the commission in writing of the change.

(~~6~~) Posting and recording fees. The commission may require that course providers pay to the commission a nonrefundable posting and recording fee to defray normal expenses incurred in maintaining the certificate program. The fee amount shall be established by the commission by motion.

(~~5~~7) Advertising restrictions:

(a) Providers may advertise that they are currently certified by the commission, if current certification has been approved, but no such advertising may state or imply that the provider is an agency of the commission or the council;

(b) No course provider shall provide any information to the public or to prospective students which is misleading in nature. Information is misleading when, taken as a whole, there is distinct probability that it will deceive the persons whom it is intended to influence.

(~~6~~8) Changes in certification. Certification shall be granted to the particular provider for the specific ownership, provider location, and named individual in charge as designated in the application for certification. Any changes in ownership, provider location, or provider name, or named individual in charge must be submitted for approval to the commission, at least one (1) month in advance of the effective date of the proposed changes.

SECTION 13. That Section 54-2036, Idaho Code, be, and the same is hereby amended to read as follows:

54-2036. CERTIFICATION OF COURSES AND COURSE CONTENT. Every real estate course offered for prelicense or continuing education credit for an Idaho real estate license shall first be certified and accredited by the Idaho real estate commission.

(1) An application for course certification must be submitted in the form and manner required by the commission, with proper fees, at least two (2) months prior to contemplated date of the first course offering.

(2) Minimum requirements for course certification:

(a) Each course must be certified individually, offered only through a provider certified or approved in Idaho, and taught by an instructor certified or approved in Idaho in accordance with this chapter.

(b) Each prelicense course must contain at least twenty (20) hours of classroom instruction.

(c) Exam time shall not be included as approved classroom hours of instruction.

(d) A course hour is defined as a period of at least fifty (50) minutes of actual instruction.

(e) Distance learning and alternative course delivery. The length of a certified distance learning or other alternative course shall be based upon the same number of hours which would be awarded in an equivalent classroom course, and must include a commission-approved, proctored final exam. The commission may, by motion, adopt national standards and require national certification for the design and delivery of noncommission-produced distance learning courses.

(f) Each prelicense course must include a proctored, commission-approved final exam requiring a minimum passing score of seventy percent (70%).

(i) Exam retake policy. Each certified course provider~~,~~ may, at its option, allow students who fail the initial course exam one (1) opportunity to retake the approved course exam within the following time periods:

1. Prelicense course exam retakes must occur within one (1) month of the original course exam;

2. Continuing education course challenge exam retakes must occur within that course's certification period;

(ii) If a student fails the retake exam for any prelicense or continuing education course, the student must repeat the entire course and pass the final exam to receive credit.

(g) Challenge exams. A student shall not earn credit for any prelicense course by challenging and passing the course exam without otherwise completing all course requirements. Credit for continuing education courses may be earned by challenge exam only as allowed in section 54-2023(5), Idaho Code.

(3) Approved topics. The commission shall establish specific, approved topics for course content as it deems appropriate to current real estate practices and laws.

SECTION 14. That Section 54-2039, Idaho Code, be, and the same is hereby amended to read as follows:

54-2039. BROKER AND BRANCH OFFICE MANAGER ABSENCES AND CHANGES. Each real estate brokerage company must have a legally qualified indi-

vidual acting as designated broker at all times. Each branch office licensed under section 54-2016(4), Idaho Code, shall have, at all times, a legally qualified individual acting as branch office manager.

(1) Broker or branch manager absent for more than twenty-one days. A designated broker who is absent from his main office for more than twenty-one (21) ~~calendar~~ consecutive days shall appoint a qualified designated broker of another office, or an associate broker who is licensed and associated with the absent broker, to manage, supervise and oversee the regular office operations of the company in his absence. A branch office manager who is absent for more than twenty-one (21) consecutive days from a branch office in which trust funds and original transaction files are maintained shall appoint a qualified individual to manage, supervise and oversee the regular office operations of the company in his absence. The appointee shall conduct all supervisory activities normally required of the designated broker or branch manager. Except in the event of an emergency, the designated broker or branch manager shall notify the commission in writing of the name of the appointee prior to the broker or manager leaving the office for an extended period of more than twenty-one (21) consecutive days.

(2) Broker or branch manager absent for more than sixty days. A designated broker, or manager of a branch office in which trust funds and original transaction files are maintained, shall not be absent from his main office for a period longer than sixty (60) consecutive days. In the case of such extended absence, another qualified individual shall be designated to act as broker or branch office manager. If a designated broker is absent from his main office for a period longer than sixty (60) consecutive days, and no new broker is designated to act as broker for the brokerage company, the commission shall place on inactive status the licenses of the absent broker and of all licensees associated with him, and all brokerage listing agreements and all buyer brokerage agreements shall be terminated.

(3) Change of broker in business entity. A license issued to a legal business entity, as defined in this chapter, is effective only as long as the individual designated broker's license is in active status and in effect. If the individual so designated has a license refused, revoked, suspended or otherwise made inactive by the commission, or if the individual designated broker voluntarily surrenders the individual license or ceases to be connected with the entity in the manner required in this chapter, the business entity shall have ten (10) business days in which to designate another qualified individual as designated broker before the entity's license is terminated, and the licenses of all associated licensees are made inactive.

(4) Effective date of changes. No change in designated broker shall be effective until written notice is received and approved by the commission, in the form required.

(5) Failure to comply — Original broker to remain responsible except in the case of revocation. Where a licensed brokerage company fails to comply with this section and its office is closed, or during any period where the designated broker has left the brokerage company and no new broker has been designated to act for the company, the original designated broker shall remain responsible for trust account funds, pending transactions and records in the manner described in sections 54-2041 through 54-2049, Idaho Code. However, if the license of the original designated broker of the brokerage company is revoked, the

license of that brokerage company shall be made inactive and its office closed until the company designates another qualified individual to act as broker.

SECTION 15. That Section 54-2040, Idaho Code, be, and the same is hereby amended to read as follows:

54-2040. MAIN OFFICE OR BUSINESS LOCATION -- DISPLAY OF LICENSE. (1) Definite location required. Each individual licensed as a designated real estate broker under the provisions of this chapter shall be required to have and maintain a definite, physical place of business, which place shall serve as his main office for the transaction of business and be regarded for the intent and purpose of this chapter as his principal place of business. Notice in writing shall be given to the commission of any change by the broker of the business name, ~~or business~~ location, or mailing address ~~whereupon a new license shall be issued reflecting the changed business name or address~~ and each wall license requiring a change shall be returned to the commission along with the fee for printing and issuance of a new license. A change of business name or location without notification to the commission and issuance of a new lic~~ense shall automatically cancel~~ inactivate the license ~~hereto-fore~~ previously issued. The broker shall also notify the commission in writing of any change in the business ~~mailing address~~ telephone number.

(2) Broker for more than one business. A qualified individual may be the designated broker for more than one (1) licensed real estate business entity only if all licensed businesses operate their main offices at the same physical location.

(3) Brokers sharing same business location. More than one (1) individually licensed broker may operate an office at the same address only if each broker operates under a business name which clearly identifies the broker as an individual within the group of brokers, and each broker shall maintain his or her records and trust accounts separate from all other brokers.

(4) Business name and display of licenses. A broker shall not conduct business under any name other than the one in which the license is issued. Current licenses of the broker and all associates licensed with the broker shall be prominently displayed or available for public inspection in the office designated with the commission as the broker's main office location. No other location may be used as a main office location until proper notice is acknowledged by the commission.

(5) Lending license prohibited. A broker shall not lend or permit the use of the broker's license, whether for compensation or not, to enable anyone licensed or unlicensed to, in fact, establish or carry on a business for which a real estate broker's license is required, wherein the broker does not actively manage and have full control. In like manner, a salesperson shall not use another person's broker's license, whether for compensation or not, to establish or carry on a business for which a broker's license is required, nor to manage and control the office, except as allowed by sections 54-2016(4)~~,~~ and 54-2039(1), Idaho Code.

(6) Upon surrender of his real estate license or upon notice of suspension or revocation of such license, a licensee shall immediately forward the wall license to the commission. The license of any sales associate licensed under and associated with a broker whose license is

to be surrendered, suspended or revoked shall be returned to the commission on or before the effective date of the notice or order surrendering, suspending or revoking the broker's license.

SECTION 16. That Section 54-2041, Idaho Code, be, and the same is hereby amended to read as follows:

54-2041. TRUST ACCOUNTS AND ENTRUSTED PROPERTY. (1) A licensed Idaho real estate broker shall be responsible for all moneys or property entrusted to that broker or to any licensee representing the broker.

(2) Immediately upon receipt, the broker shall place entrusted moneys in a neutral, qualified trust fund account in Idaho, and shall properly care for any entrusted property.

(3) Entrusted moneys shall not be commingled with moneys of the broker, firm or agent, except for that minimum amount that may be required to open and maintain the trust account or as otherwise allowed by subsection (7) of section 54-2042, Idaho Code.

(4) The real estate broker shall remain fully responsible and accountable for all entrusted ~~funds~~ moneys and property until a full ~~accounting~~ has been given to the parties involved.

SECTION 17. That Section 54-2042, Idaho Code, be, and the same is hereby amended to read as follows:

54-2042. CREATION OF NONINTEREST-BEARING TRUST ACCOUNTS -- REQUIREMENTS. A broker may establish one (1) or more real estate trust accounts but each account must meet all requirements of this chapter, including the following:

(1) Each trust account must be established at an approved depository, which must be located in the state of Idaho, and must be noninterest-bearing, except as allowed in section 54-2043, Idaho Code, or as otherwise may be provided by law. Approved depositories are state or federally chartered banks and trust companies, state or federally chartered savings and loan associations, properly licensed title insurance companies in Idaho, or an actively licensed attorney at law in Idaho.

(2) Each account must be identified by the term "real estate trust account," on checks, deposit slips, and with the depository.

(3) Each trust account must be established and maintained under the licensed business name of the broker, and shall be under the full control of the broker.

(4) Each broker trust account must have a separate and complete set of records, which must consist of a monthly accounting, deposits, charges, and withdrawals or checks, even if the moneys are on deposit with a title company, attorney or other approved depository. The broker is responsible for ensuring that these separate account records are provided by the depository.

(5) Funds deposited in a real estate trust account must be subject to withdrawal on demand at the order or direction of the broker at all times, even if deposited with a title company or other approved depository.

(6) A commission-approved form giving notice of opening a trust account and giving authorization for the commission to inspect the account must be completed for each trust account, signed by the broker

and an officer of the bank or depository and returned to the commission.

(7) No deposits to the trust account shall be made of funds that belong to the broker or real estate firm, except that the broker may deposit broker or firm funds for the purpose of opening and maintaining the account and for the payment of anticipated bank service charges for the trust account. In no event shall the balance of broker or firm funds in the account exceed three hundred dollars ($300). Maintenance funds shall not be disbursed for any purpose other than to cover bank charges charged directly to the trust account by the bank.

(8) An entity not specified as an approved escrow depository in subsection (1) of this section, may be accepted and approved by the commission as an escrow depository upon disclosure of the following:

(a) The details of the entity's financial structure;

(b) The amount and terms of errors and omissions insurance and any bonding;

(c) A copy of the entity's last audit and financial statement;

(d) A copy of any license or certificate issued to the entity; and

(e) Any other information that may help the commission make its determination.

SECTION 18. That Section 54-2046, Idaho Code, be, and the same is hereby amended to read as follows:

54-2046. TRUST ACCOUNT DISBURSEMENTS. The broker who holds entrusted funds or like payments in lieu of cash received in a regulated real estate transaction is fully responsible for all such funds until a full accounting has been made to the parties involved. All cash or like payments in lieu of cash must be disbursed from the real estate trust account only in accordance with this section. Failure to comply with this section is a violation of license law and will subject the broker to discipline.

(1) Written authorization required. No disbursements shall be made without a written, signed authorization by the parties to the transaction or an order of the court. Written and signed instructions from parties to the transaction may be in the purchase and sale agreement or in a separate document.

(2) Disbursements in advance of closing. No disbursements shall be made in advance of closing or before the happening of a condition set forth in the purchase and sale agreement or other agreement in a regulated real estate transaction to the seller, closing agent or any other person without the required written and signed authorization.

(3) Disbursements to escrow agent. When set forth in the purchase and sale agreement that funds are to be disbursed to the person or company named as the escrow closing agent or agency, such disbursement shall be made to the person, company, agent or agency on or before the day of closing, and a receipt for such disbursement shall be retained in the broker's transaction file.

(4) Withdrawal of broker's commission. No disbursement of any portion of the broker's commission shall take place without prior written, signed authorization from the buyer and seller or until copies of the closing statements, signed by the buyer and seller, have been delivered to the broker and until the buyer or seller has been paid the amount due as determined by the closing statement.

(45) Provision for forfeited earnest money. The purchase and sale

agreement must include a provision for division of moneys taken as earnest money when the transaction is not closed and such moneys are retained by any person as forfeited payment.

SECTION 19. That Section 54-2050, Idaho Code, be, and the same is hereby amended to read as follows:

54-2050. BROKERAGE REPRESENTATION AGREEMENTS -- REQUIRED ELEMENTS. All real estate brokerage representation agreements, whether with a buyer or seller, must be in writing in the manner required by section 54-2085, Idaho Code, and must contain the following contract provisions:

(1) Seller representation agreements. Each seller representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

(a) Conspicuous and definite beginning and expiration dates;

(b) A legally enforceable description of the property;

(c) Price and terms;

(d) All fees or commissions; and

(e) The signature of the owner of the real estate or the owner's legal, appointed and duly qualified representative, and the date of such signature.

(2) Buyer representation agreements. Each buyer representation agreement, whether exclusive or nonexclusive, must contain the following provisions:

(a) Conspicuous and definite beginning and expiration dates;

(b) All financial obligations of the buyer or prospective buyer, if any, including, but not limited to, fees or commissions;

(c) The manner in which any fee or commission will be paid to the broker; and

(d) Appropriate signatures and their dates.

(3) Prohibited provisions and exceptions -- Automatic renewal clauses. No buyer or seller representation agreement shall contain a provision requiring the party signing the agreement to notify the broker of the party's intention to cancel the agreement after the definite expiration date, unless the representation agreement states that it is completely nonexclusive and it contains no financial obligation, fee or commission due from the party signing the agreement.

(4) Copies required. A broker or salesperson who obtains a written brokerage representation agreement of any kind shall, at the time of securing such agreement, give the person or persons signing such agreement, a legible, signed, true and correct copy thereof. To the extent the parties have agreed in writing, c~~C~~opies ~~may--be~~ that are electronically generated or transmitted, faxed or delivered in another method ~~as--long-as-the-representation-agreement-specifically-allows-for such-transmission-and-the-parties-to-the-agreement-agree-in--writing--to accept-such-copies-or-documents-as~~ shall be deemed true and correct.

(5) Electronically generated agreements. To the extent the parties have agreed in writing, b~~B~~rokerage representation agreements with a buyer or seller ~~may-be~~ that are electronically generated or transmitted, faxed or delivered in another method ~~as-long-as-the-representation agreement-specifically-allows-for-such-transmission-and-the--parties--to the--representation--agreement-agree-in-writing-to-accept-such-copies-or documents-as~~ shall be deemed true and correct and enforceable as originals.

SECTION 20. That Section 54-2052, Idaho Code, be, and the same is hereby amended to read as follows:

54-2052. ELECTRONICALLY GENERATED AGREEMENTS. To the extent the parties to the transaction have agreed in writing ~~o~~offers to purchase, counteroffers and acceptances may be electronically generated or transmitted, faxed or delivered in another method ~~only if the representation agreement specifically allows for such transmission and the parties to the representation agreement agree in writing to accept such copies or documents as~~ shall be deemed true and correct and enforceable as originals.

SECTION 21. That Section 54-2056, Idaho Code, be, and the same is hereby amended to read as follows:

54-2056. TERMINATING LICENSE BUSINESS RELATIONSHIPS. (1) Sales associate terminating license with broker. Any sales associate who terminates his association with a broker and licenses with another broker shall immediately return his wall license to the commission, along with the completed forms and fees necessary for relicensing. If the sales associate is unable to obtain his wall license from the broker, the sales associate shall send written notice of his termination, by certified mail, return receipt requested, to the broker, and shall deliver a copy of such notice to the commission. Upon receipt of such notice from the sales associate, the broker shall immediately return the sales associate's wall license to the commission.

(2) Broker terminating sales associate. Any broker who terminates the association of a sales associate shall return the sales associate's wall license along with a completed termination form to the commission.

(3) Any broker who terminates the association of a sales associate for the violation of any of the provisions of sections 54-2059 through 54-2065, Idaho Code, shall promptly notify the commission, in writing, of the termination and the facts giving rise to the termination.

(4) Closing a branch office. A written notice shall be sent to the commission office along with the branch office license and the wall licenses of all licensees licensed in the branch office immediately upon closing the branch office.

(~~4~~5) Property of the broker. Upon termination of the business relationship as a sales associate licensed under a broker, the sales associate shall immediately turn over to the broker all listing information and listing contracts, keys, purchase and sale agreements and similar contracts, buyer brokerage information and contracts, and other property belonging to the broker. A sales associate shall not engage in any practice or conduct, directly or indirectly, which encourages, entices or induces clients of the broker to terminate any legal business relationship with the broker unless he first obtains written permission of the broker.

(~~5~~6) Location of trust accounts and file records. When an actively licensed broker changes to a license status other than that of a designated broker, that individual must notify the commission in writing of the location of all trust accounts and transaction file records which the broker was responsible for during the term of licensure as a designated broker. These records shall be available to the commission for three (3) years following the year in which each transaction was closed.

(67) Terminating relationships between a broker and a sole proprietorship owned by a person other than the broker. When a broker for a sole proprietorship, owned by a person other than the broker, terminates an association with the owner, all records and trust account funds shall become the property of, and be maintained and disbursed by, the terminating broker in accordance with this chapter and applicable rules promulgated thereunder. The terminating broker shall deliver, upon request made in writing by the clients and the new broker of that sole proprietorship, such records and trust account funds pertaining to that client, to the new broker who shall thereafter have the responsibility for preservation and disbursement, in accordance with this chapter and applicable rules promulgated thereunder.

SECTION 22. That Section 54-2058, Idaho Code, be, and the same is hereby amended to read as follows:

54-2058. AUTHORITY TO INVESTIGATE AND DISCIPLINE. (1) General authority to investigate. The commission may investigate the action of any person engaged in the business or acting in the capacity of real estate broker or salesperson within the state of Idaho. The commission may initiate an investigation at its own discretion or upon receipt of a written complaint from anyone who claims to have been injured or defrauded as a result of such action.

A person is acting "within the state of Idaho" if that person is dealing with any interest in real property or a business opportunity involving an interest in real property, which is situated in this state, or is conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

(2) Unlicensed persons. The commission also may investigate and file a formal administrative complaint under this chapter against any person believed to have acted as a real estate broker or salesperson without a license in violation of section 54-2002, Idaho Code.

(3) Audits. The commission or its duly authorized representative is vested with the authority to conduct periodic inspections, surveys and audits of the transaction records and real estate trust accounts of all Idaho licensed designated brokers. Any transaction records or real estate trust account records located outside the state of Idaho shall promptly be made available to the commission upon request at the licensee's own cost and at the location or in the manner requested by the commission. If the analysis of a broker's real estate trust account indicates a deficiency or any irregul~~arity which~~ cannot be resolved between the commission and the broker, the commission may order a complete audit of the trust account by a certified public accountant at the broker's expense.

(4) The commission or its staff also has the authority to investigate the action of any Idaho licensee. The licensee or broker shall answer all reasonable investigative questions of the commission or its staff, and must make available, promptly upon request, any and all records to the commission at the licensee's own cost and at the location or in the manner requested by the commission.

SECTION 23. That Section 54-2061, Idaho Code, be, and the same is hereby amended to read as follows:

54-2061. ADDITIONAL GROUNDS FOR DISCIPLINARY ACTION -- COURT ACTIONS -- LICENSEE TO REPORT TO COMMISSION. (1) The commission may also take disciplinary action against a licensee including, but not limited to, suspension or revocation of a license, where, in a court of competent jurisdiction, the licensee:

(a) Has been convicted of a felony, or has been convicted of a misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing or which otherwise demonstrates the licensee's lack of trustworthiness to engage in the real estate business;

(b) Has been declared to lack capacity or to be incompetent or under an infirmity, for the duration of such declaration only;

(c) Has a judgment entered against the licensee in a civil action upon grounds of fraud, misrepresentation, deceit or gross negligence with reference to a real estate-related transaction.

(2) The court's record of conviction, order determining legal competency, or the order entering judgment in a civil case, or certified copies thereof, shall be prima facie evidence of a conviction, or the court's action.

(3) A licensee who is convicted, declared legally incompetent, or who has a judgment entered against him in a civil action as described in subsection (1) of this section, shall, within twenty (20) days of such conviction, declaration or judgment, forward to the commission a copy of the legal document evidencing the same.

SECTION 24. That Section 54-2062, Idaho Code, be, and the same is hereby amended to read as follows:

54-2062. ADDITIONAL GROUNDS FOR DISCIPLINARY ACTION -- OTHER ADMINISTRATIVE ACTIONS -- LICENSEE TO REPORT TO COMMISSION. (1) The commission may also take any disciplinary action, including, but not limited to, suspension or revocation of a license where the licensee:

(~~1~~a) Has an order or determination of debarment, suspension, or any limitation on participation in government loan programs issued against the licensee for misconduct; or

(~~2~~b) Has a license, issued by another jurisdiction, suspended or revoked for a disciplinary violation involving fraud, misrepresentation, or dishonest or dishonorable dealings. A certified copy of the order of the administrative agency in the other jurisdiction shall be prima facie evidence of the suspension or revocation.

(2) A licensee against whom a final administrative action has been taken, as described in subsection (1) of this section, shall, within twenty (20) days of such action, forward to the commission a copy of the legal document evidencing the same.

SECTION 25. That Section 54-2085, Idaho Code, be, and the same is hereby amended to read as follows:

54-2085. DISCLOSURE AND WRITING REQUIREMENTS -- AGENCY DISCLOSURE BROCHURE AND REPRESENTATION CONFIRMATION. (1) A licensee shall give to a prospective buyer or seller at the first substantial business contact the agency disclosure brochure ~~established~~ adopted or approved by the Idaho real estate commission. The commission by ~~rule~~ motion shall establish the form and contents of the brochure in accordance with the provisions of this ~~act~~ chapter. Each brokerage shall keep ~~an initialed~~ a

signed and dated record of a buyer or seller's receipt of the agency disclosure brochure.

(2) The agency disclosure brochure shall list the types of representation available to a buyer or seller in a regulated real estate transaction, the legal duties and obligations owed to the buyer or seller in each type of representation and a conspicuous notice that no representation will exist absent a written agreement between the buyer or seller and the brokerage.

(3) A brokerage's relationship with a buyer and seller as an agent, nonagent, or limited dual agent must be determined and all necessary agreements executed no later than the preparation of a purchase and sale agreement. A brokerage must disclose its relationship to both buyer and seller in any transaction no later than the preparation or presentation of a purchase and sale agreement.

(4) In addition, a purchase and sale agreement or other document drafted in connection with a real estate transaction shall contain the following confirmation of the relationship, whether it involved representation or not, between the buyer, seller and licensees involved:

REPRESENTATION CONFIRMATION

In this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER ("agent" or "nonagent" or "limited dual agent"):

Listing broker acted as a(n) ..... for the buyer.

Selling broker acted as a(n) ..... for the buyer.

In this transaction, the brokerage(s) involved had the following relationship(s) with the SELLER ("agent" or "nonagent" or "limited dual agent"):

Listing broker acted as a(n) ..... for the seller.

Selling broker acted as a(n) ..... for the seller.

Each party signing this document confirms that he or she has received, read and understood the Agency Disclosure Brochure and has elected the relationship confirmed above. In addition, each party confirms that the broker's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE OR SHE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKER UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

(5) The failure of a licensee to timely give a buyer or seller the agency disclosure brochure or the failure of a licensee to properly and timely obtain any written agreement or confirmation required by this act shall be a violation of the Idaho real estate license law and may subject the licensee to disciplinary action according to the provisions of sections 54-2058 through 54-2078, Idaho Code.

(6) Neither the commission brochure nor the representation confirmation shall create a brokerage relationship. A separate, signed, written agreement is required for that purpose.

SECTION 26. That Section 54-2087, Idaho Code, be, and the same is hereby amended to read as follows:

54-2087. DUTIES TO A CLIENT. If a buyer or seller enters into a written contract for representation in a regulated real estate transac-

tion, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations:

(1) To perform the terms of the written agreement with the client;

(2) To exercise reasonable skill and care;

(3) To promote the best interests of the client in good faith, honesty and fair dealing including, but not limited to:

(a) Disclosing to the client all adverse material facts actually known or which reasonably should have been known by the licensee;

(b) Seeking a buyer to purchase the seller's property at a price, and under terms and conditions acceptable to the seller and assisting in the negotiation therefor; or

(c) Seeking a property for purchase at a price and under terms and conditions acceptable to the buyer and assisting in the negotiation therefor;

(d) For the benefit of a client/buyer: conducting a reasonable investigation of the property and material representations about the property made by the seller or seller's agent, or when appropriate, advising the client to obtain professional inspections of the property or to seek appropriate tax, legal and other professional advice or counsel;

(e) For the benefit of a client/seller: requesting reasonable proof of a prospective buyer's financial ability to purchase the real property which is the subject matter of the transaction. This duty may be satisfied by any appropriate method suitable to the transaction or, when deemed necessary by the real estate licensee, by advising the client to consult with an accountant, lawyer, or other professional as dictated by the transaction.

(4) ~~To maintain the confidentiality of specific client information as defined by and to the extent required in this act.~~

~~(5)~~ To properly account for moneys or property placed in the care and responsibility of the brokerage; and

(5) To maintain the confidentiality of specific client information as defined by and to the extent required in this chapter, and as follows:

(a) The duty to a client continues beyond the termination of representation only so long as the information continues to be confidential client information as defined in this chapter, and only so long as the information does not become generally known in the marketing community from a source other than the brokerage or its affiliated licensees;

(b) A licensee who personally has gained confidential client information about a buyer or seller while associated with one (1) broker and who later affiliates with a different broker remains obligated to maintain the client confidentiality as required by this chapter;

(c) If a brokerage represents a buyer or seller whose interests conflict with those of a former client, the brokerage shall inform the second client of the broker's prior representation of the former client and that confidential client information obtained during the first representation cannot be given to the second client. Nothing in this section shall prevent the brokerage from asking the former client for permission to release such information;

(d) Nothing in this section is intended to create a privileged communication between any client and any brokerage or licensee for purposes of civil, criminal or administrative legal proceedings.

Approved March 23, 2001.

CHAPTER 124
(S.B. No. 1055)

AN ACT
RELATING TO THE COMPREHENSIVE STATE WATER PLAN; RATIFYING AND APPROVING AN AMENDMENT TO THE COMPREHENSIVE STATE WATER PLAN FOR THE NORTH FORK CLEARWATER BASIN AS ADOPTED BY THE IDAHO WATER RESOURCE BOARD ON DECEMBER 21, 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, the amendment to the Comprehensive State Water Plan for the North Fork Clearwater Basin, adopted by resolution of the Idaho Water Resource Board on December 21, 2000, for the purpose of adding thereto the Dworshak Operation Plan, be, and the same is hereby ratified and approved.

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 23, 2001.

CHAPTER 125
(S.B. No. 1056)

AN ACT
RELATING TO FISH AND GAME PERMITS; AMENDING SECTION 36-416, IDAHO CODE, TO STRIKE A PERMIT FEE FOR PRIVATE PONDS; AND AMENDING SECTION 36-706, IDAHO CODE, TO STRIKE REFERENCE TO A PERMIT FEE FOR PRIVATE PONDS.

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

SECTION 1. That Section 36-416, Idaho Code, be, and the same is hereby amended 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 2. 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 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.

Approved March 23, 2001.

CHAPTER 126
(S.B. No. 1122)

AN ACT

RELATING TO WATER USE; AMENDING SECTION 42-222A, IDAHO CODE, TO ALLOW TEMPORARY CHANGES TO WATER RIGHTS BY TRANSFER OR EXCHANGE OF WATER DURING A DROUGHT EMERGENCY, TO ADD A STATUTORY REFERENCE TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES IS NOT REQUIRED TO PUBLISH NOTICE OR MAKE FINDINGS IN REGARD TO CHANGES PURSUANT TO THIS SECTION AND TO CHANGE A REFERENCE FROM ACT TO SECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 42-222A, Idaho Code, be, and the same is hereby amended to read as follows:

42-222A. ~~EMERGENCY--TRANSFERS~~ TEMPORARY CHANGES DURING DROUGHT CONDITIONS. (1) Upon declaration of a drought emergency for an area designated by the director of the department of water resources and approved by the governor of the state of Idaho, the director of the department of water resources is authorized to allow temporary changes to the use of water rights consisting of temporary transfers to change point of diversion, place and purpose of use of valid existing water rights or temporary exchanges of water authorized to be diverted under water rights, as provided in section 42-240, Idaho Code, when the director of the department of water resources determines that such change(s) can be accomplished in accordance with the provisions of this section.

(2) Application for a temporary change shall be made upon forms provided by the department of water resources and shall be accompanied by an application fee of fifty dollars ($50.00) per application.

(3) The director of the department of water resources is not

required to publish notice of the proposed change pursuant to the provisions of section 42-211, ~~or~~ 42-222(1) or 42-240, Idaho Code, and is not required to make findings as provided in said sections. A temporary change may be approved upon completion of the application form, payment of the filing fee and a determination by the director of the department of water resources that the proposed change can be properly administered and there is no information that the change will injure any other water right. If the water right to be changed is administered by a watermaster within a water district, the director of the department of water resources shall obtain and consider the recommendations of the watermaster before approving the temporary change application.

(4) All temporary changes approved pursuant to the provisions of this ~~act~~ section shall expire on the date shown in the approval which shall not be later than December 31 of the year in which the emergency transfer approval is made and thereafter the water right shall revert to the point of diversion and place of use existing prior to the temporary change. Nothing herein shall be construed as approval to authorize the construction of a new well as a new point of diversion.

(5) The recipient of an approved temporary change issued pursuant to this section shall assume all risk that the diversion and use of the water may cause injury to other water rights, that the change constitutes an enlargement in use of the original right, that the use is not consistent with the conservation of water resources within the state of Idaho and that such use is not in the local public interest. Any applicant for a temporary change who is aggrieved by a denial by the director of the department of water resources of a temporary change pursuant to this ~~act~~ section may request a hearing pursuant to the provisions of section 42-1701A(3), Idaho Code, and may seek judicial review of the final order of the director pursuant to the provisions of section 42-1701A(4), Idaho Code.

(6) Temporary changes shall only be approved for the purpose of providing a replacement water supply to lands or other uses which normally have a full water supply except for a drought condition. Temporary changes may not be approved to provide water for new projects or to allow expansion of the use of water under existing water rights. If the right to use the water, the diversion works or the water delivery system is represented by shares of stock in a corporation or if such right, diversion works or delivery system is owned or managed by an irrigation district, no change in point of diversion or place or nature of use of such water shall be made or allowed without the written consent of such corporation or irrigation district.

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 23, 2001.

CHAPTER 127
(S.B. No. 1127, As Amended)

AN ACT

RELATING TO LEGAL SERVICE EXPENSE PLANS; AMENDING CHAPTER 1, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-114B, IDAHO CODE, TO DEFINE THE TERM "LEGAL SERVICE EXPENSE PLAN," TO EXEMPT LEGAL SERVICE EXPENSE PLANS FROM REGULATION AS INSURANCE AND TO SPECIFY CODE PROVISIONS APPLICABLE TO LEGAL SERVICE EXPENSE PLANS; AND DECLARING AN EMERGENCY.

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 41-114B, Idaho Code, and to read as follows:

41-114B. LEGAL SERVICE EXPENSE PLANS. (1) The term "legal service expense plan," as used in this section, means a contract or agreement for a stated consideration between a plan administrator and a member or group of members, whereby the member pays the administrator, in advance or by installments, for the receipt of professional legal services, advice or representation. Such services in Idaho shall be provided by attorneys at law licensed in Idaho. The attorneys shall be prepaid under a contract or agreement with the administrator to provide specified legal services for the express benefit of the plan member and shall agree to render services to the member when required.

(2) The marketing, sale, contracting, issuance of a contract, plan administration and delivery of services under a legal service expense plan are exempt from all other provisions of title 41, Idaho Code. In addition, such plans shall not be characterized as "insurance" when marketed in Idaho.

(3) Legal service expense plans, but not law firm retainer agreements, shall be subject to the provisions of the Idaho consumer protection act, chapter 6, title 48, Idaho Code, and attorneys providing service shall be subject to the provisions relating to the regulation of the practice of law under title 3, Idaho Code.

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

Approved March 23, 2001.

CHAPTER 128
(S.B. No. 1143)

AN ACT

RELATING TO DOMESTIC CERVIDAE; AMENDING SECTION 25-3506, IDAHO CODE, AS ADDED BY SECTION 1, CHAPTER 73, LAWS OF 1994, TO REDESIGNATE THE SECTION, TO PROVIDE FOR CIVIL VIOLATIONS OF CERTAIN STATUTES AND

RULES REGARDING DOMESTIC CERVIDAE, TO PROVIDE FOR CIVIL PENALTIES, TO PROVIDE FOR CERTAIN CRIMINAL OFFENSES 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 25-3506, Idaho Code, as added by Section 1, Chapter 73, Laws of 1994, be, and the same is hereby amended to read as follows:

25-35706. ~~PENALTY~~ VIOLATIONS -- CIVIL -- CRIMINAL -- PENALTIES FOR VIOLATIONS. (1) Failure to comply with provisions applicable to domestic cervidae as set forth in chapters 2, 3, 4 and 6 of title 25, Idaho Code, the provisions of this chapter, or rules promulgated thereunder, shall constitute a violation. Civil penalties may be assessed against a violator as follows:

(a) A civil penalty as assessed by the department or its duly authorized agent not to exceed five thousand dollars ($5,000) for each offense;

(b) Each day of a continuing violation may be assessed as a separate offense;

(c) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(2) No civil penalty may be assessed against a person unless the person was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act as set forth in chapter 52, title 67, Idaho Code.

(3) If the department is unable to collect an assessed civil penalty, or if a person fails to pay all or a set portion of an assessed civil penalty as determined by the department, the department may file an action to recover the civil penalty in the district court of the county in which the violation is alleged to have occurred. In addition to the assessed penalty, the department shall be entitled to recover reasonable attorney's fees and costs incurred in such action or on appeal from such action.

(4) A person against whom the department 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 to have occurred.

(5) Moneys collected pursuant to this section shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund.

(6) 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 and such other matters as justice requires.

(7) Nothing in this chapter shall be construed as requiring the director to report minor violations when the director believes that the public interest will be best served by suitable warnings or other administrative action.

(8) Any person, firm or corporation violating any of the provisions of chapters 2, 3, 4 and 6, title 25, Idaho Code, this chapter, or rules promulgated thereunder by the division of animal industries, applicable to domestic cervidae, ~~or of the rules promulgated by the division of~~

~~animal--industries-for-the-enforcement-thereof~~ shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each offense.

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 23, 2001.

CHAPTER 129
(S.B. No. 1166)

AN ACT

RELATING TO MATERNITY BENEFITS; AMENDING SECTION 41-2214, IDAHO CODE, TO PROVIDE THAT IF AN INSURANCE POLICY PROVIDES BENEFITS FOR PREGNANCY, CHILDBIRTH OR MISCARRIAGE AND AN EMPLOYEE OR DEPENDENT IS PREGNANT AT THE TIME OF DISCONTINUANCE OF THE POLICY AND IS NOT ELIGIBLE FOR ANY REPLACEMENT GROUP COVERAGE WITHIN SIXTY DAYS OF DISCONTINUANCE, THE POLICY MUST PROVIDE THAT THE BENEFITS WILL BE PAYABLE TO THE SAME EXTENT AS IF DISCONTINUANCE HAD NOT OCCURRED BUT NOT BEYOND A PERIOD OF TWELVE MONTHS FOLLOWING DISCONTINUANCE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 41-2214, Idaho Code, be, and the same is hereby amended to read as follows:

41-2214. POLICY STANDARDS -- MATERNITY BENEFITS. If a policy provides any benefits for pregnancy, childbirth or miscarriage and if an employee or dependent covered for such benefit is pregnant at the time of discontinuance and is not eligible for any replacement group coverage within sixty (60) days of discontinuance, the policy must provide that benefits will be payable to the same extent as if discontinuance had not ~~occurred for~~ any covered benefits in ~~connnection~~ connection with such pregnancy, childbirth or miscarriage, but not beyond a period of twelve (12) months following such discontinuance.

Approved March 23, 2001.

CHAPTER 130
(S.B. No. 1174)

AN ACT

RELATING TO THE IDAHO BOND BANK AUTHORITY; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 87, TITLE 67, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR THE CREATION OF THE IDAHO BOND BANK AUTHORITY, TO SET FORTH MEMBERSHIP, VACANCIES, OFFICERS, QUORUM REQUIREMENTS AND COMPENSATION OF THE AUTHOR-

ITY, TO PROVIDE THAT THE AUTHORITY MAY RETAIN OUTSIDE SERVICES, TO PROVIDE FOR POWERS AND DUTIES OF THE AUTHORITY, TO REQUIRE THAT THE AUTHORITY SUBMIT AN ANNUAL REPORT, TO PROVIDE THAT BONDS ARE FULLY NEGOTIABLE, TO PROVIDE THAT BONDS ARE LEGAL INSTRUMENTS, TO EXEMPT PROPERTY AND BONDS OF THE AUTHORITY FROM TAXES AND ASSESSMENTS, TO PROVIDE FOR ISSUANCE AND FORM OF ISSUANCE OF BONDS, TO PROVIDE FOR SALE AND SALE PRICES OF BONDS, TO PROVIDE FOR PAYMENT OR REFUNDING OF BONDS AND TO PROVIDE FOR TERMS OF AGREEMENT WITH BONDHOLDERS, TO PROVIDE FOR PURCHASE AND DISPOSITION OF BONDS OF THE AUTHORITY, TO PROVIDE FOR PRESUMPTION OF VALIDITY OF BONDS AND CONTRACTS, TO PROVIDE FOR A RESERVE FUND AND TO PROVIDE THAT THE AUTHORITY MAY ESTABLISH ADDITIONAL FUNDS AND ACCOUNTS, TO PROVIDE THAT CERTAIN PERSONS SHALL NOT BE PERSONALLY LIABLE ON BONDS OR CONTRACTS, TO PROVIDE FOR EXEMPTION OF PROPERTY OF THE AUTHORITY FROM EXECUTION AND SALE, TO PROVIDE FOR AN UNLIMITED SALES TAX ACCOUNT PLEDGE, TO PROVIDE FOR A LIEN OF PLEDGE, TO PROVIDE FOR CREDIT ENHANCEMENT OR LIQUIDITY, TO PROVIDE FOR SURETY FOR DEPOSITS BY BANKS, TO PROVIDE THAT EXPENSES OF ADMINISTRATION SHALL BE LIMITED, TO PROVIDE FOR SWAP CONTRACTS, TO PROVIDE FOR ADDITIONAL POWERS OF CERTAIN MUNICIPALITIES RELATING TO MUNICIPAL BONDS, TO PROVIDE THAT CHAPTER 87, TITLE 67, IDAHO CODE, PROVIDES COMPLETE AUTHORITY, TO PROVIDE THAT THE RIGHTS OF BONDHOLDERS SHALL NOT BE IMPAIRED BY THE STATE, TO PROVIDE FOR PAYMENT TRANSFERS, TO PROVIDE FOR NOTICE OF NONPAYMENT, TO PROVIDE FOR THE STATE FINANCIAL ASSISTANCE INTERCEPT MECHANISM, TO PROVIDE FOR DUTIES OF THE STATE TREASURER AND TO PROVIDE FOR INTEREST AND PENALTY PROVISIONS AND TO REQUIRE COOPERATION BY STATE GOVERNMENT AGENCIES; AMENDING SECTION 63-316, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AND AMENDING SECTION 63-3638, IDAHO CODE, TO PROVIDE THAT CERTAIN SALES TAX MONEYS MAY BE DISTRIBUTED FOR PURPOSES OF PAYMENT ON MUNICIPAL BONDS, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS.

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 87, Title 67, Idaho Code, and to read as follows:

CHAPTER 87
IDAHO BOND BANK AUTHORITY

67-8701. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Bond Bank Authority Act."

67-8702. DEFINITIONS. As used in this chapter:

(1) "Authority" or "bond bank authority" means the Idaho bond bank authority.

(2) "Bonds" means bonds, notes or other obligations of the authority issued under this chapter.

(3) "Municipal bond" means a bond, note or other obligation, including a lease or installment sale agreement, issued or undertaken by a municipality for any purpose authorized by law.

(4) "Municipality" means any county, city, municipal corporation, school district, irrigation district, sewer district, water district,

highway district or other special purpose district or political subdivision of the state established by law.

67-8703. BOND BANK AUTHORITY CREATED -- MEMBERSHIP -- VACANCIES -- OFFICERS -- QUORUM -- COMPENSATION. (1) There is hereby created an independent public body corporate and politic to be known as the Idaho bond bank authority. The authority is an instrumentality of the state within the state treasurer's office but has a legal existence independent of and separate from the state with continuing succession until its existence is terminated by law.

(2) The authority shall consist of the following five (5) members:

(a) The state treasurer, or his designee, who shall serve as ex officio chairman;

(b) One (1) member of the senate, who shall be appointed by and serve at the pleasure of the president pro tempore of the senate for a term of two (2) years;

(c) One (1) member of the house of representatives, who shall be appointed by and serve at the pleasure of the speaker of the house of representatives for a term of two (2) years; and

(d) Two (2) members appointed by the governor, who shall serve at the pleasure of the governor for terms of four (4) years, and who shall be residents of the state and qualified voters at the time of appointment.

(3) A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment and for the balance of the unexpired term.

(4) The members may elect, by majority vote, a secretary and a treasurer. The secretary and treasurer may be nonmembers, and the same person may be elected to serve both as secretary and treasurer.

(5) Three (3) members of the authority shall constitute a quorum. Action may be taken and motions and resolutions adopted by the authority at any meeting by the affirmative vote of a majority of members present. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the powers and perform all the duties of the authority.

(6) Members of the authority shall be compensated as provided by section 59-509(h), Idaho Code.

67-8704. RETENTION OF OUTSIDE SERVICES. The authority may contract for and engage the services of bond counsel, consultants, experts and others whose services the authority considers necessary or appropriate.

67-8705. POWERS AND DUTIES OF THE AUTHORITY. The authority shall have the following powers and duties:

(1) To sue and be sued in its own name;

(2) To adopt and from time to time alter an official seal;

(3) To adopt and from time to time amend or repeal rules and bylaws;

(4) To accept and receive public grants or private gifts, bequests or other moneys;

(5) To purchase municipal bonds and to obtain funds for such other purposes of the authority authorized by this chapter by:

(a) Issuing bonds payable from or secured by municipal bonds of one (1) or more municipalities;

(b) Pledging or otherwise obligating, for and in the name and on behalf of the state as its agent and instrumentality, sales tax revenues of the state as a source of payment or security for bonds issued by the authority;
(c) Establishing debt service reserve funds or other reserve funds;
(d) Obtaining private credit enhancement for bonds issued by the authority;
(e) Investing moneys held by the authority, as proceeds or to pay or secure bonds issued by the authority, in such securities or obligations as are described in the indenture, trust agreement or other instrument providing for the authority's issuance of the bonds;
(f) Investing any moneys held by the authority, in excess of funds described in paragraph (e) of this subsection, in any securities or other obligations in which a trustee may invest as provided by law; or
(g) Taking any other actions and entering into such other contracts and agreements as the authority may determine to be necessary or appropriate to accomplish the purposes of the authority and this chapter.

(6) To charge such fees to municipalities in connection with application for and receipt of financing under this chapter and interest and other charges on or in connection with municipal bonds purchased as it may deem necessary or appropriate to cover all costs and expenses of the authority and its operations, and to set such other terms and conditions on its services or purchase of municipal bonds as may be necessary or appropriate to secure the bonds or improve their marketability or to otherwise achieve the purposes of the authority; and

(7) To take any and all actions, execute any and all contracts, including payment of any arbitrage rebate as may be necessary to obtain or maintain exemption of interest on bonds issued by the authority from federal income taxes; provided however, that nothing shall prevent the authority from issuing bonds bearing interest subject to federal income tax.

67-8706. ANNUAL REPORT. Before January 1 of each year, the authority shall prepare and submit to the governor and the legislature a report of its activities for the preceding fiscal year. The report shall set out a complete operating and financial statement which covers its operations during the previous fiscal year, and shall include an estimate of the amount of bonds of the authority to be issued during the upcoming fiscal year.

67-8707. NEGOTIABILITY OF BONDS. Notwithstanding any other provision of law, a bond issued under this chapter is fully negotiable, and a holder or owner of a bond, by accepting the bond, is conclusively considered to have agreed that the bond is fully negotiable.

67-8708. BONDS AS LEGAL INVESTMENTS. Notwithstanding any other provisions of law, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, may legally invest sinking

funds, money or other funds belonging to them or within their control in bonds issued under this chapter.

67-8709. TAX EXEMPTION. All property of the authority is public property exempt from all taxes and special assessments of the state or a municipality. All bonds issued under this chapter are issued by a body corporate and politic of this state, and the bonds and the interest and income on and from the bonds and their transfer, and all fees, charges, funds, revenues, interest, income and other moneys or property received by the authority from or in connection with municipal bonds or other assets or operations of the authority, are exempt from every kind of taxation by the state or a municipality.

67-8710. ISSUANCE OF BONDS -- FORM OF ISSUANCE -- SALE PRICE -- PAYMENT OR REFUNDING OF BONDS -- TERMS OF AGREEMENT WITH BONDHOLDER. (1) The authority may issue its bonds from time to time in principal amounts that it considers necessary to provide funds for any purpose under this chapter, including, without limitations, to purchase municipal bonds, to fund reserves or to pay costs of issuance, refunding, including redemption premium, credit enhancement, or other matters related to the purpose, structure or marketing of the bonds.

(2) Bonds shall be authorized by resolution of the authority and shall bear the date, mature at the time or times, bear interest at the rate or rates of fixed or variable interest, payable at the times, be in the denominations, be in the forms, carry the conversion or registration privileges, have the rank or priority, be executed in the manner, be payable from the sources in the medium of payment at the place or places inside or outside the state, and be subject to the terms of redemption, with or without premium, rights of holders to tender for purchase and other terms and conditions as the resolution of the authority provides.

(3) Bonds of the authority may be issued in one (1) or more series.

(4) Bonds of the authority may be sold at public or private sale at the price or prices the authority determines.

(5) The authority may, from time to time, issue its bonds under this chapter and pay and retire, or fund or refund previously issued bonds from proceeds of refunding bonds, or from other funds or money of the authority available for that purpose.

(6) By resolution, the authority may authorize entering into an indenture or trust agreement with a corporate trustee located within or outside the state in order:

(a) To provide for the issuance of the bonds with such terms, including without limitation those terms referred to in subsection (2) of this section, as the authority may determine;

(b) To pledge or assign to the trustee for the benefit of holders of the bonds all or any part of the proceeds of the bonds, any municipal bonds purchased from municipalities, any other assets or revenues of or received by or pledged to the authority, and the income or other proceeds from any or all of the foregoing;

(c) To provide for the establishment of reserves and any other funds or accounts that the authority determines to be necessary or appropriate;

(d) To provide for the custody, safekeeping and enforcement of the municipal bonds acquired;

(e) To provide for the right to sell or otherwise dispose of prop-

erty of any kind, including municipal bonds;

(f) To provide for the investment of bond proceeds or other moneys held by the trustee in such securities or obligations as may be described in the indenture or trust agreement;

(g) To provide for amending the indenture or trust agreement, with or without the consent of the holders of the bonds;

(h) To provide for the replacement of lost, stolen, destroyed or mutilated bonds;

(i) To provide for the issuance or limitations on issuance of additional bonds;

(j) To provide for the rights, liabilities, powers and duties arising upon the breach of any covenant, condition or obligation, to limit the rights of bondholders to enforce covenants, conditions or obligations, and to prescribe the events of default and the terms and conditions upon which any or all of the bonds become or may be declared due and payable before maturity, and the terms and conditions upon which the declaration and its consequences may be waived;

(k) To appoint and to provide for the duties and obligations of a paying agent or agents or other fiduciaries inside or outside the state;

(l) To make covenants to do or refrain from doing acts, including to enter into any contract, and to provide any other terms and conditions which the authority may determine to be necessary or appropriate in order to better secure the bonds or improve their marketability; and

(m) To intercept certain payments, and to impose interest and penalties, as provided in section 67-8725, Idaho Code.

67-8711. PURCHASE AND DISPOSITION OF BONDS. The authority may purchase bonds of the authority. The authority may hold, cancel or resell the bonds subject to, and in accordance with, agreements with holders of its bonds.

67-8712. PRESUMPTION OF VALIDITY. After issuance, all bonds of the authority, and the purchase of all municipal bonds from municipalities with the proceeds of the bonds, and any contracts entered into in connection with issuance of the bonds, shall be conclusively presumed to be fully authorized and issued under the laws of the state, and all persons, entities and municipalities are estopped from questioning the authorization, sale, issuance, execution or delivery of the bonds and other agreements by the authority.

67-8713. RESERVE FUND -- ADDITIONAL FUNDS AND ACCOUNTS. (1) There is hereby created in the state treasury a fund to be known as the "Idaho Municipal Bond Bank Authority Reserve Fund" (hereinafter referred to as "reserve fund") in which there shall be deposited or transferred:

(a) All proceeds of bonds that the authority may require municipalities, by contract with the municipality or by a resolution of the authority, to deposit in the reserve fund; and

(b) All moneys appropriated by the legislature for the purpose of the fund.

(2) Moneys in the reserve fund shall be maintained by the authority and shall be held and applied solely to the payment of the interest on and principal of bonds, pursuant to the provisions of section 67-8725,

Idaho Code, as the interest and principal become due and payable. Moneys may not be withdrawn from the reserve fund if a withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, as herein defined, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable, whether by reason of maturity or mandatory redemption, for which payments other than moneys of the authority are not then available. As used in this chapter, "required debt service reserve" means, as of the date of computation, the amount required to be on deposit in the reserve fund as provided by resolution of the authority.

(3) For purposes of valuation, investments in the reserve fund shall be valued at par, or if purchased at less than par, at cost unless otherwise provided by resolution of the authority. Valuation on a particular date shall include the amount of interest then earned or accrued to that date on the moneys or investments in the reserve fund.

(4) Moneys in the reserve fund in excess of the required debt service reserve, whether by reason of investment or otherwise, may be withdrawn at any time by the authority and transferred to another fund or account of the authority, subject to the provisions of any agreement with the holders of any bonds.

(5) In order to assure the maintenance of the required debt service reserve in the reserve fund, the legislature may annually appropriate to the authority for deposit in the reserve fund the sum, certified by the chairman of the authority to the legislature, that is necessary to restore the fund to an amount equal to the required debt service reserve. The chairman of the authority, annually before December 1, shall make and deliver to the legislature his certificate stating the sum required to restore the funds to that amount. Nothing in this subsection creates a debt or liability of the state to make any appropriation.

(6) All amounts received on account of moneys appropriated by the state to the reserve fund shall be held and applied in accordance with this section; provided however, at the end of each fiscal year, if the amount in the reserve fund exceeds the required debt service reserve, any amount representing earnings or income received on account of moneys appropriated to the reserve fund that exceed the expenses of the authority for that fiscal year shall be transferred to the general fund of the state.

(7) The authority may establish additional reserves or other funds or accounts as may be, in its discretion, necessary or appropriate to further the accomplishment of its purposes or to comply with the provisions of any of its agreements or resolutions.

67-8714. PERSONAL LIABILITY. Neither a member of the authority nor a person executing bonds issued or contracts entered into under this chapter shall be liable personally on the bonds or contracts.

67-8715. EXEMPTION FROM EXECUTION AND SALE. All property of the authority is exempt from levy and sale by virtue of an execution. No execution or other judicial process may issue against the property of the authority, and a judgment against the authority may not be a charge or lien upon its property; provided however, this section shall not apply to nor limit the rights of a holder of bonds or a trustee on behalf of the holder to pursue a remedy for the enforcement of a pledge,

lien or covenant given by the authority or a municipality.

67-8716. UNLIMITED SALES TAX ACCOUNT PLEDGE. (1) If moneys expected to be intercepted pursuant to section 67-8725, Idaho Code, are expected to be insufficient to reimburse the state for its payments on the municipal bonds, the state treasurer shall certify to and give notice to the state tax commission of the amount of the deficiency.

(2) After receipt of the certified notice from the state treasurer, the state tax commission shall:

(a) Immediately fix the amount necessary and in the amount of the deficiency stated in the notice; and

(b) Cause moneys to be transferred from the state sales tax account pursuant to section 63-3638, Idaho Code, and deposited in the bond bank authority fund, which is hereby statutorily created in the state treasury; provided however, that in no event shall a transfer of moneys from the state sales tax account under the provisions of this chapter impede or otherwise affect the payment of sales tax moneys pledged for the payment on other outstanding state bonds.

(3) The state of Idaho pledges to and agrees with the holders of any bonds that the state will not alter, impair or limit the rights vested by the sales tax account pledge provided in this section and in section 63-3638, Idaho Code, with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.

(4) To the extent that other legally available revenues and funds of the state are sufficient to meet the certified deficiency, the transfer of moneys from the sales tax account in section 63-3638, Idaho Code, is abated.

67-8717. LIEN OF PLEDGE. A pledge of sales tax revenues made by the authority is binding from the time the pledge is made. Sales tax revenues so pledged and thereafter received by the authority are immediately subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of a pledge is binding against all parties having claims against the authority of any kind in tort, contract, or otherwise, regardless of whether the parties have notice of the lien and notwithstanding any other law relating to the creation, priority, perfection or enforcement of pledges or liens or otherwise. Neither the resolution nor any other instrument by which a pledge is created must be filed or recorded except in the records of the authority.

67-8718. CREDIT ENHANCEMENT OR LIQUIDITY. (1) The authority may enter into agreements to obtain, from a department or agency of the United States or from a nongovernmental financial institution or other entity, insurance, guaranty or other credit enhancement or liquidity for the payment of interest or principal on, or payment of the purchase price on tender of:

(a) Bonds issued by the authority;

(b) Municipal bonds purchased or held by the authority; and

(c) Other municipal bonds as the authority determines to be appropriate.

(2) Agreements as provided in subsection (1) of this section may contain such payment, interest rate, security, default, remedies or other terms and conditions as the authority may determine to be necessary or appropriate.

67-8719. SURETY FOR DEPOSITS BY BANK. All banks, trust companies, savings banks, investment companies and other persons carrying on a banking business are authorized to give to the authority a good and sufficient undertaking with such sureties as are approved by the bank, to the effect that the bank or banking institution shall faithfully keep and pay over to the order of, or upon the warrant of, the authority or its authorized agent all those funds deposited with it by the bank and agreed interest under, or by reason of, this chapter at such times or upon such demands as may be agreed with the bank or in lieu of these sureties, deposit with the authority or its authorized agent or a trustee or for the holders of bonds, as collateral, those securities as the authority may approve. The deposits of the authority may be evidenced by an agreement in the form, and upon the terms and conditions, that may be agreed upon by the authority and the depository bank or banking institution.

67-8720. EXPENSES OF ADMINISTRATION. All expenses incurred in carrying out this chapter are payable solely from revenues or funds appropriated under this chapter. Nothing in this chapter authorizes the authority to incur an indebtedness or a liability on behalf of or payable by the state.

67-8721. SWAPS. In connection with, or incidental to, the issuance or carrying of bonds, but only for the purpose of reducing the amount or duration of payment, interest rate, spread or similar risk, or to result in a lower cost of borrowing, and not for purposes of investment or speculation, the authority may enter into contracts which the authority determines to be necessary or appropriate to hedge such risk or to place the obligation of the bonds, in whole or in part, on the interest rate, cash flow, or other basis desired by the authority, including without limitation, contracts commonly known as interest rate swap agreements, interest rate caps or floors, forward payment conversion agreements, futures or hedge contracts.

67-8722. MUNICIPAL BONDS. Any municipality which receives sales tax funds from the state may, in addition to any other powers it may have and without regard to the restrictions or requirements that might otherwise apply under the laws of the state but subject to the requirements of section 3, article VIII, of the constitution of the state of Idaho and any other limitations imposed upon municipalities by the constitution of the state of Idaho:

(1) Issue municipal bonds for sale to the authority, with such interest rate, maturity, redemption, security, remedies and other terms as the municipality may agree with the authority;

(2) Levy and collect property taxes, fees, rates, charges and other assessments to pay or secure the municipal bonds issued by the municipality for the sale to the authority;

(3) Pledge or assign to the authority or its designee property taxes, fees, rates, charges and other assessments, and rights to enforce the collection and application thereof, to pay or secure the municipal bonds issued by the municipality for sale to the authority; and

(4) Take any other actions and enter into such other contracts and agreements including, without limitation, leases on installment sale agreements for credit enhancement or liquidity, with such terms as it

may determine with the authority to be necessary or appropriate to accomplish the purposes of the authority under this chapter.

67-8723 COMPLETE AUTHORITY. This chapter provides a complete, additional and alternative method for accomplishing the acts authorized by this chapter, whether by the authority or by municipalities, and the issuance of bonds and municipal bonds, the purchase of municipal bonds, the entering into of any indenture, trust agreement, credit enhancement or liquidity agreement, investment agreement, swap or other agreement entered into or the taking of any other action in connection with the issuance of bonds or municipal bonds need not comply with the requirements of any other law except as specifically set forth in this chapter.

67-8724. RIGHTS NOT TO BE IMPAIRED BY STATE. The state does hereby pledge to and agree with the holders of any bonds issued under this chapter that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the security, rights or remedies of such holders until the bonds, with interest thereon, are fully paid and discharged. The authority is authorized to include this pledge and agreement in any indenture, trust agreement or other agreement with the holders of such bonds.

67-8725. PAYMENT TRANSFER -- NOTICE OF NONPAYMENT -- STATE FINANCIAL ASSISTANCE INTERCEPT MECHANISM -- STATE TREASURER DUTIES -- INTEREST AND PENALTY PROVISIONS.

(1) (a) Each municipality with outstanding unpaid bonds as set forth in this chapter shall transfer moneys sufficient for the scheduled debt service payment to its paying agent at least fifteen (15) days before any principal or interest payment date for the bonds. The paying agent may, if instructed to do so by the municipality, invest the moneys at the risk and for the benefit of the municipality until the payment date.

(b) A municipality which is unable to transfer the scheduled debt service payment to the paying agent fifteen (15) days before the payment date shall immediately notify the paying agent and the state treasurer by:

(i) Telephone;

(ii) A writing sent by facsimile transmission; and

(iii) A writing sent by first-class United States mail.

(c) If sufficient funds are not transferred to the paying agent as required by this subsection, the paying agent shall notify the state treasurer of that failure in writing at least ten (10) days before the scheduled debt service payment date by:

(i) Telephone;

(ii) A writing sent by facsimile transmission; and

(iii) A writing sent by first-class United States mail.

(d) If sufficient moneys to pay the schedule debt service payment have not been transferred to the paying agent, the state treasurer shall, on or before the scheduled payment date, transfer sufficient moneys from the reserve fund as provided in section 67-8713, Idaho Code, to the paying agent to make the scheduled debt service payment.

(e) The payment by the treasurer:

(i) Discharges the obligation of the issuing municipality to its bondholders for the payment; and

(ii) Transfers the rights represented by the general obligation of the municipality from the bondholders to the state.

(2) (a) If one (1) or more payments on bonds are made by the state treasurer due to the failure of the municipality to make payment on its bonds in a timely manner, the state treasurer shall:

(i) Immediately intercept any payments from:

(A) The receipt of any payment of property taxes; or

(B) Sales tax moneys distributed pursuant to section 63-3638, Idaho Code; or

(C) Any other source of operating moneys provided by the state to the municipality that issued the bonds that would otherwise be paid to the municipality by the state; and

(ii) Apply the intercepted payments to reimburse the state for payments made by the state for the bonds until all obligations of the municipality to the state arising from those payments, including interest and penalties, are paid in full.

(b) The state has no obligation to the municipality or to any person or entity to replace any moneys intercepted under the authority of this subsection.

(3) The municipality that issued bonds for which the state has made all or part of a debt service payment shall:

(a) Reimburse all moneys drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all moneys paid by the state from the date the moneys are drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus five percent (5%); and

(c) Pay all penalties required by this chapter.

(4) (a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the municipality on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payments on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the municipality to make payment on its bonds in a timely manner, impose on the municipality a penalty of not more than five percent (5%) of the amount paid by the state for each instance in which a payment by the state is made.

(5)(a)(i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one (1) year from the state's payment of a municipality's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the municipality to compel it to:

(A) Levy and provide tax revenues to pay debt service on its bonds when due; and

(B) Meet its repayment obligations to the state.

(ii) In pursuing its rights under paragraph (a) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a municipality.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The municipality shall pay the attorney's fees, expenses and costs of the state treasurer and the attorney general.

(6) (a) Except as provided in paragraph (c) of this subsection, any municipality whose operating funds were intercepted under this section may replace those funds from other municipal moneys or from property taxes, subject to the limitations provided in this subsection.

(b) A municipality may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

(i) Taxes originally levied to make the payment but which were not timely received by the municipality;

(ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;

(iii) Moneys transferred from the undistributed reserve, if any, of the municipality; or

(iv) Any other source of money on hand and legally available.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a municipality may not replace operating funds intercepted by the state with moneys collected and held to make payments on bonds if that replacement would divert moneys from the payment of future debt service on the bonds and increase the risk that the state would be called upon an additional time to make payments on the bonds.

67-8726. COOPERATION BY GOVERNMENT AGENCIES. (1) All officers, departments, boards, agencies, divisions and commissions of the state shall render to the authority services that are within the area of their respective governmental functions and that may be requested by the authority, and shall comply promptly with any reasonable request by the authority to conduct a study or review regarding:

(a) The desirability, need, expense or financial feasibility of a public project, purpose or improvement; or

(b) The financial or fiscal responsibility or ability of a municipality making application to the authority for the purchase by the authority of municipal bonds to be issued by that municipality.

(2) The cost and expense of a service requested by the authority, at the request of the officer, department, board, agency, division or commission rendering the service, shall be paid by the authority.

SECTION 2. 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 conform 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 (89)(c) and (89)(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 3. 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:

(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.

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

(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.

(4) 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.

(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.

(6) An amount required by the provisions of chapter 53, title 33, Idaho Code. ~~of this section~~

(7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

(8) One dollar ($1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, 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.

(~~8~~9) Thirteen and three-quarters percent (13.75%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be paid by the tax commission as follows:

(a) 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.

(b) Twenty-eight and two-tenths percent (28.2%) shall be paid 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~~9) 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~~9)(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~~9)(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 (89)(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 (89) 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 (89)(d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (89)(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 (89)(d).

(vi) For purposes of this subsection (89)(d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(9~~1~~0) 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~~ fund.

Approved March 23, 2001.

CHAPTER 131
(H.B. No. 23)

AN ACT

RELATING TO THE IDAHO SECURITIES ACT; AMENDING SECTION 30-1407, IDAHO CODE, TO STRIKE THE REQUIREMENT THAT FINGERPRINTS ACCOMPANY APPLICATIONS FOR REGISTRATION, TO STRIKE THE REQUIREMENT THAT A WRITTEN EXAMINATION BE GIVEN AT LEAST TWICE A YEAR AND TO STRIKE EXCEPTIONS TO THE EXAMINATION REQUIREMENT; AMENDING SECTION 30-1434, IDAHO CODE, TO STRIKE THE EXEMPTION FROM THE SECURITIES ACT FOR SECURITIES ISSUED OR GUARANTEED BY A RAILROAD, OTHER COMMON CARRIER, PUBLIC UTILITY OR HOLDING COMPANY WHICH IS SUBJECT TO THE JURISDICTION OF THE INTERSTATE COMMERCE COMMISSION AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 30-1437, IDAHO CODE, TO PROVIDE THE REGISTRATION FEE SHALL NOT EXCEED FIVE HUNDRED DOLLARS.

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

SECTION 1. That Section 30-1407, Idaho Code, be, and the same is hereby amended to read as follows:

30-1407. APPLICATION FOR REGISTRATION -- FINGERPRINTS, WRITTEN EXAMINATION, BOND, WAIVER, MINIMUM CAPITAL REQUIRED -- EFFECT OF BROKER-DEALER REGISTRATION ON PARTNERS' OFFICES. (1) A broker-dealer, salesman or investment adviser or investment adviser representative shall apply for registration by filing with the director or an organization which the director by rule designates an application in such form as the director shall prescribe and payment of the fee prescribed in section 30-1437, Idaho Code. ~~Such--application--shall--be--accompanied--by--the fingerprints-of-the-applicant,-unless-waived-by-the-director.~~

(2) (a) A registered investment adviser shall file with the director a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of twenty-five thousand dollars ($25,000) and conditioned upon faithful compliance with the provisions of this chapter by the investment adviser, or its agents, such that upon failure to so comply by the investment adviser, or its agents, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these bonding requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding requirements.

(b) Upon a proper showing, the director, in his discretion, may waive the surety bond requirement of an investment adviser or an

investment adviser applicant who satisfies both of the following conditions:

(i) The investment adviser will not have custody of or discretionary authority over client funds or securities; and

(ii) The investment adviser includes a provision in all investment advisory contracts which states that the investment adviser will not have custody of or discretionary authority over client funds or securities, as required by section 30-1405(2), Idaho Code.

(c) Any salesman acting as agent for an issuer or issuers shall file with the director a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars ($10,000) and conditioned upon faithful compliance with the provisions of this act by the salesman, such that upon failure to so comply by the salesman the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the director in an amount equal to the bond which would otherwise be required may be accepted by the director in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter.

(3) The director may by rule or order require a minimum capital for registered broker-dealers, subject to the limitations of section 15 of the securities exchange act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the investment advisers act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these minimum financial requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's minimum financial or net capital requirements, as the case may be.

(4) The director shall require as a condition of registration that the applicant (and, if the applicant is a corporation or partnership, all officers, directors or partners doing securities business in this state) pass a written examination in such form as the director shall prescribe as evidence of knowledge of the securities business: Provided, that not more than two (2) officers of an issuer may be registered as salesmen for a particular original offering of the issuer's securities without being required to pass such written examination or file a salesman's bond as required by section 30-1407(2)(c), Idaho Code; and provided further, that no such officer may again register within five (5) years as such salesman for this or any other issuer without passing the written examination. ~~Such examination shall be given twice a year or at such more frequent intervals as the director shall direct.~~

~~(5) Any person who is licensed to sell securities or conduct a securities business in this state and (a) is a member or registered rep-~~

~~resentative of a member of the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or the National Association of Securities Dealers or any other exchange registered with the Securities and Exchange Commission and approved by the director; or, (b) has successfully completed the general examination for nonmembers of the National Association of Securities Dealers, commonly known as the SECO examination, shall not be required to pass an examination given by the director as a condition of registration.~~

SECTION 2. That Section 30-1434, Idaho Code, be, and the same is hereby amended to read as follows:

30-1434. EXEMPT SECURITIES. (1) Sections 30-1416 through 30-1433A inclusive, Idaho Code, shall not apply to:

(a) any security including a revenue obligation issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any certificate of deposit for any of the foregoing,

(b) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor,

(c) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States or any bank, savings institution or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state,

(d) any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state,

(e) any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the director of the department of insurance,

(f) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state,

(g) any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is:

(i) ~~Subject to the jurisdiction of the interstate commerce commission,~~

~~(ii)~~ A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act,

(~~i~~ii) Regulated with respect to its rates and charges by a governmental authority of the United States or any state or municipality, or

(~~iv~~ii) Regulated with respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province; also equipment

trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection,

(h) any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved or any warrant or right to purchase or subscribe of the foregoing,

(i) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, also any securities issued by a community-sponsored or owned industrial corporation or foundation organized for the purpose of promoting growth and/or economic development of the community,

(j) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal when such commercial paper is sold to the banks or insurance companies,

(k) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan,

(l) any security issued by a nonprofit cooperative corporation organized pursuant to this title, if no expenditure is made by or on its behalf in connection with the issuance or sale of its securities other than the actual expenses of organization, calling or holding meetings of incorporators or shareholders, printing, mailing, and taxes,

(m) any security issued by a domestic or foreign corporation, partnership, trust or association engaged in actual mining operations or the exploration and development of mining properties in this state, whether or not sold through a broker-dealer, provided the following conditions are met:

(i) The term "actual mining operations" within the meaning of this subsection does not include the development or production of gas or oil;

(ii) The total amount of the securities to be offered and sold does not exceed five hundred thousand dollars ($500,000) in any twelve (12) month period;

(iii) All sales brochures, pamphlets, advertisements and literatures are filed with the director prior to being used;

(iv) At least eighty ~~per--cent~~ percent (80%) of the gross amount paid by the purchasers of the securities is used in actual mining operations or for actual exploration and development expenses, including legal, accounting, engineering and geological expenses; and

(v) The issuer shall file a report in a form prescribed by the director and at such times that the director by rule may pro-

vide, not to exceed once every three (3) months, stating the number of shares or amount of other securities sold, the number of purchasers, the amount of money obtained by the issuer from the sales, and the manner in which the moneys have been expended.

(2) Provided, that any person shall give notice in the form prescribed by the director of his intention to avail himself of the exemption afforded by paragraphs (d), (e), (f), (i), (k), (l) or (m) of subsection (1) of this section thirty (30) days prior to the first offer or sale to be made thereunder. The director may by order deny or revoke the exemption specified in such subsections with respect to a specific security. Upon the entry of such an order the director shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within twenty (20) days of the receipt of a written request the matter will be set for hearing. If no hearing is requested and none is ordered by the director the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered the director, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under said subsections may operate retroactively. No person may be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under said subsections if he sustains the burden of proof that he did not know, and in the exercise of reasonable care, could not have known of the order.

SECTION 3. 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 not more than 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 eighteen (18) months from the date 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 regis-

tration 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.

Approved March 23, 2001.

CHAPTER 132
(H.B. No. 27)

AN ACT

RELATING TO THE REAL ESTATE APPRAISER BOARD; AMENDING SECTION 54-4106, IDAHO CODE, TO PROVIDE THAT THE IDAHO REAL ESTATE APPRAISER BOARD MAY ADOPT RULES RELATING TO THE REGISTRATION AND LIMITATIONS OF REAL ESTATE APPRAISER TRAINEES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 54-4106, Idaho Code, be, and the same is hereby amended to read as follows:

54-4106. REAL ESTATE APPRAISERS -- REAL ESTATE APPRAISER BOARD -- POWERS AND DUTIES -- COMPENSATION. (1) There is hereby created in the department of self-governing agencies, a real estate appraiser board, hereinafter referred to as the "board," which shall administer the provisions of this chapter. The board shall consist of five (5) members to be appointed by the governor as follows:

(a) One (1) from the northern district consisting of the counties of Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Boundary, Shoshone, Kootenai and Bonner; one (1) from the southeastern district consisting of the counties of Lemhi, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Caribou, Bear Lake, Franklin, Oneida, Power and Bannock; one (1) from the southwestern district consisting of the counties of Owyhee, Elmore, Ada, Canyon, Boise, Gem, Payette, Washington, Adams and Valley; one (1) from the south central district consisting of the counties of Blaine, Camas, Cassia, Custer, Gooding, Jerome, Lincoln, Minidoka and Twin Falls; and one (1) from the state at large;

(b) On July 1, 1990, the governor shall appoint the members of the board, each of whom shall be a real estate appraiser with not less than five (5) years' experience in the real estate appraisal business in Idaho. As of July 1, 1999, the board appointment from the state at large is extended for a period of two (2) years and the board appointment from the south central district is extended for a period of one (1) year. Each regular appointment thereafter, other than an appointment to fill an unexpired term, shall be for a term of four (4) years and each board member shall hold office until a successor is appointed and qualified. Upon the death, resignation or removal of any member of the board, the governor shall appoint a state licensed or state certified real estate appraiser to fill the unexpired term. Appointments to fill any vacancy other than that resulting from the expiration of a term shall be made for the unexpired term. After July 1, 1991, new board members shall be required to be state licensed or certified real estate appraisers with not less than five (5) years' experience in the real estate appraisal business in Idaho;

(c) Within fifteen (15) days after the appointment of the members of the board, the board shall call a meeting and organize by the election of a chairman. Thereafter, the chairman may call meetings of the board whenever he deems it advisable but if he refuses to call a meeting upon written demand of the other four (4) members of the board, then such members may call such meeting. Reasonable notice shall be given in writing by mail of such meeting.

(2) The board shall have, in addition to the powers conferred elsewhere in this chapter, the following powers and duties:

(a) To authorize, by written agreement, the bureau of occupational licenses to act as its agent in its interest;

(b) To adopt, pursuant to the administrative procedure act, such rules as the board, in its discretion, deems necessary for the administration and enforcement of this chapter, and any such rules deemed necessary by the board to keep the Idaho real estate appraisers act in compliance with federal law, rule, regulation or policy;

(c) To conduct investigations into violations of the provisions of this chapter;

(d) To receive applications for and issue licenses or certificates

to real estate appraisers pursuant to this chapter;

(e) To hold meetings, hearings and examinations at such places and at such times as it shall designate;

(f) To collect, deposit and disburse application and other fees, as required by this chapter or federal law;

(g) To maintain a register of all state licensed or certified residential and state certified general real estate appraisers; ~~and~~

(h) To censure a state licensed or certified appraiser or suspend or revoke appraisal licenses or certificates as provided in this chapter, subject to the provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code; and

(i) To adopt rules governing the registration and limitations of real estate appraiser trainees.

(3) Each member of the board of real estate appraisers shall be compensated as provided in section 59-509(m), Idaho Code.

Approved March 23, 2001.

CHAPTER 133
(H.B. No. 28, As Amended)

AN ACT

RELATING TO BARBERS; AMENDING SECTION 54-501, IDAHO CODE, TO PROVIDE PURPOSE OF LICENSURE; AMENDING SECTION 54-502, IDAHO CODE, TO ADD DESIGNATION AND DEFINITION OF "BARBER-STYLIST" AND TO ADD DEFINITION OF "BARBERING"; AMENDING SECTION 54-506, IDAHO CODE, TO PROVIDE QUALIFICATIONS FOR LICENSURE; AMENDING SECTION 54-507, IDAHO CODE, TO REQUIRE LICENSING OF APPROVED BARBER COLLEGES AND TO MODIFY REQUIREMENTS FOR INSTRUCTION; AMENDING SECTION 54-509, IDAHO CODE, TO REQUIRE THAT THE FEE AND A PASSPORT PHOTOGRAPH ACCOMPANY THE APPLICATION FOR EXAMINATION; AMENDING SECTION 54-510, IDAHO CODE, TO PROVIDE FOR EXAMINATION OF BARBER-STYLISTS, TO PROVIDE FOR LICENSURE AND TO CLARIFY EXAMINATION REQUIREMENTS; AMENDING SECTION 54-511, IDAHO CODE, TO PROVIDE FOR ISSUANCE OF REGISTRATION AND LICENSE AS A BARBER OR BARBER-STYLIST; AMENDING SECTION 54-512, IDAHO CODE, TO PROVIDE REFERENCES TO BARBER-STYLISTS, TO DELETE LANGUAGE REFERRING TO TEMPERATE HABITS, TO PROHIBIT PRACTICE AS A BARBER OR BARBER-STYLIST WITHOUT A LICENSE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-514, IDAHO CODE, TO REQUIRE DISPLAY OF LICENSE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-516, IDAHO CODE, TO CLARIFY GROUNDS FOR REFUSAL, REVOCATION OR SUSPENSION OF LICENSES, TO PROVIDE REFERENCE TO LICENSE, TO DELETE LANGUAGE REFERRING TO SUSPENSION OF LICENSE IF AN OWNER OR OPERATOR FAILS TO MEET SANITARY REQUIREMENTS OR EMPLOYS UNLICENSED BARBERS, TO PROVIDE THAT A LICENSE MAY BE REFUSED, REVOKED OR SUSPENDED BASED UPON CERTAIN VIOLATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-517, IDAHO CODE, TO PROVIDE FOR NOTICE AND HEARING BY THE BOARD OF BARBER EXAMINERS PRIOR TO THE BOARD'S REFUSAL TO ISSUE, RENEW, SUSPEND OR REVOKE A LICENSE; AMENDING SECTION 54-518, IDAHO CODE, TO PROVIDE FOR FEES, TO PROVIDE AN ORIGINAL LICENSE AND ANNUAL RENEWAL FEE FOR BARBER-STYLISTS AND TO MAKE TECHNICAL CHANGES; AMENDING SECTION 54-519, IDAHO CODE, TO DELETE REFERENCE TO A FINE FOR MISDE-

MEANOR CONVICTION AND TO PROHIBIT PRACTICE BY UNLICENSED BARBER-STYLISTS, FRAUDULENT OBTAINMENT OF LICENSES, FAILURE TO DISPLAY LICENSES AND UNLICENSED OPERATION OF A SHOP OR SCHOOL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-521, IDAHO CODE, TO INCREASE BOARD COMPENSATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-527, IDAHO CODE, TO PROVIDE FOR ISSUANCE OF LICENSES TO TEACHERS; AMENDING SECTION 54-528, IDAHO CODE, TO REQUIRE LICENSING OF BARBER TEACHERS AND TO PROVIDE QUALIFICATIONS FOR LICENSING OF TEACHERS OF BARBERING AND BARBER-STYLING; AND AMENDING SECTION 54-530, IDAHO CODE, TO DELETE REFERENCE TO CERTIFICATE OF REGISTRATION.

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

SECTION 1. That Section 54-501, Idaho Code, be, and the same is hereby amended to read as follows:

54-501. REQUIREMENTS OF ~~REGISTRATION~~ LICENSURE AND BARBERSHOP ~~LICENSE~~ LICENSURE. After July 1, 1927, in order to safeguard the public health, safety and welfare, it shall be unlawful to practice, or attempt to practice, barbering without a ~~certificate of registration~~ license as a registered barber issued pursuant to provisions of this act by the board of barber examiners.

After July 1, 1957, in order to safeguard the public health, safety and welfare, it shall be unlawful to own or operate any barbershop unless a barbershop license is first obtained from the board. The applicant for such license must furnish proof that the shop is located and equipped to meet the sanitary requirements and rules of the board. The maintenance of a bona fide establishment with a permanent and definite location shall be prerequisite for the issuance of a barbershop license, the establishment of itinerant shops being prohibited. The holder of a barbershop license must notify the board in writing of any change of address and at the same time shall return said license, upon the fact of which such change shall be properly indorsed. A change of address by a licensee without such notice and indorsement shall operate to cancel the license.

SECTION 2. That Section 54-502, Idaho Code, be, and the same is hereby amended to read as follows:

54-502. PRACTICE DEFINED. Any one (1) or any combination of the following practices (when done upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or without payment for the public generally) constitutes the practice of barbering or barber-styling:

(1) Barber-Styling: Shaving or trimming the beard or cutting, trimming, arranging, dressing, curling, waving by any method, straightening, cleansing, singeing, bleaching, coloring, or similar work upon the hair;

Fitting, cutting or dressing hairpieces or toupees;

Giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;

Applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or upper part of the body.

(2) Barbering: Shaving or trimming the beard or cutting, trimming, arranging, dressing, curling, cleansing, singeing, or similar work upon the hair;

Fitting, cutting or dressing hairpieces or toupees;

Giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;

Applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or upper part of the body.

SECTION 3. That Section 54-506, Idaho Code, be, and the same is hereby amended to read as follows:

54-506. QUALIFICATIONS FOR ~~CERTIFICATE OF--REGISTRATION--AS--REGISTERED~~ LICENSURE. (1) A person is qualified to receive a ~~certificate of registration~~ license to practice ~~barbering~~ as a barber-stylist who:

~~1.~~(a) ~~Who hH~~as two (2) years of high school or an equivalent education as ~~determ~~ined by an examination ~~conducted~~ by the board~~.~~; and

~~2.~~(b) ~~Who i~~Is at least sixteen and one-half (16 1/2) years of age~~.~~; and

~~3.~~(c) ~~Who i~~Is of good moral character ~~and temperate habits.~~; and

~~4.~~(d) ~~Who hH~~as completed and graduated from a course ~~consisting~~ of instruction of at least ~~seventeen~~ one thousand eight hundred ~~(17,800)~~ hours ~~within a period of ten and one-half (10 1/2) months~~ in a school of barbering approved by the board~~.~~; and

~~5.~~(e) ~~As applicant shall be required to submit to and s~~Successfully passes ~~a barber's~~ an examination under the supervision of the board of barber examiners. ~~An applicant for a certificate of registration to practice as a barber who fails to pass a satisfactory examination must complete a further course of three (3) months of not less than five hundred (500) hours in an approved school of barbering before he is entitled to take an examination again~~

(2) A person is qualified to receive a license to practice as a barber who:

(a) Has two (2) years of high school or an equivalent education as determined by an examination conducted by the board; and

(b) Is at least sixteen and one-half (16 1/2) years of age; and

(c) Is of good moral character; and

(d) Has completed and graduated from a course of instruction of at least nine hundred (900) hours in a school of barbering approved by the board; and

(e) Successfully passes an examination under the supervision of the board of barber examiners.

SECTION 4. That Section 54-507, Idaho Code, be, and the same is hereby amended to read as follows:

54-507. APPROVED BARBER COLLEGES -- REQUIREMENTS -- BOND. No school teaching the art or science of barbering shall ~~be approved by the board nor shall it~~ operate or be ~~recognized~~ licensed as a school of barbering, unless the entrance requirements are equal to those which are required ~~for--apprentices~~ under section 54-506, Idaho Code. An approved college may teach special courses, but as a prerequisite to graduation the college must ~~give~~ provide:

(1) A ~~a~~ course of instruction for barber-stylists of not less than

~~seventeen~~ one thousand eight hundred (1~~7~~,800) hours ~~over a period of not less than ten and one-half (10-1/2) months~~ and include in its course of instruction the ~~following subjects:~~

~~S~~scientific fundamentals for barbering: hygiene; bacteriology; histology of the hair, skin, nails, muscles and nerves; structure of the head, face and neck; elementary chemistry relating to sterilization and antiseptics; diseases of the skin, hair, glands and nails; massaging and manipulating the muscles of the upper body; hair cutting; shaving; and arranging, dressing, curling, waving, straightening, coloring, bleaching and tinting of the hair; and

(2) A course of instruction for barbers of not less than nine hundred (900) hours and include in its course of instruction the scientific fundamentals for barbering: hygiene; bacteriology; histology of the hair, skin, nails, muscles and nerves; structure of the head, face and neck; elementary chemistry relating to sterilization and antiseptics; diseases of the skin, hair, glands and nails; massaging and manipulating the muscles of the upper body; hair cutting; shaving; and arranging and dressing of the hair.

For the purpose of this chapter, a recognized approved barber school or college (hereinafter referred to as a college) shall be understood to be a college that has met with the provisions of this chapter, and has a valid unrevoked ~~certificate~~ license issued by the board, to the effect that said college is approved by the state of Idaho.

No college in the state shall advertise or use any signs or terms to indicate that the college is approved, recognized, accredited, ~~or~~ certified, or licensed unless said college is ~~approved~~ licensed by the board. Every college shall advertise as a college and make known to the public and customers that the work is being done by students.

All instructors in an approved college must be licensed in the state of Idaho as a barber instructor or a cosmetology instructor.

Every instructor in an approved college shall devote his or her entire time during class hours to that of instructing the students and shall not apply his time to that of private or public practice during the school or class hours.

~~School--hours--for the purpose of instruction in an approved college shall not begin before 8 a.m., or continue longer than 6 p.m., and shall be conducted for at least five (5) days during the--week--except--Sunday and holidays.~~

~~The--school--day--in--an--approved--college shall not be divided into periods that may work to the detriment of--the--students.--Each--student shall be required to work or receive instruction in the college at least seven--(7)--hours--each--day.--Credit will be allowed students for their actual time in attendance at the college, but not to--exceed--eight--(8) hours per day.~~

A college furnishing satisfactory evidence that it is maintaining the requirements set forth in this chapter, whether located within or without the state, shall, upon the payment of the required fee, be issued a ~~certificate~~ license to the effect that the college is approved by the board.

A ~~certificate~~ license issued to a college must be renewed annually on July first of each year. Should a college fail or refuse to renew a ~~certificate~~ license said college shall cease to operate if within the state of Idaho and be removed from the list of the approved colleges.

The board may cancel or refuse to renew a ~~certificate~~ license issued

to a college upon proof that said college has failed or refused to meet with the requirements for approved colleges set forth in this chapter.

One (1) instructor must be employed to each fifteen (15) students or fractional part thereof and one (1) barber instructor must be employed on a full-time basis in each school or college.

Every school or college approved by the board shall deliver to the board, a bond to the state of Idaho in a form approved by the board, and renew the same annually, in the sum of two thousand dollars ($2,000), executed by a corporate surety company duly authorized to do business in this state, conditioned that such school or college shall continue to give its courses of instruction, in accordance with the provision of this chapter, until it has completed all such courses for which students have enrolled, and conditioned that such school or college shall fully comply with all promises or representations made to enrolled students as an inducement to such students to enroll. Any student so enrolled who may be damaged by reason of the failure of such school or college to comply with such conditions, shall have a right of action in his or her own name, on such bonds, for such damage.

SECTION 5. That Section 54-509, Idaho Code, be, and the same is hereby amended to read as follows:

54-509. APPLICATION FOR EXAMINATION. Each applicant for examination shall:

Make application to the board of barber examiners on blank forms prepared and furnished by said board and furnish to the board ~~two~~ one (~~2~~1) ~~3"--x-2"~~ passport photographs of the applicant, which shall accompany the application~~.--Should he pass, one--(1)--photograph--is--attached permanently--to his certificate of registration, and he shall pay to the board~~ together with the required fees.

SECTION 6. That Section 54-510, Idaho Code, be, and the same is hereby amended to read as follows:

54-510. EXAMINATIONS. The board of barber examiners shall conduct examinations of applicants for ~~certificates of registration~~ licensure to practice as ~~registered~~ barbers and barber-stylists at such times and places as said board may determine.

The examination of applicants for ~~certificates--of registration~~ licensure as ~~registered~~ barbers and barber-stylists shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the board.

An examination is failed when an applicant obtains a score of below seventy-five percent (75%). Any applicant failing below seventy-five percent (75%) on any portion of the examination on the first attempt will not be required to complete any additional training. An applicant failing below seventy-five percent (75%) on a second attempt and all subsequent attempts will be required to complete additional training equal to twenty percent (20%) of the original course of instruction.

SECTION 7. That Section 54-511, Idaho Code, be, and the same is hereby amended to read as follows:

54-511. ISSUANCE OF CERTIFICATE OF REGISTRATION AND LICENSE. Whenever the provisions of this chapter have been complied with, the board shall issue a certificate of registration and license as either a ~~registered~~ barber or barber-stylist.

SECTION 8. That Section 54-512, Idaho Code, be, and the same is hereby amended to read as follows:

54-512. PERSONS HAVING PRACTICED BARBERING OR BARBER-STYLING IN ANOTHER STATE OR COUNTRY. A person who is at least eighteen (18) years of age and of good moral character ~~and temperate habits~~ and who has completed two (2) years of high school or its equivalent as determined by the board, and either:

(1~~.~~) Has a license or certificate of registration as a practicing barber or barber-stylist from another state or country, which has substantially the same requirements for licensing or registering barbers or barber-styl~~ists~~ as required by this chapter, or

(2~~.~~) Who has been licensed as a barber or barber-stylist in another state or country for at least three (3) years immediately prior to making application in this state:

May be granted a license by the board to practice as a registered barber or barber-stylist upon application and payment of the required fee. No such license may be issued except upon authorization by the board. It is unlawful for any person to practice as a ~~registered~~ barber or barber-stylist without a ~~certificate of registration~~ license.

SECTION 9. That Section 54-514, Idaho Code, be, and the same is hereby amended to read as follows:

54-514. DISPLAY OF ~~CERTIFICATE AND~~ LICENSE. Every holder of a ~~certificate of registration~~ license shall display it in a conspicuous place adjacent to or near his work chair. A barbershop license must at all times during the term thereof be displayed in the ~~barber shop~~ barbershop for which it is issued.

SECTION 10. That Section 54-516, Idaho Code, be, and the same is hereby amended to read as follows:

54-516. REFUSAL, REVOCATION OR SUSPENSION OF ~~CERTIFICATE AND~~ LICENSE. The board of barber examiners may either refuse to issue or renew or may suspend or revoke any ~~certificate of registration~~ license for any one (1) or combination of the following causes:

(1~~.~~) Conviction of a felony shown by a certified copy of the record of the court of conviction;

(2~~.~~) Gross malpractice or gross incompetency;

(3~~.~~) Failure to meet the sanitary and health requirements as promulgated for barbers under the provisions of this chapter;

(4~~.~~) Advertising by means of knowingly false or deceptive statements;

(5~~.~~) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs;

(6~~.~~) Immoral or unprofessional conduct; and

(7~~.~~) The commission of any of the offenses described in section 54-519, Idaho Code.

~~The--board--may--suspend-for-not-more-than-thirty-(30)-days-or-until compliance-with-the-requirements,-a-barber-shop-license-if-the-owner-and operator-fail-to-meet-the-sanitary--requirements--of--the--board--or--if either-the-owner-or-operator-employs-unlicensed-barbers-in-the-shop.~~

(8) The violation of any of the provisions of this chapter, or rule adopted pursuant thereto.

SECTION 11. That Section 54-517, Idaho Code, be, and the same is hereby amended to read as follows:

54-517. HEARINGS. The board may neither refuse to issue nor refuse to renew, nor suspend, nor revoke any ~~certificate-of-registration~~ license, however, for any of these causes unless the person accused has been given at least twenty (20) days' notice in writing of the charge against him and a public hearing by the board.

Upon the hearing of any such proceeding, said board may administer oaths and may procure by its subpoena, the attendance of witnesses and the production of relevant books and papers.

Any district court, or any judge of the district court, either in term time or in vacation, upon application either of the accused or of the board may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before said board in any hearing relating to the refusal, suspension or revocation of ~~certificates-for-registration~~ a license.

SECTION 12. That Section 54-518, Idaho Code, be, and the same is hereby amended to read as follows:

54-518. FEES. The various fees to be paid by applicants for original registrations, original licenses, annual renewals, ~~certificates issued-upon-endorsement~~ and examinations as required under this chapter shall be fixed by rules of the board in amounts not to exceed the following:

(1~~.~~) Original ~~registrations,~~ licenses and annual renewals thereof:

approved barber college within the state, original ~~certificate~~ license/annual renewals.....$200.00
approved barber college located outside the state, original ~~certificate~~ license/annual renewals.....100.00
barbershop original license/annual renewals.....50.00
~~registered~~ barber, original license/annual renewals.....50.00
barber-stylist, original license/annual renewals.....50.00
teacher, original license/annual renewals.....60.00
student registration (no renewal fees required).....60.00
temporary permit fee (no renewal fees required).....60.00
endorsement.....80.00

(2~~.~~) Examination/Reexamination:

~~registered~~ barber.....$ 75.00
teacher ~~certificate~~ license examination.....100.00

All fees shall be paid to the bureau of occupational licenses. Fees shall not be prorated or refundable. The fee for reinstatement shall be as provided in section 67-2614, Idaho Code. All ~~certificates/~~ licenses expire on June 30.

SECTION 13. That Section 54-519, Idaho Code, be, and the same is hereby amended to read as follows:

54-519. CERTAIN ACTS PROHIBITED. Each of the following ~~constitutes~~ shall be unlawful and punishable as a misdemeanor~~, punishable upon conviction by a fine of not less than twenty-five dollars ($25.00), nor more than two hundred dollars ($200)~~:

(1~~.~~) The violation of any of the provisions of this chapter;

(2~~.~~) Permitting any person in one's employ, supervision or control to practice as a barber or barber-stylist unless that person has a valid, unrevoked ~~certificate of registration~~ license as a ~~registered~~ barber, barber-stylist, or a temporary permit from the department or to practice cosmetology unless that person has a valid, unrevoked certificate of registration as a registered cosmetologist;

(3~~.~~) Obtaining or attempting to obtain a ~~certificate of registration~~ license for money other than the required fee, or any other thing of value, or by fraudulent misrepresentation;

(4~~.~~) Practicing or attempting to practice by fraudulent misrepresentations;

(5~~.~~) The ~~wilful~~ willful failure to display a ~~certificate of registration~~ license as required by section 54-514, Idaho Code; or

(6~~.~~) The use of any room or place for cutting or trimming the hair which is also used for residential or business purposes (except the sale of such commodities as are used in ~~barber shops~~ barbershops) unless a substantial partition of ceiling height separates the portion used for residential or business purposes.

(7) Maintaining or operating a barbershop or barber college unless licensed as herein provided.

SECTION 14. That Section 54-521, Idaho Code, be, and the same is hereby amended to read as follows:

54-521. BOARD OF BARBER EXAMINERS -- POWERS AND DUTIES -- DESIGNATION OF PERSONS TO REPORT TO BOARD. There is hereby created, and established in the department of self-governing agencies, the board of barber examiners. The board may, by written agreement, authorize the bureau of occupational licenses as agent to act in its interest (in this chapter referred to as the board) and in addition to the powers herein elsewhere conferred, shall have the following powers and it shall be the duty of the board:

(1) To conduct examinations to ascertain the qualifications and fitness of applicants for licenses hereunder and to pass upon the qualifications of all applicants for licenses.

(2) To conduct hearings and proceedings in accordance with the provisions of chapter 52, title 67, Idaho Code, to revoke licenses issued under this chapter and to revoke such licenses subject to the provisions of this chapter.

(3) To designate what schools of barbering within and without the state are approved schools, and from time to time, to change such designations and to keep public records thereof.

(4) To prescribe rules in accordance with the provisions of chapter 52, title 67, Idaho Code, for a fair and wholly impartial method of examination of applicants for licenses hereunder and, subject to the provisions of chapter 52, title 67, Idaho Code, for conducting hearings

for the revocation of licenses, defining the qualifications of an approved school of barbering and for the administration of this chapter in general.

Excepting the regulation of schools under section 54-507, Idaho Code, hereof, and the issuance of licenses under section 54-513, Idaho Code, none of the powers and duties specified in ~~the~~ subsections (1) to (4) of this section, shall be exercised by the said bureau except on the action of the board of barber examiners. When vacancies occur on said board, the governor shall appoint new members, but not more than a total of three (3) members, each of whom shall be a registered barber, and shall have been a resident of, and lawfully practicing barbering within the state of Idaho for a period of at least five (5) years next before his appointment, and who is neither directly nor indirectly in any way connected with or interested in the barber supply business nor in any institution offering instruction in barbering. In appointing the members of such board the governor shall give consideration to the recommendations received from the Idaho state barbers association. The board and all assistants shall be compensated as provided by section 59-509(~~g~~h), Idaho Code.

The regular term of office of a member of the board shall begin as of the first Monday of July of the year in which he is appointed and shall continue for three (3) years thereafter. A member appointed to fill a vacancy occasioned otherwise than by expiration of a term shall serve the unexpired term of his predecessor.

A vacancy in membership in the board shall occur, and be declared by the governor, whenever the regular term of a member expires, or whenever a member dies, resigns, or is found by the governor to be mentally or physically incapable of acting, or to be neglecting or refusing to act, or to cease to have the qualifications of a member, or to have acquired disqualifications of a member, or to have been absent without reasonable cause from two (2) successive meetings of the board.

The board of barber examiners shall select from its members a chairman, ~~vice-chairman~~ vice chairman, and secretary who shall serve at the pleasure of the board.

The action and report in writing of the board so designated shall be sufficient authority upon which the bureau may act.

Whenever the board is satisfied that substantial justice has not been done, either in examination or in revocation of a license or otherwise, it may order a reexamination or rehearing of the matter.

SECTION 15. That Section 54-527, Idaho Code, be, and the same is hereby amended to read as follows:

54-527. ~~CERTIFICATES~~ LICENSES OF TEACHERS. The board of barber examiners is authorized to issue ~~certificates~~ licenses to teach in a barber school and must determine by examination the qualifications of applicants to teach.

SECTION 16. That Section 54-528, Idaho Code, be, and the same is hereby amended to read as follows:

54-528. QUALIFICATIONS OF TEACHERS. No person shall teach or be employed to teach in any barber school within the state, who at the time of rendering such service is not a holder of a teacher's ~~certificate~~ license for barbering or cosmetology.

No person shall be issued a teacher's ~~certificate~~ license until he has satisfactorily completed a minimum six (6) month course of barber teaching as a student in a properly licensed barber college or had a minimum of three (3) years' experience in practical barbering. Any person who makes application to obtain a ~~certificate~~ license to teach barbering and barber-styling must pass satisfactorily the barber teachers' examination to be conducted by the board of barber ~~examiners.~~

The barber ~~teachers' ex~~amination will determine fully the applicants' ability to teach all the branches of barbering, both practical and scientific.

A barber teacher's license may be renewed annually by the payment of the required fee and proof of having met the continued education as may be required by board rule.

SECTION 17. That Section 54-530, Idaho Code, be, and the same is hereby amended to read as follows:

54-530. JUDICIAL REVIEW. Any person who shall feel aggrieved by an action of the board in denying, suspending or revoking his ~~certificate of registration or~~ license may seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

Approved March 23, 2001.

CHAPTER 134
(H.B. No. 29, As Amended)

AN ACT

RELATING TO COSMETOLOGY; AMENDING SECTION 54-801, IDAHO CODE, TO ADD ELECTROLOGY AS A LICENSED DISCIPLINE; AMENDING SECTION 54-802, IDAHO CODE, TO REVISE DEFINITIONS, TO ADD DEFINITIONS FOR "NAIL TECHNOLOGY INSTRUCTOR" AND "ESTHETICS INSTRUCTOR" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-805, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR LICENSURE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-806, IDAHO CODE, TO PROVIDE LICENSURE FOR SCHOOLS AND ESTABLISHMENTS; AMENDING SECTION 54-807, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR PRACTICE OF APPRENTICES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-808, IDAHO CODE, TO PROVIDE REGULATIONS FOR SCHOOLS, TO REQUIRE LICENSING FOR SCHOOLS, TO PROVIDE FOR CURRICULUMS FOR SCHOOLS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-809, IDAHO CODE, TO REQUIRE A PASSPORT PHOTOGRAPH AND ADDRESSES OF CHARACTER REFERENCES TO ACCOMPANY AN APPLICATION FOR EXAMINATION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-810, IDAHO CODE, TO DELETE A REFERENCE TO AN ORAL TEST; AMENDING SECTION 54-811, IDAHO CODE, TO PROVIDE FOR ISSUANCE OF A LICENSE; AMENDING SECTION 54-812, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR ENDORSEMENT LICENSURE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-814, IDAHO CODE, TO REQUIRE DISPLAY OF LICENSE; AMENDING

SECTION 54-816, IDAHO CODE, TO DELETE REFERENCES TO CERTIFICATES, TO PROVIDE REFERENCES TO LICENSES AND REGISTRATION, TO DELETE LANGUAGE RELATING TO THE REFUSAL TO ISSUE OR RENEW CERTIFICATES OR LICENSES BASED UPON A DEFAULT IN THE REPAYMENT OF CERTAIN STUDENT LOANS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-817, IDAHO CODE, TO PROVIDE FOR HEARINGS ON REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF PERMITS; AMENDING SECTION 54-818, IDAHO CODE, TO PROVIDE FOR AN INCREASE IN CERTAIN FEES, TO PROVIDE REFERENCE TO LICENSES AND PERMITS, TO DELETE REFERENCE TO INTERIM CERTIFICATES, TO DELETE AN EXPIRATION DATE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-819, IDAHO CODE, TO PROVIDE CERTAIN PROHIBITED ACTS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 54-827, IDAHO CODE, TO PROVIDE QUALIFICATIONS FOR A PERMIT TO DEMONSTRATE AND TEACH AND TO DELETE TEMPORARY PRACTICE PERMITS.

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

SECTION 1. That Section 54-801, Idaho Code, be, and the same is hereby amended to read as follows:

54-801. DECLARATION OF POLICY. In order to safeguard the public health, safety and welfare, every person practicing or offering to practice cosmetology or electrology, as hereinafter defined, shall submit evidence of his qualifications and be licensed as hereinafter provided; and it shall be unlawful for any person to practice or offer to practice cosmetology or electrology, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a licensed cosmetologist or electrologist, unless such person has been duly licensed under the provisions of this chapter and any amendments thereto; and it shall be unlawful for any person to operate a cosmetological establishment or school of cosmetology unless such cosmetological establishment or school of cosmetology has been duly ~~registered~~ licensed for such purpose as hereinafter provided.

SECTION 2. That Section 54-802, Idaho Code, be, and the same is hereby amended to read as follows:

54-802. DEFINITIONS. For the purpose of this chapter, the following definitions shall apply:

(~~a~~1) "Cosmetology" shall constitute any one (1) or combination of the following practices when done upon the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

~~1.~~(a) Cutting, trimming, arranging, dressing, curling, waving by any method, cleansing, singeing, bleaching, coloring, or similar work upon the hair.

~~2.~~(b) Applying cosmetic preparations, antiseptics, tonics, lotions or creams, or massaging, cleansing, exercising, beautifying, or similar applications or work upon the scalp, face, neck, arms, hands, busts, or other parts of the body.

~~3.~~(c) Manicuring, pedicuring the nails, and the application of artificial nails.

(~~b~~2) "Registered cosmetologist" shall mean any person licensed to

practice cosmetology.

(c3) "Nail technology" shall constitute any one (1) or more of the following practices when done upon the human body:

~~1.~~(a) Manicuring, pedicuring the nails, and the application of all forms of artificial nails.

~~2.(b)~~ Massage of the hands and feet.

(d4) "Nail technician" shall mean any licensed person whose practice of cosmetology is limited to nail technology.

(e5) "Nail technology instructor" shall mean a nail technologist who is licensed to teach nail technology or any practice thereof in a school of cosmetology.

(6) "Apprentice" shall mean any person ~~who--is--engaged~~ registered with the board to engage in the learning or acquiring of any or all of ~~the~~ practices of cosmetology in a licensed cosmetological establishment, and while so learning performs or assists in any of the practices of cosmetology.

(f7) "Student" shall mean any person ~~who-is-engaged~~ registered with the board to engage in the learning or acquiring of any or all of the practices of cosmetology in a ~~registered~~ licensed school of cosmetology, and while so learning performs or assists in any of the practices of cosmetology.

(g8) "Instructor" shall mean a cosmetologist who ~~teaches~~ is licensed to teach cosmetology or any practices thereof in a school of cosmetology, ~~or~~ school or college of barbering, or cosmetology establishment meeting the requirements for apprenticeship training.

(h9) "Student instructor" shall mean a cosmetologist who is ~~receiving~~ registered with the board in a school of cosmetology to receive training to teach cosmetology.

(i10) "Cosmetological establishment" shall mean any licensed place or part thereof other than a school of cosmetology wherein cosmetology is practiced.

(j11) "School of cosmetology" shall mean any licensed place or part thereof wherein cosmetology is taught to students.

(k12) "Board" means the Idaho board of cosmetology.

(l13) "Department" means the Idaho department of self-governing agencies.

(m14) "Chapter" as used in this act refers to chapter 8, title 54, Idaho Code.

(n15) "Electrologist" means any person licensed to practice electrology and who is skilled in the permanent removal of unwanted hair.

(o16) "Electrolysis or electrology" means the permanent removal of hair by destroying the hair producing cells of the skin and vascular system using equipment and devices approved by and registered with the United States food and drug administration.

(p17) "Esthetics" shall constitute any one (1) or combination of the following practices when done on the human body:

~~1.~~(a) Applying cosmetic preparations, antiseptics, tonics, lotions or creams, or massaging, cleansing, exercising, beautifying or similar applications of work to the human body.

~~2.~~(b) Nonpermanent hair removal by tweezing or waxing.

(q18) "Esthetician" means any person licensed to practice esthetics.

(19) "Esthetics instructor" shall mean an esthetician who is licensed to teach esthetics or any practice thereof in a school of cos-

metology approved to teach esthetics.

(~~r~~20) "Electrologist instructor" shall means an electrologist who ~~teaches~~ is licensed to teach electrology or any practices thereof in a school of cosmetology approved to teach electrology.

(~~s~~21) "Student electrologist instructor" shall mean an electrologist who is ~~receiving~~ registered with the board in a school of cosmetology approved to teach electrology to receive training to teach electrology.

(~~t~~22) "Makeover or glamour photography business" means any business engaged in the offering of photographic services to the general public and whose employees engage in the facial application of cosmetic products or the arranging of the hair of customers in connection with the sale, or attempted sale, of photographic services.

(~~u~~23) "Retail cosmetics dealer" means a fixed retail business which offers cosmetic products for sale at retail to members of the general public and whose employees engage in the facial application of cosmetic products to customers in connection with the sale, or attempted sale, of the products without compensation from the customer other than the regular price of the merchandise.

(~~v~~24) "Demonstration, competition or production" means an organized event of limited duration where cosmetology services may be performed, if sponsored by a salon, school of cosmetology or cosmetology-related organization.

SECTION 3. That Section 54-805, Idaho Code, be, and the same is hereby amended to read as follows:

54-805. REQUIREMENTS FOR LICENSE. Except as herein otherwise provided, the following shall be considered minimum requirements for license in the respective categories, and all applicants shall be of good moral character and temperate habits:

(1~~.~~) As a registered cosmetologist:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Completion of two (2) years' high school education or its equivalent.

(~~b~~c) Graduation from and completion of a two thousand (2,000) hour course of instruction in a school of cosmetology, or a four thousand (4,000) hour course of instruction as an apprentice covering all phases of the practice of cosmetology.

(~~c~~d) Successful passage of the examination for cosmetologist given under the direction of the board.

(2~~.~~) As an instructor of cosmetology, nail technology, esthetics or electrology: twelve (12) semester college credit hours or equivalent as approved by the board or successful completion of the examination required by board rules, and

(a) One (1) year's experience as a licensed cosmetologist, nail technologist, esthetician or electrologist in a registered cosmetological establishment or school and a six (6) months teacher's course of instruction in a ~~school~~ of cosmetology, or

(b) Two (2) years' experience as a licensed cosmetologist, nail technologist, esthetician or electrologist in a registered cosmetological establishment and a three (3) months teacher's course of instruction in a school of cosmetology, or

(c) Five (5) years' experience as a licensed cosmetologist, nail technologist, esthetician or electrologist immediately preceding the

application for license.~~, and~~

(3~~.~~) As a student:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(4~~.~~) As an apprentice:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(5~~.~~) As a nail technician:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(c) Have completed and graduated from at least a ~~three~~ four hundred (~~3~~400) hour course of instruction and graduated from such training in a board approved school, or a ~~six~~ eight hundred (6800) hour course of instruction as an apprentice in ~~any~~ a specified cosmetological establishment under the direct personal supervision of a licensed cosmetology instructor, who shall have at least one (1) ~~registered~~ licensed nail technician on-site in the specified cosmetological establishment for each student being trained.

(d) Successful passage of the examination for nail technician given under the direction of the board.

(6~~.~~) As an electrologist:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(c) Have completed and graduated from at least an eight hundred (800) hour course of instruction ~~for~~ and graduated from such training in a school approved by the board to teach electrology, or a ~~sixteen~~ one thousand six hundred (1,600) hour course of instruction as an apprentice in a specified cosmetological establishment under the direct personal supervision of a licensed electrologist instructor, who shall have at least one (1) licensed electrologist on-site in the specified cosmetological establishment as established by board rules.

(d) Successfully passed the examination for electrologist given under the direction of the board.

(7~~.~~) As an esthetician:

(a) Be sixteen and one-half (16 1/2) years of age.

(b) Have completed at least two (2) years of high school education or its equivalent.

(c) Have completed and graduated from at least a six hundred (600) hour course of instruction for such in a school approved by the board to teach esthetics or a one thousand two hundred (1,~~0~~200) hour course of instruction as an apprentice in ~~any~~ a specified cosmetological establishment under the direct personal supervision of a licensed cosmetology instructor, who shall have at least one (1) ~~registered~~ licensed esthetician on-site in the specified cosmetological establishment for each student being trained.

(d) Successfully passed the examination for esthetic~~ian giv~~en under the direction of the board.

~~8. As an electrologist instructor: twelve (12) semester college credit hours or equivalent, as approved by the board, or successful com-~~

~~pletion-of-an-examination-required-by-board-rules;-and:~~
~~(a)--Five-(5)-years'-experience-as-a-licensed-electrologist;-or~~
~~(b)--Fewer--than--five--(5)--years'---experience---as---a---licensed electrologist--and--completion-of-an-adequate-training-program-to-be established-by-board-rule.~~

SECTION 4. That Section 54-806, Idaho Code, be, and the same is hereby amended to read as follows:

54-806. SCHOOLS AND ESTABLISHMENTS -- WHO MAY OPERATE -- ~~REGISTRATION~~ LICENSURE -- MANAGEMENT. (1) Any person, firm, association or corporation may own and operate a cosmetological establishment, provided that such establishment has been duly ~~registered~~ licensed with the board and each establishment maintains compliance with the requirements of section 54-803, Idaho Code.

(2) Any person, firm, association or corporation may own and operate a school of cosmetology, provided that such school has been duly ~~registered~~ licensed with the board, and the school maintains the requirements specified in section 54-808, Idaho Code.

SECTION 5. That Section 54-807, Idaho Code, be, and the same is hereby amended to read as follows:

54-807. PRACTICE OF APPRENTICE. No licensed apprentice may practice independently, but ~~he~~ may do any and all acts necessary for ~~his~~ training as a cosmetologist, nail technician, electrologist or esthetician providing the same is done under the immediate personal supervision of a licensed registered cosmetologists, nail technicians, electrologists or estheticians in ~~an~~ licensed cosmetological establishments where one (1) of said registered cosmetologists, nail technicians, electrologists or estheticians is a licensed instructor, and only one (1) such apprentice shall be employed for each two (2) licensed registered cosmetologists, nail technicians, electrologists or estheticians in any cosmetological establishment. Cosmetological establishments employing apprentices shall keep a daily work record of the attendance of such apprentices and shall, upon the termination of such apprenticeship, certify to the board the total number of hours worked and the types of instruction given the apprentice.

SECTION 6. That Section 54-808, Idaho Code, be, and the same is hereby amended to read as follows:

54-808. REGULATIONS FOR SCHOOLS. Every domestic school of cosmetology must be ~~registered~~ licensed under the provisions of this chapter and shall meet the following standards and provisions:

(1~~.~~) Employ and maintain at least one (1) licensed instructor for every fifteen (15) students or fraction thereof;

(2~~.~~) Possess sufficient apparatus and equipment for the proper and full teaching of all subjects of its curriculum;

(3~~.~~) Keep a daily attendance record for each student;

(4~~.~~) Maintain regular class and instruction hours, establish grades, and hold monthly examinations;

(5~~.~~) Prescribe a school term for training in all phases of the practice of cosmetology;

(6~~.~~) Provide ~~a~~ applicable curriculums embracing subjects covering the scientific fundamentals for cosmetology, nail technology, esthetics, electrology and instructors as follows:

(a) The curriculum for cosmetology shall include hygiene, bacteriology, histology of the hair, skin, muscles, nails and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands and nails, massaging and manipulating the muscles of the body, permanent waving, haircutting and arranging, dressing, coloring, bleaching and tinting of the hair, ~~removal--of--unwanted--hair--when approved-by-the-board-to-teach-electrology,-and-a-study-of-electricity--as-applied-to-cosmetology,~~ a study of electricity as applied to cosmetology, and the Idaho laws and rules governing the practice of cosmetology;

(b) The curriculum for nail technology shall include hygiene, bacteriology, histology of the hands and feet, skin, muscles, nails and nerves, structure of the hands and feet, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, glands and nails, massaging and manipulating the muscles of the hands and feet, a study of electricity as applied to nail technology, and the Idaho laws and rules governing the practice of nail technology;

(c) The curriculum for esthetics shall include hygiene, bacteriology, histology of the skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, glands and nails, massaging and manipulating the muscles of the body, a study of electricity as applied to cosmetology, and the Idaho laws and rules governing the practice of esthetics;

(d) The curriculum for electrology shall include hygiene, bacteriology, histology of the hair, skin, muscles, nails and nerves, structure of the body, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands and nails, hypertrichosis, permanent removal of unwanted hair, a study of electricity as applied to electrology including the use and study of galvanic current, and the use and study of both automatic and manual high frequency current, and the Idaho laws and rules governing the practice of electrology;

(e) The curriculum for instructors shall include fundamentals of adult education, communication, preparation of lesson plans, practical and theoretical presentation and demonstration, use of teaching aids, measurement and evaluation, and the Idaho laws and rules governing cosmetology and electrology, in addition to teaching the acts prescribed in section 54-802, Idaho Code;

(7~~.~~) Denote with clarity that the establishment is a school and that work is done by students. Such fact shall be made clear to the patron by signs conspicuously posted in the school and the adjoining shop, if any;

(8~~.~~) All instructors must be licensed instructors in this state;

(9~~.~~) Such school shall not permit any student or apprentice to receive instruction unless licensed under the provisions of this chapter;

(10~~.~~) Every instructor shall devote his entire time during school or class hours to that of instructing the students and shall not apply his time to that of private or public practice;

(11~~.~~) School hours for the purpose of instruction shall be offered on not less than a five (5) day week;

(12~~.~~) Training received in an establishment not meeting the requirements for schools as herein set forth shall receive credit for said training as an apprentice rather than as a student, provided said training meets the requirements for apprentice training;

(13~~.~~) All students, including those enrolled for instructor's training, shall be registered by the school with the board, listing the name, age, and qualifications of the student required for such training. Forms for such enrollment may be provided by the board and a register of such enrollments shall be maintained by the board. Hours of instruction shall be registered with the board as established by board ~~regulations~~ rules, and a student may be permitted to transfer the credits earned at one (1) school to another school with permission of the board;

(14~~.~~) Training received in electrology in a school shall not be recognized unless the school has been approved for such training by the board and the school meets and maintains the requirements to train electrologists as established by board ~~regulations~~ rules;

(15~~.~~) Training received in esthetics shall not be recognized unless the school has been approved for such training by the board, and the school meets and maintains the requirements to train estheticians as established by board rules;

(16~~.~~) Training received in nail technology shall not be recognized unless the school has been approved for such training by the board, and the school meets and maintains the requirements to train nail technicians as established by board rules;

(17~~.~~) Every school approved by the board shall deliver to the board, a bond to the state of Idaho in a form approved by the board, and renew the same annually, in the sum of five thousand dollars ($5,000) executed by a corporate surety company duly authorized to do business in this state, conditioned that such school shall continue to give its courses of instruction, in accordance with the provisions of this chapter, until it has completed all such courses for which students have enrolled, and conditioned that such school shall fully comply with all promises or representations made to enrolled students as an inducement to such students to enroll. Any student so enrolled who may be damaged by reason of the failure of such school to comply with such conditions, shall have a right of action in his or her own name, on such bonds, for such damage.

SECTION 7. That Section 54-809, Idaho Code, be, and the same is hereby amended to read as follows:

54-809. APPLICATIONS. Each applicant for a license shall:

(1~~.~~) Make application to the board on ~~blank~~ forms authorized by the board and furnished thereby, such application to contain proof under oath by the applicant of the particular qualifications of the applicant and contain the names and addresses of three (3) character references.

(2~~.~~) Furnish to said board a ~~3"-x-3"~~ passport photograph ~~,--bust only,~~ of the applicant taken within the year preceding the filing of the application, together with a description of the applicant.

(3~~.~~) Pay to the board the required fee.

SECTION 8. That Section 54-810, Idaho Code, be, and the same is hereby amended to read as follows:

54-810. EXAMINATIONS. Examinations shall be held at such times and places as the board shall determine. The scope of the examinations and the methods of procedure shall be prescribed by the board with special reference to the applicant's general knowledge in the particular practices for which license is sought, and the applicant's ability to perform the particular work satisfactorily. Examinations shall include both a practical demonstration and written ~~and oral~~ test. Applicants who fail to pass an examination as prescribed by this chapter must supply written evidence of additional training before they shall be eligible to take another examination. The amount of such additional training and the nature of the proof required shall be prescribed by rules of the board. Failure to appear for an examination, unless excused by the board, shall cause an immediate forfeiture of the application fee, and terminate the application.

SECTION 9. That Section 54-811, Idaho Code, be, and the same is hereby amended to read as follows:

54-811. ISSUANCE OF CERTIFICATE AND LICENSE. The board shall issue a certificate of registration ~~or~~ and a license to applicants who have successfully met the qualifications ~~therefor, which~~ therefore. The certificate shall be signed by the members of the board. The issuance of a ~~certificate~~ license shall be prima facie evi~~dence that~~ the holder ~~thereof and~~ named ~~therein~~ thereon is entitled to ~~follow~~ engage in the practices designated therein. A registered cosmetologist may indicate this fact where his or her name or signature appears by placing the letters R.C. following his or her name.

SECTION 10. That Section 54-812, Idaho Code, be, and the same is hereby amended to read as follows:

54-812. ENDORSEMENT ~~CERTIFICATION~~ LICENSURE. The board, upon application and the payment of the fee required therefore, may issue a license without examination to any person who is at least eighteen (18) years of age and of good moral character ~~and temperate habits~~ and who has completed two (2) years of high school or its equivalent and who holds a certificate of qualification or license issued to him by the proper authority of any state, territory or possession of the United States, or of a foreign country, and either:

(1.) ~~Holds a certificate of qualification or license issued to him by the proper authority of any state, territory, or possession of the United States, or of a foreign country, provided~~ Provides official documentation that the requirements for license under which the certificate was issued are of a standard not lower than those specified in this chapter, or

(2.) ~~Holds a certificate of qualification or license issued to him by the proper authority of any state, territory or possession of the United States, or of a foreign country and upon proof~~ Provides official documentation that said person has practiced the pursuit for which ~~license~~ licensure is requested for at least three (3) years immediately prior to such application. The board shall evaluate the applications for license by ~~reciprocity~~ endorsement. No ~~reciprocal~~ endorsement license shall be issued ~~except by~~ without the approval of the board.

SECTION 11. That Section 54-814, Idaho Code, be, and the same is hereby amended to read as follows:

54-814. DISPLAY OF ~~CERTIFICATE~~ LICENSE. Every holder of a ~~certificate of registration or~~ license shall display it in a conspicuous place in his or her principal office, place of business, or employment.

SECTION 12. That Section 54-816, Idaho Code, be, and the same is hereby amended to read as follows:

54-816. REFUSAL, REVOCATION OR SUSPENSION OF ~~CERTIFICATE~~ REGISTRATION OR LICENSE. The board may either refuse to issue or renew, or may suspend or revoke, any ~~certificate of~~ registration or license for any one (1) of the following causes:

(1~~.~~) Conviction of a felony evidenced by a certified copy of the record of the court of conviction;

(2~~.~~) Malpractice or incompetency;

(3~~.~~) Continued practice by a person knowingly having an infectious or contagious disease;

(4~~.~~) Advertising by means of knowingly false or deceptive statements;

(5~~.~~) Habitual intoxication or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(6~~.~~) Immoral or unprofessional conduct;

(7~~.~~) Where the application is fraudulently made or the ~~certificate~~ registration or license fraudulently obtained;

(8~~.~~) The violation of any of the provisions of this ~~act~~ chapter, or rules adopted pursuant thereto.

~~9.--The board may refuse to issue or renew a certificate or license for a person who is in default in the repayment of any student loan guaranteed or insured by the student loan fund of Idaho, inc. or otherwise issued by a financial institution if, at the time the loan was incurred, the student is provided notice of the power of the board to refuse to issue or renew a certificate or license in the event of a default in the repayment, which notice shall be in writing and acknowledged by the signature of the student six (6) months prior to the refusal to issue or renew a certificate or license. The board shall not renew the certificate or license until the person in default enters into a payment agreement with the student loan fund of Idaho, inc. or the financial institution and the board is notified by the fund or the financial institution that the agreement is in effect.~~

SECTION 13. That Section 54-817, Idaho Code, be, and the same is hereby amended to read as follows:

54-817. HEARINGS. No refusal to renew, or the suspension or revocation of, a ~~certificate of~~ registration, permit or license shall be made until the person affected has been given an opportunity to be heard on charges preferred in accordance with the provisions of chapter 52, title 67, Idaho Code. Such charges shall be in writing, and shall be sworn to by the person making them, and shall be filed with the board.

All charges, unless dismissed as unfounded or trivial, shall be heard within four (4) months after the date on which they are received by the board.

All charges shall be heard by the board at such time and place as it shall fix, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on, or sent by registered mail to the last known address of such registrant at least twenty (20) days before the date set for the hearing. At any hearing the accused registrant shall have the right to appear personally or by counsel and to call witnesses in his own defense.

The board may subpoena witnesses and compel their attendance, and also may require the production of books, papers, documents, etc., in a case involving the revocation or suspension of a license, permit or registration or the practicing or offering to practice without a license, permit or registration. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district judge of the district in which the witness may be found, setting forth the proceedings theretofore taken and briefly stating the subject matter upon which the testimony of the witness is required; thereupon such district judge may cause an order to be issued requiring such witness to appear before the board to testify and to produce such books, papers, and other documents as directed in the subpoena. Any person failing or refusing to obey such order shall be punished as for contempt of court.

SECTION 14. That Section 54-818, Idaho Code, be, and the same is hereby amended to read as follows:

54-818. FEES. The various fees to be paid by applicants for original registrations, original licenses, permits, annual renewals, ~~certificates issued upon reciprocity,~~ fees for endorsement and examinations as required under this chapter shall be fixed by administrative rules of the board in amounts not to exceed the following:

(~~a~~1) Original ~~registrations~~ permits, licenses, and annual renewals thereof:

cosmetological establishment, original ~~registration~~ license .....$ 50.00
cosmetological establishment, annual renewals 50.00
retail cosmetics dealer, original ~~registration~~ license 50.00
retail cosmetics dealer, annual renewals 50.00
makeover or glamour photography business, original ~~registration~~ license 50.00
makeover or glamour photography business, annual renewals 50.00
domestic school of cosmetology, original ~~registration~~ license ... 500.00
domestic school of cosmetology, annual renewals 150.00
registered cosmetologist, original license/annual renewals 50.00
nail technician, original license/annual renewals 50.00
apprentice, original ~~license~~ permit (no renewal fees required) .. 20.00
student ~~certificate~~ registration (no renewal fees required) 20.00
instructor, original license/annual renewals 50.00
student instructor ~~certificate permit~~ 25.00
electrologist, original license/annual renewals 50.00
esthetician, original ~~license/annual~~ renewals 50.00
endorsement fee 100.00
~~interim--certificate--when endorsement denied, also constitutes examination..... 75.00~~
temporary ~~license~~ permit to ~~practice,~~ demonstrate and teach 10.00

(~~b~~2) Examination fees:

as a registered cosmetologist	$~~75~~100.00
as a nail technician	~~75~~100.00
as an instructor ~~when required by board rule~~	~~75~~100.00
as an electrologist	~~75~~100.00
as an esthetician	~~75~~100.00

Fees shall not be prorated or returnable.

~~All certificates expire December 31.~~

SECTION 15. That Section 54-819, Idaho Code, be, and the same is hereby amended to read as follows:

54-819. CERTAIN ACTS PROHIBITED. The following acts shall be unlawful and punishable as a misdemeanor:

(1~~.~~) The violation of any of the provisions of this chapter;

(2~~.~~) Permitting any person in one's employ, supervision or control to practice cosmetology or electrology or as an apprentice or student unless that person has complied with the provisions of this act;

(3~~.~~) Obtaining or attempting to obtain a ~~certificate of~~ registration, permit or license for money other than the required fee, or any other thing of value, or by fraudulent misrepresentation;

(4~~.~~) Practicing or offering to practice any of the occupations defined in this chapter, unless licensed as herein provided;

(5~~.~~) Maintaining or operating a cosmetological establishment, a retail cosmetics dealer, or a school of cosmetology unless ~~registered~~ such facility is licensed as herein provided.

SECTION 16. That Section 54-827, Idaho Code, be, and the same is hereby amended to read as follows:

54-827. PERMIT TO ~~TEMPORARILY PRACTICE,~~ DEMONSTRATE OR TEACH COSMETOLOGY. (1) Upon application, and payment of the required fee, the board shall grant a temporary permit authorizing a person to practice, demonstrate or teach cosmetology, or perform any one (1) or more of such functions in the following instances:

(a) ~~When a student or apprentice has completed his or her training, such temporary permit to be valid only until said student or apprentice is called by the board for examination and until the results of said examination are announced.~~

~~(b) When a person has applied for license by reciprocity, such temporary permit to be valid only until such application is granted or, if denied, until such person is called by the board for examination and until the results of said examination are announced.~~

~~(c)~~ When such permit is sought primarily for educational or demonstration purposes and the person making application therefore is licensed or qualified through proper documentation to practice or teach cosmetology in this or any other state, territory, possession of the United States or foreign country, and presents satisfactory evidence of that fact. When a permit is issued for this purpose, it shall spec~~ify the time and p~~lace when and where such educational demonstrations shall take place, and the permit shall be limited to such time and place, and in no instance shall said permit be for a period in excess of thirty (30) days.

(~~d~~b) When a permit is requested for educational or demonstration

purposes by a licensed school on behalf of its students currently enrolled or a licensed cosmetologist on behalf of an apprentice. When a permit is issued for this purpose, it shall specify those students or apprentices eligible to participate and the time and place of the education demonstration; and the permit shall be limited to those individuals and time and place. In no instance shall the permit be for a period in excess of seven (7) days.

(2) Facilities used for cosmetological services pursuant to a permit obtained under subsection (1)(~~c~~a) or (1)(~~d~~b) of this section shall be exempt from the requirements for licensed establishments set forth in section 54-803 1., Idaho Code. However, the facility and permit holder shall observe and comply with the inspection and sanitation requirements established by board rule.

Approved March 23, 2001.

CHAPTER 135
(H.B. No. 30)

AN ACT

RELATING TO CREMATORIUMS; AMENDING SECTION 27-306, IDAHO CODE, TO INCREASE APPLICATION AND RENEWAL FEES TO OPERATE A CREMATORY.

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

SECTION 1. That Section 27-306, Idaho Code, be, and the same is hereby amended to read as follows:

27-306. LICENSE OR PERMIT FEE -- RENEWAL. Each applicant for a permit to operate a crematory in the state of Idaho shall pay to the bureau of occupational licenses as agent of the board of morticians at the time of filing the application the sum of ~~one~~ two hundred dollars ($~~1~~200). All licenses or permits issued under this act shall expire on June 30th of each year and may be renewed by payment of an annual license fee of ~~one~~ two hundred dollars ($~~1~~200) provided the applicant is not in violation of this act or the rules of the state board of morticians.

Approved March 23, 2001.

CHAPTER 136
(H.B. No. 33, As Amended)

AN ACT

RELATING TO MORTICIANS, FUNERAL DIRECTORS AND EMBALMERS; AMENDING SECTION 54-1108, IDAHO CODE, TO STRIKE A REFERENCE TO ORAL EXAMINATION; AMENDING SECTION 54-1115, IDAHO CODE, TO INCREASE MAXIMUM FEES, TO STRIKE A REFERENCE TO TIME IN WHICH LICENSES WILL BE ISSUED AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 11, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 54-1115A, IDAHO CODE, TO PROVIDE FOR ANNUAL RENEWAL, CANCELLATION AND REINSTATEMENT OF LICENSES.

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

SECTION 1. That Section 54-1108, Idaho Code, be, and the same is hereby amended to read as follows:

54-1108. EXAMINATION OF APPLICANTS FOR LICENSE -- SUBJECTS -- CERTIFICATION OF RESULTS. The board of morticians shall have the sole power for determining the nature, type and extent of examinations to be taken by applicants for a mortician's license, but such examinations shall include generally the following subjects: anatomy, chemistry, physiology, psychology, sanitary science, the care, disinfection, preservation, transportation of and burial, or other final disposition of dead human bodies, the law of the state of Idaho and the rules of the state department of health and welfare relating to infectious diseases and quarantine. The board shall grade, or cause to have graded by licensed morticians, the examinations and shall determine whether the applicant has passed or failed such examination. Examinations may be written or ~~oral,--or--both,~~ as determined ~~in~~ at the discretion of the board, and shall be held at such times and at such places within the state of Idaho as determined by the board of morticians. National conference examinations, passed at an accredited embalming college, may be accepted by the board. Upon the conclusion of grading any and all of the above examinations, the board of morticians shall certify the results listing each applicant as having failed or passed the examination, and such determination shall not be subject to review.

SECTION 2. That Section 54-1115, Idaho Code, be, and the same is hereby amended to read as follows:

54-1115. LICENSE FEES. There shall be paid with the filing of any application for an original license, or the applications for any renewal of a license, the following license fees:

A. Not more than ~~fifty~~ one hundred dollars (~~$50.~~100) for a mortician license.

B. Not more than ~~fifty~~ one hundred dollars (~~$50.~~100) for a funeral director license.

C. Not more than ~~seventy-five~~ one hundred fifty dollars (~~$75.0~~150) for a funeral establishment license.

D. Not more than ~~fifty~~ one hundred dollars (~~$50.~~100) for a resident trainee license.

E. Not more than ~~fifty~~ one hundred dollars (~~$50.~~100) for a certificate of authority.

F. Not more than ~~fifty~~ one hundred dollars (~~$50.~~100) application fee for endorsement and/or examination.

~~All licenses shall be issued on a calendar or fiscal year basis, as determined by the board, and t~~There shall be no proration of fees for a part-year license. All fees shall be paid to the bureau of occupational licenses.

SECTION 3. That Chapter 11, 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 54-1115A, Idaho Code, and to read as follows:

54-1115A. ANNUAL RENEWAL — CANCELLATION — REINSTATEMENT. All licenses issued pursuant to this act shall expire on June 30 of each year; all licensees shall renew their licenses on or before July 1 of each year. In the event a licensee fails to renew a license as provided, the board shall immediately cancel the license following the date of delinquency; provided however, that the board may reinstate any license canceled for failure to renew the same on payment of two hundred fifty dollars ($250), together with all fees delinquent at the time of cancellation and the renewal fee for each year thereafter up to the time of reinstatement.

Provided further, that where a license has been canceled for a period of more than five (5) years, the person so affected shall be required to make application to the board, using the same forms and furnishing the same information as required of a person originally applying for a license, and pay the same fee that is required of a person taking the examination in the particular profession in which said person holds a canceled Idaho license. Said applicant shall appear in person before the board at any regular or special meeting for an examination, the nature of which shall be determined by the board. If after an examination, the board is of the opinion that the person examined is the bona fide holder of the canceled license, is of good moral character and, if found capable of again practicing in this state the profession for which the original or canceled license was granted, the license shall be reinstated and the holder thereof entitled to practice subject to the laws of this state.

Approved March 23, 2001.

CHAPTER 137
(H.B. No. 34)

AN ACT

RELATING TO BANK HOLDING COMPANIES; AMENDING SECTION 26-501, IDAHO CODE, TO DEFINE "FINANCIAL HOLDING COMPANIES" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 26-503, IDAHO CODE, TO REQUIRE A FINANCIAL HOLDING COMPANY TO APPLY TO THE DEPARTMENT OF FINANCE FOR APPROVAL TO COMMENCE ACTIVITY OR ACQUIRE A COMPANY; AND AMENDING SECTION 26-505, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF FINANCE MAY ASSESS COSTS OF EXAMINATIONS AGAINST BANK HOLDING COMPANIES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 26-501, Idaho Code, be, and the same is hereby amended to read as follows:

26-501. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

(1) "Bank" shall mean any bank chartered under this act.

(2) "Company" shall mean any corporation, business trust, association, or similar organization but shall not include:

(a) ~~a~~An individual; or

(b) ~~a~~Any corporation the majority of shares of which are owned by the United States or any state~~;~~.

(3) "Business trust" shall mean a business organization wherein a business or other property is conveyed to trustees who manage the business or other property for the benefit of the certificate or shareholders of the trust. Business trust shall not include a voting trust.

(4) "Bank holding company" shall mean any company:

(a) Which directly or indirectly owns or controls twenty-four percent (24%) or more of the voting shares of a bank;

(b) Which controls in any manner the election of the majority of the directors of a bank; or

(c) For the benefit of whose shareholders or members twenty-four percent (24%) or more of the voting shares of a bank is held by trustees;

For the purposes of any proceeding under subsection (4)(b) of this section, there is a presumption that any company which directly or indirectly owns, controls or has power to vote less than five percent (5%) of the voting shares of a bank does not have control over that bank; and

(5) Notwithstanding the foregoing~~;~~:

(a) No estate, trust, guardianship, or conservatorship or fiduciary thereof shall be a bank holding company by virtue of its ownership or control of shares of stock of a bank unless such trust is a business trust or a voting trust which by its terms or by law does not expire within ten (10) years from the effective date of the voting trust;

(b) No company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of bank shares and which are held only for such period of time as will permit the sale thereof on a reasonable basis; and

(c) No company shall be a bank holding company by virtue of its ownership or control of shares acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith and which are held only for such period of time as will permit the sale thereof on a reasonable basis.

(6) "Financial holding company" shall mean a bank holding company that, notwithstanding subsection (4) of this section, may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the director determines, by rule or order:

(a) To be financial in nature or incidental to such financial activity; or

(b) Is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system in general.

SECTION 2. That Section 26-503, Idaho Code, be, and the same is hereby amended to read as follows:

26-503. APPROVAL TO ACQUIRE A BANK -- REQUIREMENTS -- APPROVAL TO COMMENCE ACTION OR ACQUIRE A COMPANY. (1) A bank holding company shall apply to the department of finance and receive the approval of ~~the~~ department of finance prior to acquiring a bank. The application shall include such information with respect to the financial condition and operations, management and intercompany relationships of the bank to be acquired and the holding company as the director may deem necessary or

appropriate. In considering an application to acquire a bank, the director shall consider at least:

(~~1~~a) The financial condition of the bank holding company and any banks already owned by the holding company;

(~~2~~b) The probable effect of the acquisition on the holding company, any banks already owned by the holding company and the bank which is to be acquired; and

(~~3~~c) The effect of the acquisition on competition in the providing of banking services.

(2) A financial holding company shall apply to the department of finance and receive the approval of the department of finance prior to commencing any activity or acquiring any company as described in section 26-501(6), Idaho Code.

SECTION 3. That Section 26-505, Idaho Code, be, and the same is hereby amended to read as follows:

26-505. DIRECTOR OF FINANCE -- REPORTS -- REQUIREMENTS. The director may require reports made under oath to be filed in the department of finance to keep it informed as to the operation of any bank holding company. The director may make examinations of each bank holding company and each subsidiary thereof under the provisions of section 26-1102, Idaho Code, the actual cost of which ~~shall~~ may be assessed against and paid by such holding company. The director may accept reports of ~~examination~~ examinations made by the ~~F~~federal ~~R~~reserve ~~B~~board, the ~~C~~comptroller of the ~~C~~currency, or the ~~F~~federal ~~D~~deposit ~~I~~insurance ~~C~~corporation in lieu of making an examination by the department.

Approved March 23, 2001.

CHAPTER 138
(H.B. No. 41)

AN ACT

RELATING TO THE PUBLIC EMPLOYEE RETIREMENT SYSTEM; AMENDING SECTION 59-1331, IDAHO CODE, TO PROVIDE THAT ERRONEOUS EMPLOYEE CONTRIBUTIONS MAY BE REFUNDED UPON A DISTRIBUTABLE EVENT; AMENDING SECTION 59-1343, IDAHO CODE, TO AUTHORIZE THE RETIREMENT BOARD TO DETERMINE BY RULE THE APPROPRIATE BENEFIT LEVEL SUBJECT TO COMMUTATION; AMENDING SECTION 59-1352, IDAHO CODE, TO REVISE PUNCTUATION TO CLARIFY THE SCOPE OF IN-SERVICE DISABILITY RETIREMENT FOR GENERAL MEMBERS; AND AMENDING SECTION 59-1396, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS.

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

SECTION 1. That Section 59-1331, Idaho Code, be, and the same is hereby amended to read as follows:

59-1331. CONTRIBUTIONS. (1) Beginning on or after the later of the date of establishment or employment, each active member shall contribute toward the cost of the benefits provided under this chapter. This con-

tribution shall be made in the form of a deduction from salary to be transmitted to the board in accordance with section 59-1325, Idaho Code.

(2) Any person who was prevented from being an active member during his first twelve (12) months of employment due to the restriction contained in subsection (2) of section 59-1302, Idaho Code, may, prior to December 31, 1975, pay the board the contributions he would have made absent said restriction and be credited with membership service for such period of time. The time for payment shall be extended provided such payment includes regular interest from December 31, 1975.

(3) Employee contributions received by the board in error may be refunded upon a distributable event with regular interest.

SECTION 2. That Section 59-1343, Idaho Code, be, and the same is hereby amended to read as follows:

59-1343. CONVERSION AND COMMUTATION OF CERTAIN PAYMENTS. Unless the retirement board establishes a different level by rule, benefit pPayments of less than twenty dollars ($20.00) per month shall be commuted into ~~an actuarial~~ly equivalent single sum.

SECTION 3. 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 five (5) years 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.

SECTION 4. That Section 59-1396, Idaho Code, be, and the same is hereby amended to read as follows:

59-1396. LIMIT ON SEPARATION BENEFIT. (1) When a firefighter member who was employed prior to October 1, 1980, terminates employment and seeks return of his or her accumulated contributions, such contributions shall be returned as provided under the provisions of section 72-1445~~5~~4, Idaho Code.

(2) When a paid firefighter whose employment began on or after October 1, 1980, terminates employment and seeks return of his or her accumulated contributions, such contributions shall be returned as provided by sections 59-1358 and 59-1359, Idaho Code.

Approved March 23, 2001.

CHAPTER 139
(H.B. No. 42)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-409, IDAHO CODE, TO REMOVE AN AGE RESTRICTION FOR CERTAIN FEES FOR BEAR, DEER OR ELK TAGS FOR PERSONS WHO HOLD A SENIOR RESIDENT COMBINATION LICENSE AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 36-409, Idaho Code, be, and the same is hereby amended to read as follows:

36-409. GAME TAGS -- 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 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 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) 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.

(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 rule.

(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 as specified in section 36-416, Idaho Code.

(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 as specified in section 36-416, Idaho Code.

(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 as specified in section 36-416, Idaho Code.

(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 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.

(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 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.

Approved March 23, 2001.

CHAPTER 140
(H.B. No. 49)

AN ACT

RELATING TO MILITIA AND MILITARY AFFAIRS; AMENDING CHAPTER 10, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-1018A, IDAHO CODE,

TO PROVIDE THAT THE GOVERNOR MAY ENTER INTO A COMPACT ON BEHALF OF THE STATE FOR EMERGENCY MANAGEMENT ASSISTANCE AND TO PROVIDE FOR THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT.

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

SECTION 1. That Chapter 10, 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 46-1018A, Idaho Code, and to read as follows:

46-1018A. EMERGENCY MANAGEMENT ASSISTANCE COMPACT. The legislature of the state of Idaho hereby authorizes the governor of the state of Idaho to enter into a compact on behalf of the state of Idaho with any other state legally joining therein, in the form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I
PURPOSES AND AUTHORITIES

(1) This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

(2) The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

(3) This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the national guard mutual assistance compact or by mutual agreement between states.

ARTICLE II
GENERAL IMPLEMENTATION

(1) Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

(2) The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from

the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

(3) On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III
PARTY STATE RESPONSIBILITIES

(1) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(a) Review individual state hazards analysis and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency or enemy attack.

(b) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(c) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(d) Assist in warning communities adjacent to or crossing the state boundaries.

(e) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

(f) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(g) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(2) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty (30) days of the verbal request. Requests shall provide the following information:

(a) A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(b) The amount and type of personnel, equipment, materials and sup-

plies needed, and a reasonable estimate of the length of time they will be needed.

(c) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(3) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV
LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the states in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency service authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or upon commencement of exercises or training of mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

ARTICLE V
LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI
LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of

the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE VII
SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two (2) or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII
COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX
REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provisions of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two (2) or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X
EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration

of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI
IMPLEMENTATION

(1) This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter this compact shall become effective as to any other state upon its enactment by such state.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty (30) days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(3) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

ARTICLE XII
VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII
ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under section 1385 of title 18, United States Code.

Approved March 23, 2001.

CHAPTER 141
(H.B. No. 50)

AN ACT

RELATING TO THE STATE MILITIA; AMENDING SECTION 46-111, IDAHO CODE, TO REVISE THE ELIGIBILITY REQUIREMENTS FOR ADJUTANT GENERAL.

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

SECTION 1. That Section 46-111, Idaho Code, be, and the same is hereby amended to read as follows:

46-111. ADJUTANT GENERAL. There shall be an adjutant general who shall be appointed by the governor and shall hold office during the pleasure of the governor and his commission shall expire with the term of the governor appointing him. The adjutant general shall be the commanding general of the military forces of the state and in addition to the duties delegated to him by law, he shall perform such other duties as prescribed by the governor as commander-in-chief. The adjutant general shall be commissioned in the national guard with the rank of not less than brigadier general. No person is eligible for appointment as adjutant general unless he is a federally recognized member of the national guard with current service of not less than six (6) years ~~service~~ as a commissioned officer in the national guard of Idaho and has attained the rank of ~~lieutenant~~ colonel or above.

Approved March 23, 2001.

CHAPTER 142
(H.B. No. 290)

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING SECTION 19-401, IDAHO CODE, TO PROVIDE THAT THERE IS NO LIMITATION OF THE TIME WITHIN WHICH PROSECUTIONS FOR RAPE MUST BE COMMENCED; AMENDING SECTION 19-402, IDAHO CODE, TO PROVIDE THAT CERTAIN TIME LIMITATIONS IN WHICH PROSECUTIONS MUST BE COMMENCED DO NOT APPLY TO CRIMES OF RAPE; AMENDING SECTION 19-625, IDAHO CODE, TO STRIKE THE PROVISION REQUIRING THE RETURN OF EVIDENCE 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 19-401, Idaho Code, be, and the same is hereby amended to read as follows:

19-401. PROSECUTIONS FOR MURDER, ~~OR~~ VOLUNTARY MANSLAUGHTER OR RAPE. There is no limitation of time within which a prosecution for murder, ~~or~~ voluntary manslaughter, or rape pursuant to section 18-6101 2., 3., 4. or 5., or section 18-6108, Idaho Code, must be commenced. They may be

commenced at any time after the death or rape of the person killed or raped.

SECTION 2. 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, rape pursuant to section 18-6101 2., 3., 4. or 5., or section 18-6108, Idaho Code, or any felony committed upon or against a minor child must be commenced by the filing of the complaint or the finding of ~~an in~~dictment 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.

SECTION 3. That Section 19-625, Idaho Code, be, and the same is hereby amended to read as follows:

19-625. DETENTION FOR OBTAINING EVIDENCE OF IDENTIFYING PHYSICAL CHARACTERISTICS. (1) A peace officer who is engaged, within the scope of his authority, in the investigation of an alleged criminal offense which is a felony may make written application upon oath or affirmation to a judge of any district court, or magistrates division thereof, for an order authorizing the temporary detention, for the purpose of obtaining evidence of identifying physical characteristics, of an identified or particularly described individual residing in or found in the jurisdiction over which the judicial officer presides. The order shall require the presence of the identified or particularly described individual at such time and place as the court shall direct for obtaining the identifying physical characteristic evidence. Such order may be issued by the judicial officer upon a showing under oath of all the following:

(A) Probable cause for belief that a specifically described criminal offense which is a felony has been committed.

(B) Reasonable grounds exist, which may or may not amount to probable cause, to believe that the identified or particularly described individual committed the criminal offense.

(C) Procurement of evidence of identifying physical characteristics from the identified or particularly described individual may contribute to the identification of the individual who committed such offense.

(D) Such evidence cannot otherwise be obtained by the investigating officer.

(2) Any order issued pursuant to the provisions of this section shall specify the following:

(A) The alleged criminal offense which is the subject of the application.

(B) The specific type of identifying physical characteristic evidence which is sought.

(C) The relevance of such evidence to the particular investigation.

(D) The identity or description of the individual who may be detained for obtaining such evidence.

(E) The name and official status of the investigative officer authorized to effectuate such detention and obtain such evidence.

(F) The place at which the obtaining of such evidence shall be effectuated.

(G) The time that such evidence shall be taken except that no person may be detained for a period of more than three (3) hours for the purpose of taking such evidence.

(H) That the individual so identified or described shall have the right to legal counsel during the detention when such evidence is obtained and if he is unable to afford private counsel an attorney shall be provided at public expense as provided by section 19-852, Idaho Code.

~~(I) That~~ the individual will be under no legal obligation to submit to any interrogation or to make any statement during the period of his appearance unless sound of voice identification is required.

(J) The period of time, not exceeding ten (10) days, during which the order shall continue in force and effect. If the order is not executed within ten (10) days, a new order may be issued, pursuant to the provisions of this section.

(3) The order issued pursuant to this section shall be returned to the court not later than fifteen (15) days after its date of issuance and shall be accompanied by a sworn statement indicating how and when the evidence was taken and the type of evidence taken. The court shall give to the person from whom such evidence was taken a copy of the order and a copy of the sworn statement indicating what type of evidence was taken, if any.

(4) For the purposes of this section, "~~I~~identifying physical characteristics" shall mean the fingerprints, palm prints, footprints, measurements, handwriting, handprinting, sound of voice, blood samples, urine samples, saliva samples, hair samples, comparative personal appearance, or photographs of an individual.

~~(5) Any evidence obtained pursuant to this section shall be returned to the individual from whom it was taken if a criminal action charging the offense described pursuant to subsection (1)(A) hereof is not filed against such individual within thirty (30) days after obtaining the same.~~

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and shall apply retroactively to any violation alleged to have been committed as to which the time for commencing prosecution has not expired.

Approved March 23, 2001.

CHAPTER 143
(H.B. No. 249)

AN ACT
RELATING TO THE PEACE OFFICERS TRAINING AND STANDARDS COUNCIL; AMENDING SECTION 19-5109, IDAHO CODE, TO REQUIRE A COURSE IN INVESTIGATION OF ALLEGATIONS OF SEXUAL ASSAULT OR BATTERY.

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. One (1) component of minimum basic training shall be a course in the investigation of and collection of evidence in cases involving an allegation of sexual assault or battery.

(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 coun-

cil, 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 or deputy serving civil process, the deputy director 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 Idaho state police, 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.

Approved March 23, 2001.

CHAPTER 144
(H.B. No. 247)

AN ACT

RELATING TO COSTS OF MEDICAL EXAMS; AMENDING SECTION 19-5303, IDAHO CODE, TO PROVIDE THAT COSTS OF MEDICAL EXAMS FOR ALLEGED VICTIMS OF SEXUAL ASSAULT SHALL BE PAID FROM THE CRIME VICTIMS COMPENSATION ACCOUNT; AND AMENDING SECTION 72-1019, IDAHO CODE, TO PROVIDE THE CRIME VICTIMS COMPENSATION COMMISSION SHALL PROVIDE FOR PAYMENT OF COSTS OF MEDICAL EXAMS FOR ALLEGED VICTIMS OF SEXUAL ASSAULT.

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

SECTION 1. That Section 19-5303, Idaho Code, be, and the same is hereby amended to read as follows:

19-5303. COST OF MEDICAL EXAMS TO BE PAID BY LAW ENFORCEMENT AGENCY. When the victim of any crime is directed or authorized by a law enforcement agency to obtain a medical examination for the purpose of procuring evidence for use by a law enforcement agency in the investigation or prosecution of the crime, the expense incurred shall be paid by the law enforcement agency. Provided however, the cost of forensic and/or medical examinations of alleged victims of sexual assault shall be paid for from the crime victims compensation account, as established by section 72-1009, Idaho Code. The provisions of this section shall not be construed to require a law enforcement agency to bear the expense of any medical treatment of the victim.

SECTION 2. That Section 72-1019, Idaho Code, be, and the same is hereby amended to read as follows:

72-1019. COMPENSATION BENEFITS. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct, subject to a maximum of

one hundred seventy-five dollars ($175). Weekly compensation payments shall be made at the end of each two (2) week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for one (1) week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The commission may order payment of reasonable expenses actually incurred by the claimant for reasonable services by a physician or surgeon, reasonable hospital services and medicines, mental health counseling and care, and such other treatment as may be approved by the commission for the injuries suffered due to criminally injurious conduct. Payment for the costs of forensic and medical examinations of alleged victims of sexual assault performed for the purposes of gathering evidence for possible prosecution, after collections from any third party who has liability, shall be made by the commission. The commission shall establish a procedure for summary processing of such claims.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive aggregate weekly benefits amounting to sixty-six and two-thirds percent (66 2/3%) of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one hundred seventy-five dollars ($175) per week. Weekly compensation payments shall be made at the end of each two (2) week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the commission determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding two thousand five hundred dollars ($2,500), shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) (a) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act of criminally injurious conduct may not exceed twenty-five thousand dollars ($25,000) in the aggregate.

(b) The limitation of subsection (5)(a) of this section is subject to the further limitation that payments for mental health treatment received as a result of the victim's injury may not exceed two thousand five hundred dollars ($2,500) unless the industrial commission finds extenuating circumstances pursuant to regulation of the industrial commission.

(6) Compensation benefits are not payable for pain and suffering or property damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the commission be awarded weekly compensation benefits in an amount determined by the commission not to exceed one

hundred fifty dollars ($150) per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death, may, in the discretion of the commission, be awarded, in an aggregate amount payable to all dependents, a sum not to exceed one hundred fifty dollars ($150) per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the commission. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed twenty thousand dollars ($20,000), and the limitations of subsection (6) apply to compensation under this subsection (7).

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every two (2) weeks.

(9) (a) Subject to the limitations in subsection (9)(c) of this section, the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c) of this section, the spouse, parent, child, brother or sister of a victim who is sexually assaulted is entitled to reimbursement for mental health treatment received as a result of the crime.

(c) Total payments made under subsections (9)(a) and (9)(b) of this section, may not exceed five hundred dollars ($500) for each person or one thousand five hundred dollars ($1,500) for a family.

(d) With regard to claims filed pursuant to this section, in order for family members of victims of crime to be entitled to benefits, the victim of the crime must also have been awarded benefits for the crime itself.

Approved March 23, 2001.

CHAPTER 145
(H.B. No. 72)

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 71-402, IDAHO CODE, TO DELETE THE PROHIBITION AGAINST ISSUING WEIGHMASTER LICENSES TO APPLICANTS WHO HAVE BEEN CONVICTED OF ANY FELONY WITHIN FIVE YEARS OR HAVE PAID ANY FINE OR COMPLETED ANY SENTENCE OF CONFINEMENT FOR ANY FELONY WITHIN FIVE YEARS.

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

SECTION 1. That Section 71-402, Idaho Code, be, and the same is hereby amended to read as follows:

71-402. LICENSING OF WEIGHMASTERS. Any person acting as a public weighmaster of grains, dry peas, potato starch, dry beans, leguminous and all other small seeds, hay, wool, bulk potatoes, bulk fertilizers, sugar beets and feeds (not including minerals) or any of them shall make application to the director of the department for a weighmaster's license. Application for a weighmaster's license shall be in writing on a form prescribed by the director. Each applicant shall furnish satisfactory evidence of good moral character, ability to weigh accurately and to make correct weight tickets. Upon receipt of the application with satisfactory evidence of qualifications, on or before July 1, 1949, and annually thereafter, and a license fee of ten dollars ($10.00), the director shall issue an annual weighmaster's license. No weighmaster's license shall be issued to any applicant for such license who is under the age of eighteen (18) ~~or who has been convicted of any felony within five (5) years or has paid any fine or completed any sentence of confinement for any felony within five (5)~~ years, or to any person whose license issued under this act has been revoked.

Approved March 23, 2001.

CHAPTER 146
(H.B. No. 73)

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-107, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF AGRICULTURE MAY DEVELOP AND IMPLEMENT SERVICES RELATING TO HAZARD CONTROLS, GOOD MANUFACTURING PRACTICES, FOOD SAFETY MANUALS FOR PACKHOUSE OPERATIONS, SANITATION STANDARDS AND OPERATING PROCEDURES FOR PRODUCERS AND PACKERS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 22-107, Idaho Code, be, and the same is hereby amended to read as follows:

22-107. VOLUNTARY SERVICES FOR PUBLIC -- FEES -- APPROPRIATION OF MONEYS. The department of agriculture may after notice and hearing provide by ~~regulation~~ rule for voluntary services to be performed by it at the request of the public, such as developing and implementing services relating to hazard controls, good manufacturing practices, food safety manuals for packhouse operations, sanitation standards and operating procedures for producers and packers, laboratory analyses and testing, inspecting, grading, sampling and all similar things. It may also provide for reasonable fees for performing such voluntary services; the moneys derived from this activity shall be received and handled as provided for by sections 67-3609 and 67-3611, Idaho Code. The department of agriculture may also receive and use as directed any donations, grants

or federal funds available for such purposes to be accounted for as prescribed by the state controller and any such moneys the department receives are hereby appropriated for the purpose for which they are received only, and may be spent for such purposes by the department of agriculture.

Approved March 23, 2001.

CHAPTER 147
(H.B. No. 75)

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-602, IDAHO CODE, TO REFER TO THE IDAHO STATE DEPARTMENT OF AGRICULTURE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-603, IDAHO CODE, TO PROVIDE DEFINITIONS AND REFERENCES TO OTHER PUBLICATIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 22-604, IDAHO CODE, TO ADD SUBJECT AREAS FOR THE ADOPTION OF RULES; AMENDING SECTION 22-605, IDAHO CODE, TO PROVIDE THAT CERTAIN FEES ARE NONREFUNDABLE, TO PROVIDE THAT A DISTRIBUTOR DOES NOT HAVE TO REGISTER A FERTILIZER ALREADY REGISTERED IF THE LABEL IS UNCHANGED, AND TO CLARIFY THAT A PENALTY APPLIES PER PRODUCT; AMENDING SECTION 22-610, IDAHO CODE, TO CORRECT A CODE REFERENCE; AMENDING SECTION 22-613, IDAHO CODE, TO PROVIDE A CODE REFERENCE; AMENDING SECTION 22-616, IDAHO CODE, TO PROVIDE THAT STOP SALE ORDERS MAY BE ISSUED AND ENFORCED AGAINST DISTRIBUTORS; AMENDING SECTION 22-619, IDAHO CODE, TO INCREASE CIVIL PENALTIES TO A MAXIMUM OF TEN THOUSAND DOLLARS; AND AMENDING CHAPTER 6, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-625, IDAHO CODE, TO PROVIDE FOR STATEMENTS OF UNIFORM INTERPRETATION AND POLICY.

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

SECTION 1. That Section 22-602, Idaho Code, be, and the same is hereby amended to read as follows:

22-602. ADMINISTRATION. The Idaho state department of agriculture, hereinafter referred to as the "department," shall administer this chapter.

SECTION 2. That Section 22-603, Idaho Code, be, and the same is hereby amended to read as follows:

22-603. DEFINITIONS. When used in this chapter:

(1) "Biosolid(s)" means a primary organic solid material produced by wastewater treatment processes that can be beneficially recycled for its plant nutrient content and soil amending characteristics, as regulated under the code of federal regulations, 40 CFR 503, as amended.

(2) "Brand" means a term, design, or trademark used in connection with one (1) or several grades of fertilizer.

(~~2~~3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight per-

centage of calcium carbonate.

(4) "Compost" means a biologically stable material derived from the composting process.

(~~3~~5) "Composting" means the ~~controlled--aerobic--degradation--of organic-waste-materials.-Natural-decay-of-organic-waste-under-uncontrolled-conditions-is-not-composting~~ biological decomposition of organic matter. It is accomplished by mixing and piling in such a way to promote aerobic and/or anaerobic decay. The process inhibits pathogens, viable weed seeds and odors.

(6) "Coproduct" means a chemical substance produced for a commercial purpose during the manufacture, processing, use or disposal of another chemical substance or mixture.

(~~4~~7) "Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed, which may result from a lack of nutrient ingredients or from lack of uniformity.

(~~5~~8) "Department" means the Idaho state department of agriculture or its authorized representative.

(~~6~~9) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend fertilizer, or to offer for sale, sell, barter or otherwise supply fertilizer in this state.

(~~7~~10) "Distributor" means any person who distributes.

(~~8~~11) "Fertilizer" means any substance containing one (1) or more recognized plant nutrient which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, and includes limes and gypsum. It does not include unmanipulated animal manure and vegetable organic waste-derived material, or biosolids regulated under the code of federal regulations, 40 CFR 503, as amended.

(a) "Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.

(b) "Customer formula fertilizer" means a mixture of fertilizer or materials of which each batch is mixed according to the specific instructions of the final purchaser.

(c) "Fertilizer material" means a fertilizer which either:

(i) Contains important quantities of no more than one (1) of the primary plant nutrients: nitrogen (N), phosphate (P_2O_5) and potash (K_2O), or

(ii) Has eighty-five percent (85%) or more of its plant nutrient content present in the form of a single chemical compound, or

(iii) Is derived from a plant or animal residue or byproduct or natural material deposit which has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(d) "Micronutrient fertilizer" means a fertilizer that contains valuable concentrations of micronutrients, but does not contain valuable concentrations of total nitrogen (N), available phosphate (P_2O_5), soluble potash (K_2O), calcium (Ca), magnesium (Mg), or sulfur (S).

(e) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(f) "Packaged fertilizer" means fertilizers, either agricultural or specialty, distributed in nonbulk form.

(g) "Specialty fertilizer" means a fertilizer distributed for

nonfarm use.

(h) "Waste-derived fertilizer" includes any commercial fertilizer derived from an industrial byproduct, coproduct or other material that would otherwise be disposed of if a market for reuse were not an option, but does not include fertilizers derived from biosolids or biosolid products regulated under the code of federal regulations, 40 CFR 503, as amended.

(~~9~~12) "Grade" means the percentage of total nitrogen, available phosphate, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. Provided however, that specialty fertilizers may be guaranteed in fractional units of less than one percent (1%) of total nitrogen, available phosphate, and soluble potash: provided further, that fertilizer materials, bone meal, and similar materials may be guaranteed in fractional units.

(~~10~~3) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed, for a total nitrogen, available phosphate, or soluble potash fertilizer, in the following order and form:

(a) Total nitrogen ..... %
Available phosphate ..... %
Soluble potash ..... %

(b) Any fertilizer intended for agricultural use with a total nitrogen, available phosphate, or soluble potash guarantee shall contain five percent (5%) or more of available nitrogen, phosphate, or potash, singly, collectively, or in combination.

(c) For unacidulated mineral phosphatic materials and basic slag, the guaranteed analysis shall contain both total and available phosphate and the degree of fineness. For bone, tankage, and other organic phosphatic materials, the guaranteed analysis shall contain total and available phosphate.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists, international (AOAC); and the minimum percentage of material that will pass respectively a one hundred (100) mesh, sixty (60) mesh, and ten (10) mesh sieve.

(e) The guarantees for nutrients other than total nitrogen, available phosphate and soluble potash shall be expressed in the form of the element. The source (oxides, salts, chelates, etc.) of such other nutrients may be required to be stated on the application for registration and shall be included on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department. Other guarantees shall not be included with the guarantee for nutrients, but shall be listed separately as "nonnutrient substances." When any plant nutrients or other substances or compounds are guaranteed they shall be subject to inspection and analysis in accordance with the methods and rules prescribed by the department.

(f) In a fertilizer with the principal constituent of calcium sulfate (gypsum), the percentage of calcium sulfate ($CaSO_4 2H_2O$) shall be given along with the percentage of total sulfur (S).

(1~~1~~4) "Investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of fertilizer.

(1~~2~~5) "Label" means the display of all written, printed, or graphic

matter, upon the immediate container, or a statement accompanying a fertilizer.

(~~13~~6) "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer, or advertisements, brochures, posters, and television and radio announcements used in promoting the sale of such fertilizer.

(~~14~~7) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium carbonate ($CaCo_3$), calcium hydroxide ($Ca(OH)_2$), calcium oxide (Ca~~0~~O), magnesium carbonate ($MgCO_3$), magnesium hydroxide ($Mg(OH)_2$) or magnesium oxide (Mg~~0~~O), singly or combined.

(~~15~~8) "Manipulation" means actively processed or treated in any manner.

(~~16~~9) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

(~~17~~20) "Micronutrient" means boron (B), chlorine (Cl), cobalt (Co), copper (Cu), iron (Fe), manganese (Mn), molybdenum (Mo), sodium (Na), and zinc (Zn).

(~~18~~21) "Official sample" means any sample ~~or~~ of fertilizer taken by the director or his authorized agent and designated as "official" by the department.

(22) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings and other vegetative wastes, wood wastes from logging and milling operations, and food wastes. "Organic waste-derived material" does not include products that contain biosolids as defined in this section.

(~~19~~23) "Packaged fertilizer" means fertilizers, either agricultural or specialty, distributed in nonbulk form.

(~~20~~4) "Percent" or "percentage" means the percentage by weight.

(~~21~~5) "Person" means an individual, partnership, association, firm or corporation.

(~~22~~6) "Primary nutrient" means total nitrogen, available phosphate, and soluble potash.

(~~23~~7) "Production" means to compound or fabricate a fertilizer through a physical or chemical process. Production does not include mixing, blending, or repackaging fertilizer products.

(~~24~~8) "Registrant" means the person who registers fertilizer under the provisions of this act.

(~~25~~9) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.

When not specifically stated in this section or otherwise designated by the department in rule, the department will be guided by the definitions of general terms, fertilizer materials and soil and plant amendment materials as set forth in the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) or the Merck Index, published by Merck Co., Inc.

SECTION 3. That Section 22-604, Idaho Code, be, and the same is hereby amended to read as follows:

22-604. ADOPTION OF RULES. The department shall administer, enforce, and carry out the provisions of this chapter and may adopt rules necessary to carry out its purposes including, but not limited to,

the proper use, handling, transportation, storage, display, distribution, sampling, records, analysis, form, minimum percentages, fertilizer ingredients, exempted materials, investigational allowances, definitions, labels, labeling, misbranding, mislabeling and disposal of fertilizers and their containers. The adoption of rules is subject to public hearing as prescribed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

SECTION 4. That Section 22-605, Idaho Code, be, and the same is hereby amended to read as follows:

22-605. REGISTRATION OF PRODUCTS. (1) Each brand and separately identifiable fertilizer product under each brand shall be registered before being distributed in this state. Companies planning to mix customer-formula fertilizers shall include the statement "customer-formula grade mixes" under the column headed "grades" on the brand registration application form. The application for registration shall be submitted to the department on forms furnished by the department, and shall be accompanied by a nonrefundable fee of twenty-five dollars ($25.00) per brand and a nonrefundable fee of twenty-five dollars ($25.00) per separately identifiable fertilizer product, under each brand, if sold in packages of twenty-five (25) pounds or less. Upon approval by the department, a certificate of registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

(a) The brand name;

(b) Declaration of guaranteed analysis of formulations to be sold;

(c) The name and address of the registrant;

(d) The sources from which the guaranteed plant nutrients are derived; and

(e) A label or labels meeting the requirements of section 22-607, Idaho Code.

(2) A distributor is not required to register any brand of fertilizer that is already registered under this chapter, as long as the label remains unchanged.

(3) A distributor is not required to register a customer-formula fertilizer; provided, that each shall be distributed under a registered brand.

(4) If an application for renewal of the brand registration provided for in this section is not filed before January 1 of any one (1) year, a penalty of ten dollars ($10.00) per product shall be assessed after February 1 of that year and added to the original fee and shall be paid by the applicant before the renewal brand registration is issued; provided, that the penalty shall not apply if the applicant furnished an affidavit that he has not distributed this brand subsequent to the expiration of his prior registration.

(5) The department shall examine the fertilizer product registration application form and labels for conformance with the requirements of this chapter. If the application, information and appropriate labels are in proper form and contain all the required information, the fertilizer products shall be registered by the department and a certificate of registration shall be issued to the applicant. The department may refuse to register or, cancel the registration, of any fertilizer product which would be in violation of any provision of this chapter.

(6) In reviewing the fertilizer product registration application, the department may consider experimental data, manufacturers' evaluations, data from agricultural experiment stations' product review evaluations, and other authoritative sources to substantiate labeling claims. The data shall be from statistically designed and analyzed trials representative of the soil, crops, and climatic conditions found in the northwestern area of the United States.

(7) In determining whether approval of a label statement or guarantee of an ingredient is appropriate, the department may require the submission of a written statement describing the methodology of laboratory analysis utilized, the source of the ingredient material, and any reference material relied upon to support the label statement or guarantee of ingredient.

(8) Any waste-derived fertilizer distributed as a single ingredient product or blended with other fertilizer ingredients must be identified as "waste-derived fertilizer" by the registrant in the application for registration.

(9) The registrant of a waste-derived fertilizer shall state in the application for registration the levels of nonnutritive metals including, but not limited to, arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb) and selenium (Se). The registrant shall provide a laboratory report or other documentation verifying the levels of the nonnutritive metals in the waste-derived fertilizer.

SECTION 5. That Section 22-610, Idaho Code, be, and the same is hereby amended to read as follows:

22-610. INSPECTION -- SAMPLING. (1) The department shall inspect, sample, analyze, and test fertilizers distributed within this state, at a time and place and to the extent the department deems necessary, to determine whether the fertilizers comply with this chapter. The department may stop any commercial vehicle transporting fertilizers on the public highways and direct it to the nearest scales approved by the department to check weights of fertilizers being delivered. The department may also, upon presentation of proper identification, enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to fertilizers and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources including, but not limited to, the association of American plant food control officials (AAPFCO) and the association of official analytical chemists, international (AOAC).

(3) The department, in determining for administrative purposes whether a fertilizer is deficient in any component or total nutrients, shall be guided solely by the official sample as defined in section 22-603(218), Idaho Code, and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the department shall forward the results of the analysis to the distributor and manufacturer, and to the purchaser upon request. Upon written request and within thirty (30) days of the results of analysis, the department shall furnish to the distributor and/or manufacturer a portion of the sample concerned.

(5) If analyses of samples made by the department indicate deficiencies in the fertilizer examined, below guaranteed analysis, and in excess of the tolerances specified by rules promulgated under this chapter, the department shall immediately notify the manufacturer and/or distributor of the fertilizer of the results of the analyses. The manufacturer or seller of the fertilizer may, upon written request, obtain from the department a portion of the sample(s) in question. If he fails to agree with the analyses of the department, he may request an umpire who shall be one (1) of a list of not less than three (3) public analysts of recognized ability in fertilizer analyses, who shall be named by the department. The umpire analyses shall be made at the expense of the manufacturer or seller requesting the same. If the umpire agrees more closely with the department, the figures of the department shall be considered correct. If the umpire agrees more closely with the figures of the manufacturer or distributor, then the figures of the manufacturer or distributor shall be considered correct.

(6) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction.

SECTION 6. That Section 22-613, Idaho Code, be, and the same is hereby amended to read as follows:

22-613. MISBRANDING. No person shall distribute a misbranded fertilizer. A fertilizer is misbranded if:

(1) The labeling is false or misleading;

(2) It is distributed under the name of another fertilizer product;

(3) It is not labeled as required in section 22-607, Idaho Code, and in accordance with rules prescribed under this chapter; or

(4) It purports to be or is represented as a fertilizer, or is represented as containing a plant nutrient or fertilizer unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by rule of the department. In adopting such rules the department shall give due regard to commonly accepted definitions and official fertilizer terms ~~such as those issued by the association of American plant food control officials (AAPFCO)~~ as stated or provided for in section 22-603, Idaho Code.

SECTION 7. That Section 22-616, Idaho Code, be, and the same is hereby amended to read as follows:

22-616. "STOP SALE" ORDERS. The department may issue and enforce a written or printed "stop sale, use, or removal" order to the distributor, owner or custodian of any fertilizer and hold the fertilizer, or order it held, at a designated place when the department finds the fertilizer is being offered for sale in violation of this chapter, until the law has been complied with and the fertilizer is released in writing by the department, or the violation has been otherwise legally disposed of by written authority. The owner or custodian of any fertilizer that has been issued a "stop sale, use, or removal" order shall remedy the violations within ninety (90) days, unless the department grants a written extension. The department shall release the fertilizer so withdrawn when the requirements of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

SECTION 8. That Section 22-619, Idaho Code, be, and the same is hereby amended to read as follows:

22-619. REMEDIES FOR VIOLATIONS. (1) Any person convicted of violating any of this chapter or the rules promulgated thereunder or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or a duly authorized agent from the performance of their duty in connection with this chapter, is guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500) for the first violation, and not more than one thousand five hundred dollars ($1,500) for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis signed by the director or his duly authorized agent shall be accepted as prima facie evidence of the composition.

(2) Any person who violates or fails to comply with this chapter or any rules promulgated thereunder may be assessed a civil penalty by the department or its duly authorized agent of not more than ~~five hundred~~ ten thousand dollars ($10,000) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in ~~conjunction~~ with any other department 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, chapter 52, title 67, Idaho Code. If the director is unable to collect the penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the director has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(3) Nothing in this chapter requires the director or a duly authorized representative to report minor violations of the chapter for prosecution, or for the institution of seizure proceedings, when the director believes that the public interest will be best served by a suitable notice of warning in writing.

(4) Each prosecuting attorney to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the director reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the director.

(5) The director may apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction shall be issued without bond.

SECTION 9. That Chapter 6, Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 22-625, Idaho Code, and to read as follows:

22-625. STATEMENTS OF UNIFORM INTERPRETATION AND POLICY. When not otherwise stated in this chapter or rule adopted under this chapter, the

statements of uniform interpretation and policy as adopted in the annual Official Publication of the Association of American Plant Food Control Officials (AAPFCO) shall guide the department when making decisions in the areas covered by AAPFCO statements of uniform interpretation and policy.

Approved March 23, 2001.

CHAPTER 148
(H.B. No. 76)

AN ACT

RELATING TO THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-2004, IDAHO CODE, TO INCREASE THE MAXIMUM CIVIL PENALTY FOR VIOLATIONS OF STATUTES AND RULES GOVERNING QUARANTINES TO TEN THOUSAND DOLLARS AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 22-2004, Idaho Code, be, and the same is hereby amended to read as follows:

22-2004. PENALTIES FOR VIOLATION. (1) Any person who violates any provision of this chapter, or of the rules made thereunder for carrying out the provisions of this chapter, or who fails or refuses to comply with any requirements herein specified, or who ~~wilfully~~ willfully interferes with the department, its agents or employees, in the execution, or on account of the execution of its or their duties under this chapter, shall be deemed guilty of a misdemeanor.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than ~~one~~ ten thousand dollars ($10,000) for each offense and shall be liable for reasonable attorney's fees.

(a) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(b) 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.

(c) If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(d) Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(e) Moneys collected for violation of a rule shall be remitted to the agricultural department inspection fund.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes

that the public interest will be best served by suitable warnings or other administrative action.

Approved March 23, 2001.

CHAPTER 149
(H.B. No. 90)

AN ACT

RELATING TO THE IDAHO BOARD OF VETERINARY MEDICINE; AMENDING SECTION 54-2103, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO DELETE A TERM; AMENDING SECTION 54-2104, IDAHO CODE, TO REVISE EXCEPTIONS TO THE REQUIREMENT OF A LICENSE OR VALID TEMPORARY PERMIT TO PRACTICE VETERINARY MEDICINE; AMENDING SECTION 54-2105, IDAHO CODE, TO REVISE THE QUALIFICATIONS OF MEMBERS OF THE BOARD, TO REVISE REMOVAL OF BOARD MEMBERS AND TO REVISE POWERS OF THE BOARD; AMENDING SECTION 54-2107, IDAHO CODE, TO REVISE LICENSE APPLICATION REQUIREMENTS; AMENDING SECTION 54-2110, IDAHO CODE, TO REVISE QUALIFICATIONS FOR LICENSURE WITHOUT THE CLINICAL COMPETENCY TEST; AMENDING SECTION 54-2111, IDAHO CODE, TO REVISE QUALIFICATIONS FOR ISSUANCE OF A TEMPORARY PERMIT AND TO PROVIDE REFERENCE TO A UNITED STATES DEPARTMENT OF AGRICULTURE VETERINARY SERVICES MEMORANDUM; AMENDING SECTION 54-2112, IDAHO CODE, TO PROVIDE REFERENCE TO CERTIFICATIONS, TO PROVIDE FOR REINSTATEMENT OF LICENSES AND TO PROVIDE REFERENCE TO CERTIFIED VETERINARY TECHNICIANS AND CERTIFIED EUTHANASIA TECHNICIANS AND AGENCIES; AMENDING SECTION 54-2114, IDAHO CODE, TO PROVIDE CORRECT CODE CITATIONS; AMENDING SECTION 54-2115, IDAHO CODE, TO PROVIDE THE BOARD WITH FURTHER DISCIPLINARY OPTIONS AND TO REVISE GROUNDS FOR DISCIPLINE; AND AMENDING SECTION 54-2118, IDAHO CODE, TO PROVIDE FOR THE RECOVERY OF PARALEGAL FEES, TO PROVIDE FOR APPEAL OF A CIVIL PENALTY WITHIN TWENTY-EIGHT DAYS, TO PROVIDE FOR A FINE BASED UPON WITHHELD JUDGMENT, AND TO MAKE TECHNICAL CORRECTIONS.

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 provider and course, seminar, scientific program or any other activity approved by the board or its designees for continuing education credit.

(2) "Accredited or approved school of veterinary medicine" means any veterinary college or division of a university or college inside or outside the United States or Canada that offers the degree of doctor of veterinary medicine, veterinary medicine doctor, or its equivalent and is accredited or approved by the council on education of the American veterinary medical association or other accrediting agency or association approved by the board.

(3) "Allied health professional" means a person 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 monitored and under continuous observation until the ~~swallowing reflex has returned~~ patient is awake and in sternal recumbency.

(5) "Animal" means any animal other than man and includes fowl, birds, fish and reptiles, wild or domestic, living or dead.

(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.

(7) "Board" means the state board of veterinary medicine.

(8) "Certified euthanasia agency" or "CEA" means a law enforcement agency, an animal control agency or a society for the prevention of cruelty to animals, which has been inspected and certified by the euthanasia task force or the board.

(9) "Certified euthanasia technician" or "CET" means:

(a) A person employed by a certified euthanasia agency or working under the indirect supervision of a licensed veterinarian, but not to include an individual employed as a technician by animal research laboratories, who is instructed 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.

(11) "Consultation" means a deliberation between two (2) or more veterinarians concerning the diagnosis of a disease or the proper management of the case.

(12) "Credit hour" means fifty (50) minutes of participation in an accredited continuing education activity.

(13) "Dentistry" is the practice of veterinary medicine and means 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. Dentistry includes, but is not limited to:

(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.

(14) "Direct supervision" means the supervisor is on the premises where the animal is being treated, is quickly and easily available and the animal has been examined by 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;

(d) The ability to bring an administrative or civil action against any person in or outside of this state who practices veterinary medicine, veterinary technology or who performs euthanasia within this state.

(16) "Emergency" means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

(17) "Emergency veterinary hospital" means a facility in which veterinary services are provided by either a "veterinarian on premises" or "veterinarian on call."

(18) "Euthanasia task force" means a task force established by the board for the purposes of training, examining, 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.

(22) "Immediate supervision" means the supervisor is in the immediate area, 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.

(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, the animal has been examined by the supervising veterinarian as acceptable veterinary medical practice requires, and the animal, 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 or delivered, to be labeled with one (1) of the following statements: "Caution: Federal law restricts this drug to be used by or on the order of a licensed veterinarian," or "Caution: Federal law prohibits dispensing without a prescription," or "RX Only," or a drug which is required by any applicable state or federal law, rule or regulation to be distributed or dispensed pursuant to a prescription only, or is restricted to used by licensed practitioners only.

(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.~~

~~(27)~~ "Licensed veterinarian" means a person who is validly and currently licensed to practice veterinary medicine in this state.

(287) "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~~8) "Medical incompetence" means lacking in sufficient medical knowledge or skills or both to a degree likely to endanger the health of patients.

(~~30~~29) "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~~0) "Owner/Ownership" means ownership as defined by the laws of property and ownership, chapter 1, title 55, Idaho Code, and chapter 1, title 73, Idaho Code.

(~~32~~1) "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~~2) "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.

(~~34~~3) "Practice of veterinary medicine" in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine and means:

(a) To directly or indirectly 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, 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 (~~34~~3)(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 (~~34~~3)(a) of this section, except where such person is a licensed veterinarian.

(~~35~~4) "Professional supervision" means the supervisor is in daily contact by telephone, radio or other means with the temporary licensee.

(~~36~~5) "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~~6) "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~~7) "Supervision" means the action or process of directing activities or a course of action, and pertains to any and all employees of the veterinarian.

(~~39~~8) "Supervisor" means an actively licensed veterinarian employing and utilizing the services of a temporary licensee, certified veterinary technician, veterinary technician, veterinary technician with a temporary certification, veterinary assistant, 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 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 deprive the board of its disciplinary authority with respect to the temporary licensees, certified veterinary technicians, veterinary technicians, veterinary assistants or certified euthanasia technicians.

(~~40~~39) "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 professional conduct to be followed and carried out by persons licensed or certified by the board.

(~~41~~40) "Unlicensed practice" means:

(a) The practice of veterinary medicine in this state, through telephonic, electronic or other means, regardless of the location of the veterinarian, 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.

(~~42~~41) "Veterinarian" means a person who has received a doctor's degree in veterinary medicine from an accredited or approved school of veterinary medicine or as otherwise provided by law or rule.

(~~43~~42) "Veterinarian on premises" means a veterinari~~an is~~ present at the veterinary medical facility and is prepared and qualified to render veterinary services.

(~~44~~43) "Veterinarian on call" means a veterinarian is not present at the 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.

(~~45~~44) "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.

(465) "Veterinary technician" means a person who has graduated from a veterinary technology program accredited or approved by the council on education of the American veterinary medical association, or other accrediting agency approved by the board, or a person who has received equivalent training as set forth in the rules of the board.

(476) "Veterinary technology" means the performance of services within the practice of veterinary medicine by a person employed by a licensed veterinarian to perform duties that require an understanding of veterinary medicine in order to carry 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 an accredited or approved 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 or approved 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 or nonapproved 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 surgery or 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 or nonapproved educational institution is prohibited.

(d) Idaho extension personnel from performing their official

duties.

(e) A veterinarian holding a current, active license, in good standing, in another state, from consulting with a licensed veterinarian in this state.

(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.

(g) A farmer, rancher or feedlot operator, including custom ranch or feedlot operators, and their regular employees, from caring for and treating animals within their possession or control, 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) 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, except where the ownership or possession of the animal was transferred or the employment changed to circumvent 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.

(i) A member of a faculty of an accredited or approved school 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. The unsupervised or unauthorized personal practice of veterinary medicine, by a faculty member on the premises of any of the above institutions, is prohibited.

(j) Any person from selling or applying any pesticide, insecticide, or herbicide.

(k) A person lecturing or giving instructions or demonstrations at an accredited or approved school of veterinary medicine, veterinary science department or an educational institution accredited or approved 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 or nonapproved 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 surgery or 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 or nonapproved educational institution is prohibited.

(m) 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 conducted in compliance with applicable state and federal laws, rules and regulations.

(n) Any person from performing artificial insemination of domestic animals as governed by chapter 8, title 25, Idaho Code.

(o) Any person from horseshoeing or hoof trimming bovine, equine and farm animals.

(p) 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.

(q) Any person from the gratuitous treatment of animals in an emergency as a neighborly act.

(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.

(s) A certified euthanasia agency from operating as a CEA as defined by law and rules.

(t) A certified euthanasia technician from performing those duties as defined by law and rules.

(u) Any person from utilizing cotton swabs, gauze, dental floss, dentifrice or toothbrushes to clean an animal's teeth.

(v) A certified veterinary technician employed by an actively licensed veterinarian from practicing veterinary technology under ~~the direct~~ appropriate supervision, ~~and employ of an actively licensed veterinarian~~ as defined by the rules of the board.

(w) An assistant or veterinary technician employed by an actively licensed veterinarian from performing acts pertaining to the practice of veterinary medicine under ~~the direct~~ appropriate supervision, as defined by the rules of the board, and provided that 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) 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, 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 or approved school of veterinary medicine or, if a ~~foreign-veterinary~~ graduate of a nonaccredited or nonapproved school, a letter from the educational commission for foreign veterinary graduates (ECFVG) certifying completion of the ECFVG program or a copy of their ECFVG certificate, or verification of successful completion of any educational equivalency program established for the purpose of evaluating an individual's educational knowledge and clinical skills as they relate to the practice of veterinary medicine, as approved and outlined by the rules of the board. In addition to verification of graduation from an accredited or nonaccredited school of veterinary medicine, is 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 medicine.

(2) Each member of the board and certified euthanasia task force shall be compensated as provided by section 59-509(n), Idaho Code.

(3) Any member of the board may be removed by the governor ~~after a hearing by the board determines cause for removal~~ at his discretion.

(~~2~~4) 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; to deliberate the qualifications of an applicant for a license or certification; to conduct deliberations in disciplinary proceedings; to consider investigatory matters; or as otherwise allowed by law.

(~~3~~5) The board member serving the fourth year of appointment shall be the president of the board and shall serve as chairman at the board meetings.

(~~4~~6) The veterinary board member serving the fifth year of appointment shall be the liaison officer of the board and shall render advice, review and medi~~ate complai~~nts, and perform other tasks assigned by the board.

(~~5~~7) All revenues received under this chapter shall be paid to the state board of veterinary medicine account created in section 54-212~~2~~1, Idaho Code, and shall be subject to and administered in accordance with the provisions of this chapter.

(~~6~~8) The responsibility for enforcement of the provisions of this chapter is hereby vested in the board. The board shall have all of the ~~power~~ duties, powers and authority specifically granted by or necessary for the enforcement of this chapter and the rules made pursuant thereto, as well as such other duties, powers and authority as it may be granted from time to time by applicable law. The powers vested in the board shall include, but are not limited to:

(a) Establish qualifications and prescribe the application format for ~~licensure~~ issuance or renewal of a license to practice as a veterinarian and certification to practice as a veterinary technician, euthanasia agency or euthanasia technician, review each application for compliance with the licensure and certification requirements, ~~and~~ issue, renew or deny licenses and certifications. Upon a showing of good cause by a licensee or certificate holder to the board, the board may grant an extension of time for submission of the required application or renewal documentation, including the required number of continuing education hours, as set forth by this chapter or the rules of the board.

(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.

(c) Issue, renew, reinstate, deny, suspend, sanction, reprimand, restrict, limit, place on probation, require voluntary surrender of, or revoke any licenses, certifications or temporary permits or certifi~~cat~~ions to practice veterinary medicine, ~~or~~ veterinary technology or euthanize animals in the state, ~~or~~ and may fine and 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.

(d) Establish a schedule of fees for licensing, certifying and registering veterinarians, veterinary technicians, euthanasia agencies and euthanasia technicians, as well as for the review, approval and

administration of national licensing and certification examinations.

(e) In addition to the fees specifically provided for herein, the board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this chapter or rules adopted hereunder. Such services rendered shall include, but not be limited to, the following:

(i) Issuance of duplicate licenses or certificates;

(ii) Mailing lists or reports of data maintained by the board;

(iii) Copies of any documents;

(iv) Verification of license or certification status;

(v) Examination review, approval and administration; and

(vi) Examination materials.

(f) Review and approve applications from ~~applicants wanting~~ candidates requesting authorization to ~~sit for~~ take 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~~ either or both national examinations.

(~~f~~g) Upon its own motion or upon any complaint, to initiate and conduct investigations on all matters relating to the practice of veterinary medicine or veterinary technology or the euthanizing of animals 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.

(~~g~~h) 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.

(~~h~~i) Employ full-time or part-time personnel, professional, clerical or special, necessary to effectuate the provisions of this chapter and the rules of the board and purchase or rent necessary office space, equipment and supplies.

(~~i~~j) 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.

(~~j~~k) Bring proceedings in the courts for the enforcement of this chapter or any rules made pursuant thereto.

(~~k~~l) ~~Levy~~ For purposes of enforcement of the provisions of this chapter and any rules duly promulgated hereunder, including the levying of civil penalties, assessment and collection of fines, and recovery of costs and paralegal, hearing officer and attorney's fees incurred by the board in investigation and prosecution of complaints, the board shall maintain jurisdiction over individuals, irrespective of their license or certification status (i.e., active, inactive, expired, lapsed, surrendered or disciplined) relative to acts, omissions, complaints and investigations which occurred during

the licensure or certification period. Jurisdiction of the board shall also extend to all individuals engaged in the practice of veterinary medicine, veterinary technology or practicing as a certified euthanasia agency or certified euthanasia technician in this state as defined in section 54-2103, Idaho Code. It is the intent of this subsection that the board's jurisdiction should extend to all licensed or unlicensed or certified or uncertified individuals and that licensees and certification holders cannot divest the board of jurisdiction by changing, surrendering or relinquishing licensure or certification status.

(~~l~~m) Establish a certified euthanasia task force for the purposes of training, examining, licensing and certifying euthanasia agencies and euthanasia technicians and assess application, training workshop and certification fees. The fees so assessed are continuously appropriated to the board to support the activities of the task force.

(~~m~~n) 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.

(o) Conduct probationary or other practice and facility inspections necessary for enforcement of this chapter or the rules duly promulgated hereunder or any order, negotiated settlement or probationary agreement of the board and issue administrative citations to alleged violators.

~~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 and shall bear the burden of substantiating to the board the license application requirements. 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 or current passport proving that the applicant is twenty-one (21) years of age or more.

(2) Notarized a~~A~~ffidavits issued during the year preceding licensure from two (2) veterinarians currently licensed and in good standing in any state attesting to the fact that the applicant is of good moral character.

(3) A certified copy of a veterinary school diploma or transcript from an accredited or approved school of veterinary medicine or a letter from an accredited or approved school of veterinary medicine ver~~ifying~~ satisfactory graduation by the applicant or, if a ~~foreign school~~ graduate of a nonaccredited or nonapproved school, a letter from the educational commission for foreign veterinary graduates (ECFVG) certifying ~~compl~~etion of the ECFVG program or a copy of the ECFVG certificate or by

completion of ~~the~~ any educational equivalency program established for the purpose of evaluating an individual's educational knowledge and clinical skills as they relate to the practice of veterinary medicine, and ~~competency requirements~~ as approved and 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 or any other examination committee or organization approved by the board, 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 or states where they ~~are currently practicing~~ have practiced for the past seven (7) years immediately preceding application for licensure in this state, and provided that the requirements for licensure in the state or states 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~~ immediately preceding application 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 or states during the seven (7) year period ~~prior to applying~~ immediately preceding application for a veterinary license in this state.

(6) A passing score of at least ninety percent (90%) correct on the Idaho jurisprudence examination.

(7) Written verification of license in good standing from the licensing organization in any state or states 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.~~

(8) The license application fee and first year's license fee in the amount established in the rules adopted by the board.

(9) Any additional information that the board may request.

(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, except as specified in other sections of this chapter or by board rule. 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 procedures 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~~ fulfill all requirements for licensure with the exception of a passing score on the clinical competency test (CCT) and shall provide verification of a current certification from a specialty board approved by the American veterinary medical association. 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 or states, who has fulfilled the requirements for licensure in this state or to a graduate of a nonaccredited or nonapproved school of veterinary medicine that has fulfilled the requirements of section 54-2107, Idaho Code, and the rules of the board. Temporary permits shall be valid until the next license application review by the board or ~~for no more than one~~ (1) year, during which time 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. Under no circumstances shall a second temporary permit be issued to the same person, except in the case of a temporary permit issued to a graduate of a nonaccredited or nonapproved school of veterinary medicine, which may be renewed for up to three (3) years. If, at the end of the three (3) year period, the applicant has completed the requirements of the approved educational equivalence program, but has not received official notification, the expiration date for the temporary permit may be extended until

official notification is received. 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 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. Pursuant to United States department of agriculture veterinary services memorandum number 572.1, a~~n~~ 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 OR CERTIFICATION -- NOTICE -- RENEWAL -- INACTIVE STATUS. All licenses and certifications 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, 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. Between July 1 and August 1, an expired license or certification may be reinstated by paying the established late fee and renewal fee, and by fulfilling the other requirements of this section. Once a license or certification has expired, the person or agency may not practice veterinary medicine or veterinary technology or function as a certified euthanasia technician or agency until the license or certification has been reinstated or until the person or agency has applied for and received a new license or certification.

On or about May 1 of each year, the board shall mail a notice to each licensed veterinarian, certified veterinary technician, certified euthanasia agency and certified euthanasia technican informing them that their license or certification will expire on July 1, and shall also provide a form for renewal. The board shall issue a new license or certification to all qualified persons registering under this chapter.

Any veterinarian licensed in Idaho who advises the ~~veterinary~~ board, in writing, that he wishes to remain licensed in this state, but 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 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 all required fees and by meeting other requirements for reinstatement as defined in the rules of the board.

Any person or agency practicing veterinary medicine or veterinary technology or functioning as a certified euthanasia technician or agency, without ~~an active~~ current license or certification, or after the expiration of a license or certification, or during inactive status, shall be practicing in violation of this chapter. A license or certification that is allowed to expire may not be renewed or reinstated after August 1, but the holder may make application for a new license or cer-

tification.

The board may by rule waive the payment of the 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 Section 54-2114, Idaho Code, be, and the same is hereby amended 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 54-211~~7~~8, 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 54-211~~7~~8, 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 54-211~~7~~8, Idaho Code.

SECTION 9. That Section 54-2115, Idaho Code, be, and the same is hereby amended to read as follows:

54-2115. GROUNDS FOR DISCIPLINE. The board may refuse to issue, renew or reinstate the license of a veterinarian, or may deny, revoke, suspend, sanction, reprimand, restrict, limit, place on probation or require voluntary surrender of, the license of a veterinarian, ~~or~~ and may fine and 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 or all of the following reasons:

(1) The employment of fraud, misrepresentation of a material fact or deception ~~in obtaining a~~ by an applicant or licensee in:

(a) Securing or attempting to secure the issuance or renewal of a license; or

(b) Statements regarding the veterinarian's skills or efficacy or value of any treatment provided or to be provided or using any false, fraudulent, misleading or deceptive statement connected with the practice of veterinary medicine including, but not limited to, false or misleading advertising.

(2) Unethical or unprofessional conduct, as defined by section 54-2103, Idaho Code, the rules of the board, and the code of professional conduct established by the rules of the board.

(3) ~~Conviction--of a charge of violating any federal or state statute or rule or regulation regulating narcotics, dangerous drugs or--controlled substances.~~

~~(4)~~ 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 practice of veterinary medicine as defined by section 54-2103, Idaho Code; or

(c) Any violation of any federal or state statute, rule or regulation regulating narcotics, dangerous drugs or controlled substances.

~~(5)~~ Medical incompetence 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.

~~(8)~~ 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.

~~(9)~~ Fraud, dishonesty, failure to report, or gross negligence in the inspection of animals and animal products intended for human consumption, issuance of health or inspection certificates, in the application, vaccination, treatment or reporting of any test for disease in animals, and in reporting any contagious or infectious disease.

~~(10)~~ Failure to comply with the veterinary standards of practice, as established by board rule.

~~(11)~~ Failure to comply with the recordkeeping requirements, as established by the rules of the board.

~~(12)~~ 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.

~~(14)~~ ~~The--r~~Revocation, ~~or~~ suspension, ~~by a state or territory or~~ disciplinary sanction, other adverse action, or failure to report any such adverse action to the board, including voluntary surrender of a license or certificate by virtue of which one is licensed to practice ~~veterin~~ary medicine in that ~~state, territory or district of the United States~~ jurisdiction or country on grounds other than nonpayment of renewal fees.

~~(15)~~ ~~Failure~~ Falsifying or failing to fulfill the continuing educa-

tion requirements, as established by the rules of the board.

(~~16~~5) 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~~6) 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~~7) Failure to timely furnish details of a patient's medical record to another veterinarian, hospital, clinic, owner or owner's agent.

(~~19~~8) 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~~9) Failure to comply with the terms of any order, negotiated settlement or probationary agreement of the board or to pay the costs assessed in a disciplinary matter pursuant to section 54-2105, Idaho Code.

(~~21~~0) 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~~1) 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~~2) Delegation of an act pertaining to the practice of veterinary medicine or veterinary technology to an unqualified employee, regardless of the supervision provided.

(~~24~~3) Aiding or abetting or violating any of the provisions of this chapter or any lawful rule or order of the board.

SECTION 10. That Section 54-2118, Idaho Code, be, and the same is hereby amended to read as follows:

54-2118. 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 five thousand dollars ($5,000) for each offense and shall be liable for investigatory expenses and reasonable paralegal and 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 paralegal and 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~~ twenty-eight (~~30~~28) 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~~ took action.

(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, temporary permit or temporary certification shall be guilty of a misdemeanor and upon conviction or withheld judgment shall be fined not less than one hundred dollars ($1~~00~~), nor more than ten thousand dollars ($10,000), or ~~imprisoned~~ incarcerated for no more than one hundred eighty (180) days, or both fined and ~~imprisoned~~ incarcerated, and provided that each act of such unlawful practice shall constitute a distinct and separate offense.

(3) 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, 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.

(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~~ prohibit the prosecution of an action based on any other of the remedies.

Approved March 23, 2001.

CHAPTER 150
(H.B. No. 129)

AN ACT

RELATING TO THE DIVISION OF BUILDING SAFETY; AMENDING SECTION 67-2601, IDAHO CODE, TO PROVIDE THAT THE DIVISION OF BUILDING SAFETY SHALL INCLUDE THE PUBLIC WORKS CONTRACTOR LICENSING BUREAU.

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

SECTION 1. 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.

(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 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; 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 or assisted living 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~~ five (~~4~~5) bureaus: plumbing,

electrical, buildings, public works contractor licensing, 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 19, title 54, Idaho Code, relating to licensing of public works contractors; 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.

Approved March 23, 2001.

CHAPTER 151
(H.B. No. 130)

AN ACT

RELATING TO COMPENSATION OF STATUTORILY CREATED BOARDS; AMENDING SECTION 39-4106, IDAHO CODE, TO INCREASE THE COMPENSATION FOR THE IDAHO BUILDING CODE ADVISORY BOARD; AMENDING SECTION 44-2104, IDAHO CODE, TO CHANGE THE PAYMENT FOR THE MANUFACTURED HOME ADVISORY BOARD FROM COMPENSATION TO AN HONORARIUM AND TO INCREASE THE AMOUNT; AMENDING SECTION 54-1006, IDAHO CODE, TO INCREASE THE COMPENSATION FOR THE IDAHO ELECTRICAL BOARD; AND AMENDING SECTION 54-2605, IDAHO CODE, TO INCREASE THE COMPENSATION FOR THE IDAHO PLUMBING BOARD.

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

SECTION 1. That Section 39-4106, Idaho Code, be, and the same is hereby amended to read as follows:

39-4106. IDAHO BUILDING CODE ADVISORY BOARD CREATED -- MEMBERSHIP -- APPOINTMENT -- TERMS -- QUORUM -- COMPENSATION -- MEETINGS. (1) The Idaho building code advisory board is established within the department as an appeals, code adoption and variance, and advisory board, to be appointed by the governor, and shall consist of nine (9) members: one (1) member of the general public; one (1) local fire official; one (1) registered engineer; one (1) licensed architect; two (2) local building officials, one (1) from a county and one (1) from a city; one (1) homebuilder or general contractor; one (1) representative of the modular building industry; and one (1) individual with a disability from an organization that represents people with all types of disabilities. Board members shall be appointed for a term of four (4) years. Three (3) consecutive failures by a member to attend meetings of the board without reasonable cause shall constitute cause for removal of the member from the board by the governor. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(2) The members of the board shall, at their first regular meeting following the effective date of this chapter 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. A majority of the members of the board shall constitute a quorum.

(3) Each member of the board not otherwise compensated by public moneys shall be compensated as provided by section 59-509(~~g~~h), Idaho Code, for each day spent in attendance at meetings of the board.

(4) The board shall meet for regular business sessions at the call of the administrator, chairman, or at the request of three (3) members of the board, provided that the board shall meet at least biannually.

SECTION 2. That Section 44-2104, Idaho Code, be, and the same is hereby amended to read as follows:

44-2104. MANUFACTURED HOME ADVISORY BOARD. (1) A manufactured home advisory board is established in the division of building safety to advise the administrator in the administration and enforcement of the provisions of this chapter. The board shall consist of five (5) members, appointed by the governor, four (4) of whom shall be from licensed manufactured home dealers and one (1) of whom shall be a consumer who lives in a manufactured home. The board shall serve the following terms commencing January 1, 1989: two (2) members shall be appointed for a term of one (1) year, two (2) members shall be appointed for a term of two (2) years, and one (1) member shall be appointed for a term of three (3) years. The consumer member shall be a member appointed to a term beginning on January 1, 1996, or as soon thereafter as there is a vacancy on the board. Thereafter board members shall be appointed for a term of three (3) years. Not more than three (3) members shall at any time belong to the same political party. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term. The members of the board shall be compensated as provided in section 59-509(~~f~~n), Idaho Code, for each day spent in attendance at meetings of the board. A majority of members shall consti-

tute a quorum, and a quorum at any meeting called by the administrator shall have full and complete power to act upon and resolve in the name of the board any matter, thing or question referred to it by the administrator, or which by reason of any provision of this chapter, it has the power to determine.

(2) The board shall, on the first day of each January or as soon thereafter as practicable, elect a chairman, vice chairman and secretary from among its members, and these officers shall hold office until their successors are elected. As soon as the board has elected its officers, the secretary shall certify the results of the election to the administrator. The chairman shall preside at all meetings of the board and the secretary shall make a record of the proceedings which shall be preserved in the offices of the division of building safety. If the chairman is absent from any meeting of the board, his duties shall be discharged by the vice chairman. All members of the board present at a meeting shall be entitled to vote on any question, matter, or thing which properly comes before it.

(3) The board shall have the authority to promulgate rules in accordance with chapter 52, title 67, Idaho Code, to implement the provisions of this chapter.

SECTION 3. 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.

(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 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 chapter and the rules of the Idaho electrical board. The board is authorized to affirm, reject, decrease or increase the penalty imposed by the administrator. 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(gh), Idaho Code.

SECTION 4. That Section 54-2605, Idaho Code, be, and the same is hereby amended to read as follows:

54-2605. IDAHO PLUMBING BOARD. (1) The Idaho plumbing board, referred to 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 the board shall make, promulgate and publish such rules as may be necessary for carrying out the provisions of this act in order to effectuate the purposes thereof and for the orderly and efficient administration thereof, and except as may be limited or prohibited by law and the provisions of this act, such rules so made and promulgated shall have the force of statute.

(2) The board shall consist of five (5) members. The members shall be appointed at large by the governor, with power of removal for cause. Members shall be appointed for a term of three (3) years. Whenever a vacancy occurs the governor shall forthwith appoint a qualified person to fill the vacancy for the unexpired portion of the term.

(3) All members of the board shall be United States citizens, residents of this state for not less than two (2) years, and qualified by knowledge, integrity and experience to properly execute the functions of the board. Two (2) members shall be qualified persons representing the public at large; one (1) member shall be an active plumbing contractor with not less than five (5) years experience in the plumbing contracting business; one (1) member shall be an active plumbing contractor with not less than five (5) years in the plumbing contracting business with an additional background of experience in gas piping installations in buildings; and one (1) member shall be a journeyman plumber. All members of the board shall take, subscribe and file with the secretary of state an oath of office in the form, manner and time prescribed by chapter 4, title 59, Idaho Code.

(4) The board shall meet within thirty (30) days after the appointment of all its members and thereafter at such other times as may be expedient and necessary for the proper performance of its duties. At the board's first meeting, the members shall elect one (1) of their number to be chairman. A majority of the board shall constitute a quorum for the transaction of business and not less than two (2) quorum meetings shall be held each year. The board may delegate to any member, or its chairman or other employees, the power to make investigations and hold hearings at any place it may deem proper, and to report findings to it; and may delegate to its chairman and employees the performance of ministerial functions.

(5) Each member of the board shall be compensated as provided by section 59-509(~~g~~h), Idaho Code.

Approved March 23, 2001.

CHAPTER 152
(H.B. No. 132)

AN ACT

RELATING TO LIENS; AMENDING SECTION 45-501, IDAHO CODE, TO DELETE REFERENCE TO UNSECURED AND TO FURTHER DEFINE THE TERM "FURNISHING MATERIAL"; AMENDING SECTION 45-504, IDAHO CODE, TO CLARIFY THAT PERSONS WHO RENT, LEASE OR OTHERWISE SUPPLY EQUIPMENT, MATERIALS OR FIXTURES FOR THE IMPROVEMENT OF A LOT HAVE A LIEN; AMENDING SECTION 45-505, IDAHO CODE, TO PROVIDE THAT THE RENTING, LEASING OR OTHERWISE SUPPLYING OF EQUIPMENT, MATERIALS OR FIXTURES SHALL AUTHORIZE A LIEN UPON LAND, TO PROVIDE FOR AGENTS OF LANDOWNERS AND TO CLARIFY THE INTEREST SUBJECT TO A LIEN UPON LAND; AMENDING SECTION 45-506, IDAHO CODE, TO PROVIDE WHEN LIENS SHALL BE ON EQUAL FOOTING WITH OTHER LIEN CLAIMS AND TO PROVIDE APPLICATION TO RENTED OR LEASED EQUIPMENT, MATERIALS OR FIXTURES; AMENDING SECTION 45-507, IDAHO CODE, TO REVISE PROCEDURES FOR A PERSON CLAIMING A LIEN; AMENDING SECTION 45-512, IDAHO CODE, TO PROVIDE THAT THE TERM "MATERIALMEN" INCLUDES PERSONS FURNISHING, RENTING OR LEASING EQUIPMENT, MATERIALS OR FIXTURES; AND AMENDING SECTION 45-515, IDAHO CODE, TO PROVIDE FOR APPLICATION TO EQUIPMENT, MATERIALS OR FIXTURES RENTED OR LEASED IN A PERSONAL ACTION TO RECOVER A DEBT.

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

SECTION 1. That Section 45-501, Idaho Code, be, and the same is hereby amended to read as follows:

45-501. RIGHT TO LIEN. Every person~~, otherwise unsecured in whole or in part,~~ performing labor upon, or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who grades, fills in, levels, surfaces or otherwise improves any land, or who performs labor in any mine or mining claim, and every professional engineer or licensed surveyor under contract who prepares or furnishes designs, plans, plats, maps, specifications, drawings, sur-

veys, estimates of cost, on-site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or professional services or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder or any person having charge of any mining claim, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purpose of this chapter: provided, that the lessee or lessees of any mining claim shall not be considered as the agent or agents of the owner under the provisions of this chapter.

For purposes of this chapter the term "furnishing material" shall also include, notwithstanding any other provision of law to the contrary, supplying, renting or leasing equipment, materials or fixtures as defined in section 28-12-309, Idaho Code.

"Furnishing material" shall also include renting, leasing or otherwise supplying any equipment, materials, fixtures or machinery to any mine or mining claim.

SECTION 2. That Section 45-504, Idaho Code, be, and the same is hereby amended to read as follows:

45-504. LIEN FOR IMPROVING LOTS. Any person who, at the request of the owner of any lot in any incorporated city or town, surveys, grades, fills in, or otherwise improves the same, or who rents, leases or otherwise supplies equipment, materials or fixtures as defined in section 28-12-309, Idaho Code, to such person for the improvement of any lot, or the street in front of or adjoining the same, has a lien upon such lot for his work done or material furnished or equipment, materials or fixtures as defined in section 28-12-309, Idaho Code, rented, leased or otherwise supplied.

SECTION 3. That Section 45-505, Idaho Code, be, and the same is hereby amended to read as follows:

45-505. LAND SUBJECT TO LIEN. The land upon which or in connection with which any professional services are performed or any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if, at the commencement of the furnishing of professional services or other work, ~~or of~~ the furnishing of the material, or the renting, leasing or otherwise supplying of equipment, materials or fixtures as defined in section 28-12-309, Idaho Code, for the same, the land belonged to the person who caused said professional services to be performed or said building, improvement or structure to be constructed, altered or repaired, or such person was acting as the agent of the owner, but if such person owns less than a fee simple estate in such land, then only ~~his~~ the interest of the person or persons causing the services or improvement therein is subject to such lien.

SECTION 4. That Section 45-506, Idaho Code, be, and the same is hereby amended to read as follows:

45-506. LIENS PREFERRED CLAIMS. The liens provided for in this chapter shall be on equal footing with those liens within the same class of liens, without reference to the date of the filing of the lien claim or claims and are preferred to any lien, mortgage or other encumbrance, which may have attached subsequent to the time when the building, ~~improvement~~ or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or ~~professional~~ services were commenced to be furnished; also to any lien, mortgage, or other encumbr~~ance of~~ which the lienholder had no notice, and which was unrecorded at the time the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or professional services were commenced to be furnished.

SECTION 5. That Section 45-507, Idaho Code, be, and the same is hereby amended to read as follows:

45-507. CLAIM OF LIEN. (1) Any person claiming a lien pursuant to the provisions of this chapter must~~, within ninety (90) days after the completion of the labor or services or furnishing of materials, or the cessation of the labor, services or furnishing of materials for any cause,~~ file a claim for record with the county recorder for the county in which such property or some part thereof is situated~~, a claim containing a statement.~~

(2) The claim shall be filed within ninety (90) days after the completion of the labor or services, or furnishing of materials.

(3) The claim shall contain:

(a) A statement of his demand, after deducting all just credits and offsets~~, with the;~~

(b) The name of the owner, or reputed owner, if known~~, and also;~~

(c) T~~t~~he name of the person by whom he was employed or to whom he furnished the materials~~,~~; and ~~also~~

(d) A~~a~~ description of the property to be charged with the lien, sufficient for identification~~, which.~~

(4) Such claim must be verified by the oath of the claimant, his agent or attorney, to the effect that the affiant believes the same to be just.

(5) A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery or mailing shall be made no later than twenty-four (24) hours following the filing of said claim of lien.

SECTION 6. That Section 45-512, Idaho Code, be, and the same is hereby amended to read as follows:

45-512. JUDGMENT TO DECLARE PRIORITY. In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien or class of liens which shall be in the following order:

1. All laborers, other than contractors or subcontractors.

2. All materialmen including persons furnishing, renting or leasing equipment, materials or fixtures as defined in section 28-12-309, Idaho Code, other than contractors or subcontractors.

3. Subcontractors.

4. The original contractor.

5. All professional engineers and licensed surveyors.

And in case the proceeds of sale under this chapter shall be insufficient to pay all lienholders under it:

1. The liens of all laborers, other than the original contractor and subcontractor, shall first be paid in full, or pro rata if the proceeds be insufficient to pay them in full.

2. The lien of materialmen including persons furnishing, renting or leasing equipment, materials or fixtures as defined in section 28-12-309, Idaho Code, other than the original contractor or subcontractor, shall be paid in full, or pro rata if the proceeds be insufficient to pay ~~them~~ in full.

3. Out of the remainder, if any, the subcontractors shall be paid in full, or pro rata if the remainder be insufficient to pay them in full, and the remainder, if any, shall be paid pro rata to the original contractor and the professional engineers and licensed surveyors; and each claimant shall be entitled to execution for any balance due him after such distribution; such execution to be issued by the clerk of the court upon demand, at the return of the sheriff or other officer making the sale, showing such balance due.

SECTION 7. That Section 45-515, Idaho Code, be, and the same is hereby amended to read as follows:

45-515. ACTION TO RECOVER DEBT. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done, equipment, materials or fixtures rented or leased or materials furnished, to maintain a personal action to recover such debt against the person liable therefor.

Approved March 23, 2001.

CHAPTER 153
(H.B. No. 147)

AN ACT

RELATING TO STATE MILITIA; AMENDING SECTION 46-1107, IDAHO CODE, TO PROVIDE THAT CERTAIN MEMBERS MAY DEMAND TRIAL BY COURT-MARTIAL IN LIEU OF NONJUDICIAL PUNISHMENT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 46-1108, IDAHO CODE, TO STRIKE A REFERENCE TO NOTICE OF DECLARED EMERGENCY, TO BROADEN THE AUTHORITY OF COMMANDING OFFICERS TO ARREST CERTAIN MEMBERS OF THE IDAHO MILITARY, TO PROVIDE FOR A PROCEDURE FOLLOWING ARREST, TO STRIKE REFERENCE TO PROBABLE CAUSE FINDING THAT THE MEMBER RECEIVED ADEQUATE NOTICE OF DECLARED EMERGENCY, TO PROVIDE FOR ISSUANCE AND SERVICE OF WARRANTS, TO PROVIDE FOR ISSUANCE OF ARREST WARRANTS BY CONVENING AUTHORITIES FOR PARTICULAR MILITARY PERSONNEL TO CERTAIN LAW ENFORCEMENT OFFICERS, TO PROVIDE FOR ARREST AND INCARCERATION AND TO MAKE A TECHNICAL CORREC-

TION; AND AMENDING SECTION 46-1124, IDAHO CODE, TO PROVIDE FOR RULES OF PROCEDURE AND TO PROVIDE THAT ENFORCEMENT OF THE IDAHO CODE OF MILITARY JUSTICE SHALL CONFORM AS NEARLY AS PRACTICABLE TO SPECIFIED RULES AND CASE PRECEDENT.

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

SECTION 1. That Section 46-1107, Idaho Code, be, and the same is hereby amended to read as follows:

46-1107. COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT. (1) Any commanding officer, not necessarily the accused's immediate commanding officer, may, in addition to or in lieu of admonition or reprimand, impose one (1) or more of the following disciplinary punishments for minor offenses punishable under this ~~code~~ chapter, without the intervention of a court-martial. However, except in the case of a member attached to or embarked on a vessel, punishment may not be imposed upon any member under this chapter if the member has, before the imposition of punishment, demanded trial by court-martial in lieu of the punishment.

(a) Upon officers of his command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than seven (7) consecutive duty days during any period or periods of duty;

(ii) If imposed by a general officer:

1. Restriction to quarters for not more than seven (7) consecutive duty days during any period or periods of duty;

2. Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) duty days during any period or periods of duty;

3. Fine, not to exceed two hundred dollars ($200).

(b) Upon other personnel of his command:

(i) Reduction to the next inferior grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(ii) Extra duties, including fatigue or other duties for not more than seven (7) consecutive duty days during any period or periods of duty;

(iii) Restriction to certain specified limits, with or without suspension from duty for not more than seven (7) consecutive duty days during any period or periods of duty;

(iv) Fine, not to exceed seventy-five dollars ($75.00);

(v) If imposed by a commander of the rank of major or above:

1. Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction, but an enlisted member above the grade of E-4 may not be reduced more than two (2) grades;

2. Extra duties, including fatigue or other duties, for not more than fourteen (14) consecutive duty days during any period or periods of duty;

3. Restriction to certain specified limits, with or with-

out suspension from duty, for not more than fourteen (14) consecutive duty days during any period or periods of duty;

4. Fine, not to exceed one hundred dollars ($100).

No two (2) or more of the punishments of extra duties and restrictions may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment so that the total period for both punishments will not exceed the maximum imposable for either punishment.

(2) The member shall be given written notification of a commander's intention to impose punishment under this section and an opportunity to make a personal presentation to the commander proposing to impose the punishment prior to imposition of punishment and of his right to appeal within two (2) duty days to the next higher authority.

(3) The officer who imposes the punishment authorized in subsection (1) of this section, or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade imposed under subsection (1) of this section, whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights and privileges affected. When mitigating extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment originally imposed.

(4) A person punished under this section who considers his punishment unjust or disproportionate to the offense may appeal to the next higher authority by delivering written notice of the appeal within two (2) duty days after receipt of written notification of the punishment. The appeal shall be promptly decided, but the person punished shall not in the meantime be required to undergo the punishment adjudged. The higher authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (3) of this section by the officer who imposed the punishment.

(5) The imposition and enforcement of disciplinary punishment under this section for any act or omission shall not be a bar to trial by court-martial for a serious offense growing out of the same act or omission, and not properly punishable under this section, but shall be considered in imposing any sentence for a court-martial conviction arising out of the same act or omission.

(6) All records of nonjudicial punishment under this section shall be destroyed upon the termination of the person's current period of enlistment or after two (2) years of honorable service in the military without further disciplinary action under this section or a conviction by court-martial, whichever occurs first.

(7) The term "minor offenses," as used in this section, means any acts or omissions constituting offenses under the punitive sections of this ~~code~~ chapter, unless deemed to be a serious offense by the convening authority.

SECTION 2. That Section 46-1108, Idaho Code, be, and the same is hereby amended to read as follows:

46-1108. ARREST. Arrest of members of the Idaho military not in

federal service by members of the Idaho military while acting in their military capacity is prohibited, except in the following circumstances:

(1) If any member ~~of the Idaho military~~ fails or refuses to report to his appointed place of duty, ~~upon adequate notice of an emergency declared by the governor, the~~ his commanding officer ~~of the member's unit~~ is authorized to arrest or cause to be arrested such member ~~or cause him to be arrested~~ and have him brought before the commanding officer at his unit or organization headquarters, whether such headquarters be located within or without the borders of the state. After such an arrest, the commanding officer is authorized to transport, or cause to be transported, such member to his appointed place of duty, whether within or without the borders of the state. Furthermore, if a commander finds that probable cause exists to believe that a minor offense has been committed by a member of his command, he may cause the member to be arrested and brought before him for the purpose of processing nonjudicial punishment under section 46-1107, Idaho Code. If military personnel are not available for the purpose of making the arrest~~,~~ or if the ~~commanding officer ordering the~~ arrest deems it advisable, he may issue a warrant~~, based upon a finding that probable cause exists that the member has failed or refused to report as ordered after receiving adequate notice of such order during a declared emergency,~~ to any sheriff or peace officer authorized to serve ~~such warrant in the same manner as other~~ warrants of arrest, and such sheriff or peace officer shall serve such warrants of arrest immediately, whenever practicable, and make return thereof to the commanding officer issuing the warrant.

(2) If any member of the Idaho military has had charges preferred against him under this ~~code~~ chapter, and the convening authority to whom the charges have been forwarded has found that probable cause exists that the offense was committed by the accused and that the incarceration of the accused pending court-martial is required because of special circumstances found to exist which warrant such incarceration, then the convening authority is authorized to arrest such member or cause him to be arrested and have him confined pending trial. If military personnel are not available for the purpose of making the arrest, or if the convening authority deems it advisable, he may issue a warrant to any sheriff or peace officer authorized to serve such warrant in the same manner as other warrants of arrest, and said sheriff or peace officer shall effect the arrest and hold the accused in the county jail of the county in which the arrest is effected. Furthermore, if a commander finds that probable cause exists that a minor offense has been committed by a member of his command, he may cause the member to be arrested and brought before him for the purpose of processing nonjudicial punishment under section 46-1107, Idaho Code. If military personnel are not available for the purpose of making the arrest, or if the convening authority deems it advisable, he may issue a warrant to any sheriff or peace officer authorized to serve such warrant in the same manner as other warrants of arrest, and said sheriff or peace officer shall effect the arrest and hold the accused in the county jail of the county in which the arrest is effected. The arresting officer shall return said warrant to the convening authority and notify him of the arrest and the location of the arrestee so that the convening authority may further process the charges against the accused. Upon receipt of the notification of arrest, the commanding officer shall direct that the arrestee be retrieved and brought before him within twenty-four (24) hours.

(3) If any member of the Idaho military is accused of an offense against a civil authority, any other member of the Idaho military may, on request by a civil authority, arrest such accused member, but in such case, immediate steps must be taken to deliver such member forthwith to the appropriate civil authorities.

SECTION 3. That Section 46-1124, Idaho Code, be, and the same is hereby amended to read as follows:

46-1124. RULES OF PROCEDURE AND EVIDENCE. ~~The military rules of evidence prescribed by the president of the United States shall apply in all cases tried under this code~~ Enforcement of the Idaho code of military justice shall conform as nearly as practicable to the rules of courts-martial, military rules of evidence, and case precedent of the armed forces of the United States, except where in conflict with other provisions of this chapter.

Approved March 23, 2001.

CHAPTER 154
(H.B. No. 156, As Amended)

AN ACT

RELATING TO THE REGULATION OF INSURANCE; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1059, IDAHO CODE, TO PROVIDE THAT WHEN A PRODUCER ACTS AS A WHOLESALE PRODUCER, THE PRODUCER MAY CHARGE A FEE OR MAY BE COMPENSATED BY A COMBINATION OF FEES AND COMMISSIONS, TO PROVIDE DUTIES OF THE WHOLESALE PRODUCER, TO PROVIDE FOR DISCLOSURE OF CERTAIN INFORMATION, TO DEFINE TERMS AND TO PROVIDE APPLICATION TO PERSONAL LINES INSURANCE POLICIES OR SURETY INSURANCE POLICIES; AMENDING SECTION 41-1803, IDAHO CODE, TO PROVIDE THAT WHOLESALE PRODUCER FEES CHARGED PURSUANT TO SECTION 41-1059, IDAHO CODE, SHALL NOT BE CONSIDERED A PREMIUM UNLESS THE FEE RELATES TO A SURPLUS LINE POLICY.

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

SECTION 1. That Chapter 10, 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 41-1059, Idaho Code, and to read as follows:

41-1059. WHOLESALE PRODUCER FEES. (1) Notwithstanding any other provision of title 41, Idaho Code, including, but not limited to, sections 41-1314, 41-1323 and 41-1324, Idaho Code, when a producer acts as a wholesale producer, the producer may charge a fee or may be compensated by a combination of fees and commissions. The wholesale producer must provide a written statement to the retail producer that describes the services the wholesale producer is to perform and the fees the wholesale producer is to receive. Information regarding the amount of the fees charged by the wholesale producer shall be disclosed in writing on the face of the policy as a separately itemized charge.

(2) For purposes of this section:

(a) "Retail producer" shall mean a producer in those situations where the producer negotiates, sells or solicits a commercial lines property or casualty contract directly with an insured or a prospective insured.

(b) "Wholesale producer" shall mean a producer in those situations where the producer negotiates, sells or solicits a commercial lines property or casualty insurance contract directly with a retail producer, but not with an insured or a prospective insured.

(3) The provisions of this section shall not apply to personal lines insurance policies or surety insurance policies.

SECTION 2. That Section 41-1803, Idaho Code, be, and the same is hereby amended to read as follows:

41-1803. "PREMIUM" DEFINED. "Premium" is the consideration for insurance by whatever name called. Any "assessment," or any "membership," "policy," "survey," "inspection," "service" or similar fee or other charge in consideration for an insurance contract is deemed part of the premium; provided that wholesale producer fees charged pursuant to section 41-1059, Idaho Code, shall not be considered a premium unless the fee relates to a surplus line policy.

Approved March 23, 2001.

CHAPTER 155
(H.B. No. 161)

AN ACT

RELATING TO THE INSURANCE GUARANTY ASSOCIATION; AMENDING SECTION 41-3605, IDAHO CODE, TO REVISE THE DEFINITION OF ACCOUNT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 41-3606, IDAHO CODE, TO DELETE THE REQUIREMENT THAT THE INSURANCE GUARANTY ASSOCIATION MAINTAIN THREE SEPARATE ACCOUNTS, TO PROVIDE FOR ONE ACCOUNT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 41-3608, IDAHO CODE, TO DELETE THE REQUIREMENT TO ALLOCATE CLAIMS AND ASSESSMENTS BY THE IDAHO INSURANCE GUARANTY ASSOCIATION AMONG THREE ACCOUNTS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-3605, Idaho Code, be, and the same is hereby amended to read as follows:

41-3605. DEFINITIONS. As used in this act:

(1) "Account" means ~~any one (1) of~~ the ~~three (3)~~ accounts created by section 41-3606, Idaho Code.

(2) "Affiliate" means a person who directly, or indirectly, through one (1) or more intermediaries controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(3) "Association" means the Idaho insurance guaranty association created under section 41-3606, Idaho Code.

(4) "Claimant" means any insured making a first party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(5) "Director" means the director of the department of insurance of this state.

(6) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(7) "Covered claim" means an unpaid claim, including one for unearned premiums submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this act applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this act and:

(a) ~~t~~The claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or

(b) ~~t~~The claim is a first party claim for damage to property with a permanent location in this state.

"Covered claim" shall not include any amount awarded as punitive or exemplary damages; any amount sought as a return of premium under any retrospective rating plan; any first party claims by an insured which is an affiliate of the insolvent insurer; or any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries, reinsurance recoveries, contribution, indemnification or otherwise. No claim for any amount due any reinsurer, insurer, insurance pool or underwriting association may be asserted against a person insured under a policy issued by an insolvent insurer other ~~that~~ than to the extent such claim exceeds the association obligation limitations set forth in section 41-3608, Idaho Code.

(8) "Insolvent insurer" means an insurer holding a certificate of authority issued by the director to transact insurance in this state either at the time the policy was issued or when the insured event occurred and against whom a final order of liquidation has been entered after the effective date of this act with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.

(9) "Member insurer" means any person who:

(a) ~~w~~Writes any kind of insurance to which this act applies under section 41-3603, Idaho Code, including the exchange of reciprocal or interinsurance contracts; and

(b) ~~i~~Is licensed to transact insurance in this state, except assessable mutual companies. An insurer shall cease to be a member insurer effective on the day following the termination or expiration of its license to transact the kinds of insurance to which this act

applies, however, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer which becomes an insolvent insurer prior to the termination or expiration of the insurer's license.

(10) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(11) "Ocean marine insurance" includes any form of insurance, regardless of the name, label or marketing designation of the insurance policy, which insures against maritime perils or risks and other related perils or risks, which are usually insured against by traditional marine insurance, such as hull and machinery, marine builders risk, and marine protection and indemnity. Such perils and risks insured against include, without limitation, loss, damage, expense or legal liability of the insured for loss, damage or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways for commercial purposes, including liability of the insured for personal injury, illness or death or for loss or damage to the property of the insured or another person.

(12) "Person" means any individual, corporation, partnership, association or voluntary organization.

(13) "Warranty insurance" includes a contract under which one (1) other than a manufacturer, builder, seller or lessor of the subject property undertakes to perform or provide, for a fixed term and consideration, repair or replacement service or indemnification therefor for the operational or structural failure of specified real or personal property or property components. Warranty insurance includes, but is not limited to, automobile guaranty insurance.

SECTION 2. That Section 41-3606, Idaho Code, be, and the same is hereby amended to read as follows:

41-3606. INSURANCE GUARANTY ASSOCIATION -- INSURERS REQUIRED TO BE MEMBERS -- PURPOSES. There is created a nonprofit unincorporated legal entity to be known as the Idaho ~~I~~insurance ~~G~~guaranty ~~A~~association. All insurers defined as member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 41-3609, Idaho Code, and shall exercise its powers through a board of directors established under section 41-3607, Idaho Code. For purposes of administ~~ration and~~ assessment, the association shall ~~be divided into three (3) separate accounts: (a) the workmen's compensation insurance account; (b) the automobile insurance account; and (c) the account for all other insurance to which this act applies~~ maintain one (1) account. Any accounts in existence on June 30, 2001, shall be consolidated into one (1) account.

SECTION 3. That Section 41-3608, Idaho Code, be, and the same is

hereby amended to read as follows:

41-3608. OBLIGATIONS AND POWERS OF ASSOCIATION. (1) The association shall:

(a) Be obligated to pay covered claims existing prior to the order of liquidation arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the order of liquidation, or before the insured replaces the policy or causes its cancellation, if he does so within thirty (30) days of the order of liquidation. Such obligation shall be satisfied by paying to the claimant an amount as follows:

(i) The full amount of a covered claim for benefits under a worker's compensation insurance coverage;

(ii) An amount not exceeding ten thousand dollars ($10,000) per policy for covered claim for the return of unearned premium;

(iii) An amount not exceeding three hundred thousand dollars ($300,000) per claim for all other covered claims.

(b) In no event shall the association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises.

Notwithstanding any other provision of this chapter, a covered claim shall not include any claim filed with the association after the earlier of: (i) eighteen (18) months after the date of the order of liquidation, or (ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured policy for incurred-but-not-reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment by settlement releasing the insured or on a judgment of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit.

(c) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations.

(d) ~~Allocate claims paid and expenses incurred among the three (3) accounts separately, and a~~Assess member insurers separately for ~~each account~~ amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency and other expenses authorized by this ~~act~~ chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance ~~in~~ covered by the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance ~~in~~ covered by the account. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any one (1) year ~~on any~~

~~account~~ an amount greater than one ~~per-cent~~ percent (1%) of that member insurer's net direct written premiums for the calendar year preceding the assessment. ~~on-the-kinds-of-insurance-in-the--account.~~ If the maximum assessment, together with the other assets of the association in ~~any~~ the account, does not provide in any one (1) year ~~in-any-account~~ an amount sufficient to make all necessary payments, ~~from--that--account,~~ the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it deems reasonable, including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account. ~~for-which-the-assessment-is-made.~~

(e) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested. The association shall have the right to appoint or substitute and to direct legal counsel retained under liability insurance policies for the defense of covered claims.

(f) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the director, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this ~~act~~ chapter.

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this ~~act~~ chapter in accord with the plan of operation.

(c) Sue or be sued, and such power to sue includes the power and right to intervene as a party before any court that has jurisdiction over the insolvent insurer as defined by this ~~act~~ chapter.

(d) Negotiate and become a party to such contracts as are necessary

to carry out the purpose of this ~~act~~ chapter.

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this ~~act~~ chapter.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association ~~in any account~~ exceed the liabilities ~~of that account~~ as estimated by the board of directors for the coming year.

Approved March 23, 2001.

CHAPTER 156
(H.B. No. 162)

AN ACT

RELATING TO CITY ORDINANCES; AMENDING SECTION 50-901, IDAHO CODE, TO PROVIDE THAT AT LEAST ONE COPY OF THE SUPPLEMENTAL CODE SHALL BE FILED FOR PUBLIC USE AND EXAMINATION PRIOR TO ADOPTION BY THE CITY COUNCIL, TO PROVIDE THAT ONE COPY OF THE SUPPLEMENTAL CODE SHALL BE RETAINED BY THE CITY AND FILED IN THE OFFICE OF THE CITY CLERK, TO MAKE TECHNICAL CORRECTIONS AND TO MAKE A GRAMMATICAL CORRECTION.

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

SECTION 1. That Section 50-901, Idaho Code, be, and the same is hereby amended to read as follows:

50-901. ORDINANCES ~~--~~ STYLE -- PUBLICATION -- WHEN EFFECTIVE -- IMMEDIATE OPERATION IN EMERGENCIES. The style of all ordinances shall be: "Be it ordained by the mayor and council of the city of ....." and all ordinances of a general nature, unless otherwise required by law, shall, before they take effect and within one (1) month after they are passed, be published in full or by summary as provided in section 50-901A, Idaho Code, in at least one (1) issue of the official newspaper of the city, or mailed as provided in section 60-109A, Idaho Code; provided, however, that in cases of riot, infections or contagious disease, or other impending danger~~,~~ requiring ~~its~~ immediate enforcement, such ordinances shall take effect upon the proclamation of the mayor or president of the council, posted in at least five (5) public places of the city; provided further, that nationally recognized codes such as, but not limited to, those establishing rules and regulations for the construction, alteration or repair of buildings, the installation of plumbing, the installation of electric wiring, fire prevention, gas piping installations, sanitary regulations, health measures, and statutes of the state of Idaho such as, but not limited to, those relating to the operation of motor vehicles, equipment of motor vehicles, traffic control devices, motor vehicle laws, liquor and beer laws, housing, construction, health and sanitation, may be adopted by a city council without including more than a particular reference to such code, and without publication or posting thereof, if adoption of such code be made in a regularly adopted and published ordinance; provided further, that ~~not~~

~~less--than-three~~ at least one (~~3~~1) ~~copies~~ copy of the supplemental code, duly certified by the city clerk, shall have been filed for use and examination by the public in the office of the clerk of the city prior to the adoption of the ordinance by the city council. Following its adoption by the city, ~~three~~ one (~~3~~1) ~~copies~~ copy of the supplemental code shall be retained by the city, ~~one-(1)-of~~ which shall be filed in the office of the city clerk.

Approved March 23, 2001.

CHAPTER 157
(H.B. No. 149)

AN ACT

RELATING TO INCOME TAX CREDITS FOR CHARITABLE CONTRIBUTIONS; AMENDING SECTION 63-3029C, IDAHO CODE, TO PROVIDE AN INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS MADE TO GEM YOUTH SERVICES OR ITS FOUNDATION; 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 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 gem youth services 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, 2001.

Approved March 23, 2001.

CHAPTER 158
(H.B. No. 177)

AN ACT
RELATING TO LICENSES TO HUNT, FISH AND TRAP; AMENDING SECTION 36-406, IDAHO CODE, TO EXTEND ENTITLEMENT FOR DISABLED PERSONS LICENSES TO THOSE DEEMED DISABLED BY THE RAILROAD RETIREMENT BOARD PURSUANT TO TITLE 45 OF THE UNITED STATES CODE.

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

SECTION 1. 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 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, 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, 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 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 a fee as specified in section 36-416, Idaho Code, for a hunting license, and 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 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.

(d) Senior Resident Combination. A license of the fourth class may be had by a person 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 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 combined 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 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, 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) Four dollars ($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) 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 license must be issued without the archery permit validation.

(g) Disabled Persons Licenses -- Combination -- Fishing. A license of the first class may be had by any resident disabled person on payment of 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 deemed disabled by the railroad retirement board pursuant to title 45 of the United States Code, or certified as eligible for federal supplemental security income (SSI); ~~social~~ security disability income (SSDI); a nonservice-connected vet-

erans 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.

Approved March 23, 2001.

CHAPTER 159
(H.B. No. 180, As Amended)

AN ACT

RELATING TO PENALTIES FOR VIOLATING THE SAFE BOATING LAW; AMENDING SECTION 67-7033, IDAHO CODE, TO REDUCE CERTAIN MISDEMEANOR PENALTIES TO INFRACTIONS FOR PERSONS VIOLATING PROVISIONS OF THE STATE'S SAFE BOATING LAW AND TO PROVIDE FOR MISDEMEANOR PENALTIES FOR CERTAIN VIOLATIONS OF THE STATE'S SAFE BOATING LAW.

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

SECTION 1. That Section 67-7033, Idaho Code, be, and the same is hereby amended to read as follows:

67-7033. PENALTIES. (1) Unless otherwise specifically provided, any person who shall violate any of the provisions of this chapter or any rule promulgated by the department pursuant to this chapter shall be guilty of ~~a misdemeanor~~ an infraction and be punished ~~by a fine of not more than three hundred dollars ($300) or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment~~ as provided in section 18-111, Idaho Code.

(2) Any person who shall be convicted of any second or subsequent violation of any of the ~~provisions~~ of law in addition to any other penalties authorized herein shall be required to attend and successfully complete a course on safe boating approved by the state boating law administrator and may, at the discretion of the court, be refused the privilege of operating any vessel on any of the waters of this state for a period not to exceed two (2) years.

(3) Any person who shall operate any vessel during the period when he has been denied the privilege to so operate by virtue of subsection (2) of this section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than three hundred dollars ($300), or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment.

(4) Any manufacturer who shall violate the provisions of this chapter with respect to the obligation for the installation of capacity of certification plates shall be guilty of ~~a misdemeanor~~ an infraction, and upon ~~conviction~~ being found to have committed the infraction, shall be punished ~~by a fine of not more than three hundred dollars ($300) or~~

~~by imprisonment of not more than thirty (30) days, or both such fine and imprisonment~~ as provided in section 18-111, Idaho Code, and each failure to affix a capacity or certification plate as provided in this chapter shall constitute a separate offense for each vessel with respect to which the failure occurs.

(5) Any person who pleads guilty to or is found guilty of violating the provisions of section 67-7016, 67-7017, 67-7025, 67-7026 or 67-7027, Idaho Code, shall be guilty of a misdemeanor and may be fined not more than three hundred dollars ($300), imprisoned for a period not to exceed thirty (30) days, or by both such fine and imprisonment.

(6) Any person who pleads guilty to or is found guilty of violating the provisions of section 67-7034, Idaho Code, shall be guilty of a misdemeanor and:

(a) May be fined an amount not to exceed one thousand dollars ($1,000);

(b) May be imprisoned for a period not to exceed six (6) months; and

(c) Shall be required to attend and successfully complete a course on safe boating approved by the designated state boating law administrator.

Approved March 23, 2001.

CHAPTER 160
(H.B. No. 183)

AN ACT

RELATING TO DUTY TO ADVISE ACCUSED OR DETAINED OF RIGHT TO COUNSEL; AMENDING SECTION 19-853, IDAHO CODE, TO CLARIFY THE APPOINTMENT OF ATTORNEYS AT PUBLIC EXPENSE IN UNIFORM POST-CONVICTION PROCEDURE ACT PROCEEDINGS.

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

SECTION 1. That Section 19-853, Idaho Code, be, and the same is hereby amended to read as follows:

19-853. DUTY TO NOTIFY ACCUSED OR DETAINED OF RIGHT TO COUNSEL -- APPOINTMENT OF COUNSEL. (a) If a person who is being detained by a law enforcement officer, or who is confined or who is the subject of hospitalization proceedings pursuant to sections 66-322, 66-326, 66-329 or 66-409, Idaho Code, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is not represented by an attorney under conditions in which a person having his own counsel would be entitled to be so represented, the law enforcement officers concerned, upon commencement of detention, or the court, upon formal charge or hearing, as the case may be, shall:

(1) clearly inform him of his right to counsel and of the right of a needy person to be represented by an attorney at public expense; and

(2) if the person detained or charged does not have an attorney, notify the public defender or trial court concerned, as the case may

be, that he is not so represented. As used in this subsection, the term "commencement of detention" includes the taking into custody of a probationer.

(b) Upon commencement of any later judicial proceeding relating to the same matter, including, but not limited to, preliminary hearing, arraignment, trial, any post-conviction proceeding, or post-commitment proceeding, the presiding officer shall clearly inform the person so detained or charged of his right to counsel and of the right of a needy person to be represented by an attorney at public expense. Provided, the appointment of an attorney at public expense in uniform post-conviction procedure act proceedings shall be in accordance with section 19-4904, Idaho Code.

(c) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the public defender or assign an attorney, as the case may be.

(d) Upon notification by the court or assignment under this section, the public defender or assigned attorney, as the case may be, shall represent the person with respect to whom the notification or assignment is made.

Approved March 23, 2001.

CHAPTER 161
(H.B. No. 184)

AN ACT

RELATING TO ATTORNEY'S FEES IN CIVIL ACTIONS; AMENDING SECTION 12-120, IDAHO CODE, TO PROVIDE FOR POSTJUDGMENT ATTORNEY'S FEES AND COSTS INCURRED IN COLLECTING ON JUDGMENTS ENTERED IN CERTAIN SMALL CLAIMS CASES AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 12-120, Idaho Code, be, and the same is hereby amended to read as follows:

12-120. ATTORNEY'S FEES IN CIVIL ACTIONS. (1) Except as provided in subsections (3) and (4) of this section, in any action where the amount pleaded is twenty-five thousand dollars ($25,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees, for the prosecution of the action, written demand for the payment of such claim must have been made on the defendant not less than ten (10) days before the commencement of the action; provided, that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety-five percent (95%) of the amount awarded to the plaintiff.

(2) The provisions of subsection (1) of this section shall also apply to any counterclaims, cross-claims or third party claims which may be filed after the initiation of the original action. Except that a ten

(10) day written demand letter shall not be required in the case of a counterclaim.

(3) In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

(4) In actions for personal injury, where the amount of plaintiff's claim for damages does not exceed twenty-five thousand dollars ($25,000), there shall be taxed and allowed to the claimant, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees. For the plaintiff to be awarded attorney's fees for the prosecution of the action, written demand for payment of the claim and a statement of claim must have been served on the defendant's insurer, if known, or if there is no known insurer, then on the defendant, not less than sixty (60) days before the commencement of the action; provided that no attorney's fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount at least equal to ninety percent (90%) of the amount awarded to the plaintiff.

The term "statement of claim" shall mean a written statement signed by the plaintiff's attorney, or if no attorney, by the plaintiff which includes:

(a) An itemized statement of each and every item of damage claimed by the plaintiff including the amount claimed for general damages and the following items of special damages: (i) medical bills incurred up to the date of the plaintiff's demand; (ii) a good faith estimate of future medical bills; (iii) lost income incurred up to the date of the plaintiff's demand; (iv) a good faith estimate of future loss of income; and (v) property damage for which the plaintiff has not been paid.

(b) Legible copies of all medical records, bills and other documentation pertinent to the plaintiff's alleged damages.

If the plaintiff includes in the complaint filed to commence the action, or in evidence offered at trial, a different alleged injury or a significant new item of damage not set forth in the statement of claim, the plaintiff shall be deemed to have waived any entitlement to attorney's fees under this section.

(5) In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable ~~post-judgment~~ postjudgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing.

(6) In any small claims case resulting in entry of a money judgment or judgment for recovery of specific property, the party in whose favor the judgment is entered shall be entitled to reasonable postjudgment

attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and an opportunity for hearing. The amount of such attorney's fees shall be determined by the court after consideration of the factors set out in rule 54(e)(3) of the Idaho rules of civil procedure, or any future rule that the supreme court of the state of Idaho may promulgate, but the court shall not base its determination of such fees upon any contingent fees arrangement between attorney and client, or any arrangement setting such fees as a percentage of the judgment or the amount recovered. In no event shall postjudgment attorney's fees exceed the principal amount of the judgment or value of property recovered.

Approved March 23, 2001.

CHAPTER 162
(H.B. No. 186)

AN ACT

RELATING TO INSURANCE PRODUCER AND INSURANCE CONSULTANT LICENSING; AMENDING CHAPTER 10, TITLE 41, IDAHO CODE, AS ADDED BY HOUSE BILL 35, AS ENACTED BY THE FIRST REGULAR SESSION OF THE FIFTY-SIXTH IDAHO LEGISLATURE, BY THE ADDITION OF A NEW SECTION 41-1036, IDAHO CODE, TO PROVIDE THAT CERTAIN LICENSED PRODUCERS AND CONSULTANTS SHALL MAKE AVAILABLE FOR INVESTIGATION CERTAIN RECORDS; AND AMENDING SECTION 41-1036, IDAHO CODE, AS ADDED BY HOUSE BILL 35, AS ENACTED BY THE FIRST REGULAR SESSION OF THE FIFTY-SIXTH IDAHO LEGISLATURE, TO REDESIGNATE THE SECTION.

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

SECTION 1. That Chapter 10, Title 41, Idaho Code, as added by House Bill 35, as enacted by the First Regular Session of the Fifty-sixth Idaho Legislature, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-1036, Idaho Code, and to read as follows:

41-1036. RECORDS. (1) Every person holding a license under this chapter shall make available through his principal place of business:

(a) If a producer, complete records of transactions placed through or countersigned by the producer; and

(b) If a consultant, complete records of subjects of insurance on which the consultant has acted.

(2) Records as provided in subsection (1) of this section shall include, but not be limited to:

(a) The names and addresses of insurer and insured;

(b) The number and expiration date of the policy or contract;

(c) The premium payable as to the policy or contract and fee payable as to consulting services;

(d) The date, time, insurer, insured and coverage of every binder made by the producer;

(e) All disclosures made by a producer to an insured or to a prospective insured or by a consultant to any person; and

(f) Such other information as the director may reasonably require.

(3) The records shall be kept available for inspection by the director for at least five (5) years after the creation or the completion, whichever is later, of the respective transactions or consulting services.

(4) This section shall not apply to life and disability insurance.

SECTION 2. That Section 41-1036, Idaho Code, as added by House Bill 35, as enacted by the First Regular Session of the Fifty-sixth Idaho Legislature, be, and the same is hereby amended to read as follows:

41-10367. SEVERABILITY. 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.

Approved March 23, 2001.

CHAPTER 163
(H.B. No. 191, As Amended)

AN ACT

RELATING TO SCHOOL DISTRICT TRUSTEE ZONES; AMENDING SECTION 33-313, IDAHO CODE, TO REQUIRE THAT TRUSTEE ZONES BE REDEFINED FOLLOWING THE DECENNIAL CENSUS AND TO STRIKE A PROVISION TO REQUIRE AN ELECTION; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Section 33-313, Idaho Code, be, and the same is hereby amended to read as follows:

33-313. TRUSTEE ZONES. Each elementary school district shall be divided into three (3) trustee zones and each other school district shall be divided into no fewer than five (5) or more than nine (9) trustee zones according to the provisions of section 33-501, Idaho Code. Any proposal to define the boundaries of the several trustee zones in each such school district shall include the determination, where appropriate, of the number of trustee zones in such district, and the date of expiration of the term of office for each trustee. The boundaries of the several trustee zones in each such school district shall be defined and drawn so that, as reasonably as may be, each such zone shall have approximately the same population.

Whenever the area of any district has been enlarged by the annexation of all or any part of another district, or by the correction of errors in the legal description of school district boundaries, any such additional territory shall be included in the trustee zone or zones contiguous to such additional territory until such time as the trustee zones may be redefined and changed. Trustee zones may be redefined and

changed, but not more than once every five (5) years in the manner hereinafter provided.

A proposal to redefine and change trustee zones of any district may be initiated by its board of trustees and shall be initiated by its board of trustees at the first meeting following the report of the decennial census, and submitted to the state board of education, or by petition signed by not less than fifty (50) school electors residing in the district, and presented to the board of trustees of the district. Within one hundred twenty (120) days following the decennial census or the receipt of a petition to redefine and change the trustee zones of a district the board of trustees shall prepare a proposal for a change which will equalize the population in each zone in the district and shall submit the proposal to the state board of education. Any proposal shall include a legal description of each trustee zone as the same would appear as proposed, a map of the district showing how each trustee zone would then appear, and the approximate population each would then have, should the proposal to change any trustee zones become effective.

Within sixty (60) days after it has received the said proposal the state board of education may approve or disapprove the proposal to redefine and change trustee zones and shall give notice thereof in writing to the board of trustees of the district wherein the change is proposed. Should the state board of education disapprove a proposal ~~that had been initiated at the request of petitioners,~~ the board of trustees shall within forty-five (45) days submit a revised proposal to the state board of education. Should the state board of education approve the proposal, ~~the board of trustees shall within sixty (60) days after notification of the approval of such proposal submit to the school district electors residing in the district, in an election to be held not less than thirty (30) days prior to the date of the next ensuing annual election of school district trustees, the question of approving or disapproving the proposal to change trustee zones. Notice of such election shall be posted and published, the election shall be held and conducted and the ballots canvassed, as provided in chapter 4, title 33, Idaho Code. If a majority of the school district electors residing in the district, and voting in the election, should approve the proposal,~~ the trustee zones shall be changed in accordance with the proposal.

At the next regular meeting of the board of trustees following the approval of the proposal the board shall appoint from its membership a trustee for each new zone to serve as trustee until that incumbent trustee's three (3) year term expires. If the current board membership includes two (2) incumbent trustees from the same new trustee zone, the board will select the incumbent trustee with the most seniority as a trustee to serve the remainder of his three (3) year term. If both incumbent trustees have equal seniority, the board will choose one (1) of the trustees by the drawing of lots. If there is a trustee vacancy in any of the new zones, the board of trustees shall appoint from the patrons resident in that new trustee zone, a person from that zone to serve as trustee until the next annual meeting. At the annual election a trustee shall be elected to serve during the term specified in the election for the zone. The elected trustee shall assume office at the annual meeting of the school district next following the election.

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 23, 2001.

CHAPTER 164
(H.B. No. 195)

AN ACT

RELATING TO PORT DISTRICT REVENUE BONDS; AMENDING SECTION 70-1808, IDAHO CODE, TO DELETE THE INTEREST RATE LIMITATION ON PORT DISTRICT REVENUE FUNDING OR REFUNDING BONDS.

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

SECTION 1. That Section 70-1808, Idaho Code, be, and the same is hereby amended to read as follows:

70-1808. FUNDING OR REFUNDING BONDS. The port commission of any port district may by resolution, from time to time provide for the issuance of funding or refunding revenue bonds to fund or refund any outstanding revenue or other warrants, bonds, and any premiums thereon, and coupons evidencing interest upon any such bonds at or before the maturity or first optional redemption date of such coupons, warrants or bonds, and may combine various outstanding revenue warrants and parts or all of various series and issues of outstanding revenue bonds and matured coupons in the amount thereof to be funded or refunded.

The port commission shall create a special fund for the sole purpose of paying the principal of and interest on such funding or refunding revenue bonds, into which fund the commission shall obligate and bind the port district to set aside and pay any part or parts of, or all of, or a fixed proportion of, or a fixed amount of the gross revenue of the port district sufficient to pay such principal and interest as the same shall become due, and if deemed necessary to maintain adequate reserves therefor.

Such funding or refunding bonds shall be negotiable instruments within the provisions and intent of the laws of this state, and the tax revenue of the port district may not be used to pay, secure, or guarantee the payment of the principal of and interest on such bonds. ~~The net interest cost to maturity on such funding or refunding bonds taken as a whole shall not exceed six per cent (6%) per annum and the amount of any premium to be paid to effect the redemption of outstanding revenue warrants or bonds shall not be considered in determining such net interest cost.~~

The port district may exchange such funding or refunding bonds for the warrants, bonds, and coupons being funded or refunded, or it may sell such funding or refunding bonds in the manner and at such price as the port commission shall deem to be for the best interest of the district and its inhabitants, either at public or private sale.

The provisions of this act relating to the terms, conditions, covenants, issuance, and sale of revenue bonds shall be applicable to such funding or refunding bonds except as may be otherwise specifically provided in this section.

Approved March 23, 2001.

CHAPTER 165
(H.B. No. 196)

AN ACT

RELATING TO LEASE OF PORT AUTHORITY PROPERTY; AMENDING SECTION 70-1616, IDAHO CODE, TO PROVIDE THAT LEASES OF PORT DISTRICT REAL PROPERTY SHALL BE SECURED BY A BOND, RENTAL INSURANCE OR OTHER FINANCIAL GUARANTY AS DEEMED SUFFICIENT BY THE PORT COMMISSION.

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

SECTION 1. That Section 70-1616, Idaho Code, be, and the same is hereby amended to read as follows:

70-1616. LEASE OF PROPERTY -- PERFORMANCE BOND OR OTHER FINANCIAL GUARANTY. A port district may lease all real and personal property owned or controlled by it, and/or improvements thereon, upon such terms as ~~the~~ port commission deems proper; provided, that no lease shall be for a period longer than fifty (50) years, and each lease of real property shall be secured by a bond, with surety satisfactory to the port commission, ~~with--penalty-not-less-than-the-rental-for-one-sixth-(1/6)-of-the term,-but-in-no-case-less-than-the-rental-for-one-(1)-year-when-the-term is-one-(1)-year-or-more,~~ or by such other rental insurance or financial guaranty as may be deemed sufficient by the port commission, conditioned to perform the terms of such lease, including the payment in lieu of taxes provided for in this act; provided further, that where the property is held by the district under lease from the United States government or any agency, instrumentality or political subdivision thereof, the port commission may sublease said property, with option for extensions, up to the total term and extensions thereof permitted by such United States lease, but in any event not to exceed ninety (90) years; provided further, that in a lease, the term of which exceeds five (5) years, and when at the option of the port commission it is so stipulated in the lease, the commission shall accept, with surety satisfactory to it, a bond or other such rental insurance or financial guaranty satisfactory to the port commission, conditioned to perform the terms of the lease for some part of the term, in no event less than five (5) years unless the remainder of the unexpired term is less than five (5) years, in which case for the full remainder and in every such case the commission shall require of the lessee, another or other like bond or other rental insurance or financial guaranty to be delivered within two (2) years, and not less than one (1) year prior to the expiration of the period covered by ~~the existin~~g bond, covering an additional part of the term in accordance with the foregoing provisions in respect to the original bond, and so on until the end of the term so that there will always

be in force a bond or other rental insurance or financial guaranty securing the performance of the lease, and the penalty in each bond or other rental insurance or financial guaranty shall be not less than the rental for one-half (1/2) the period covered thereby, but no bond or other rental insurance or financial guaranty shall be construed to secure the furnishing of any other bond or other rental insurance or financial guaranty.

Approved March 23, 2001.

CHAPTER 166
(H.B. No. 202)

AN ACT

RELATING TO PROPERTY TAX EXEMPTIONS; AMENDING SECTION 63-602G, IDAHO CODE, TO PROVIDE THAT AN OWNER OF PROPERTY IS ENTITLED TO AN EXEMPTION IF RESIDENTIAL IMPROVEMENTS ARE OWNER-OCCUPIED AFTER JANUARY 1 BUT BEFORE APRIL 15 AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 63-702, IDAHO CODE, TO PROVIDE THAT A PROPERTY TAX REDUCTION SHALL BE ALLOWED IF AN OWNER OF PROPERTY OCCUPIES RESIDENTIAL IMPROVEMENTS AFTER JANUARY 1 BUT BEFORE APRIL 15 AND IF NO OTHER PROPERTY TAX REDUCTIONS HAVE BEEN CLAIMED.

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

SECTION 1. That Section 63-602G, Idaho Code, be, and the same is hereby amended to read as follows:

63-602G. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS. (1) During the tax year 1983 and each year thereafter, the first fifty thousand dollars ($50,000) of the market value for assessment purposes of residential improvements, or fifty percent (50%) of the market value for assessment purposes of residential improvements, whichever is the lesser, shall be exempt from property taxation.

(2) The exemption allowed by this section may be granted only if:

(a) The residential improvements are owner-occupied and used as the primary dwelling place of the owner as of January 1, provided that in the event the residential improvements are owner-occupied after January 1 but before April 15, the owner of the property is entitled to the exemption. The residential improvements may consist of part of a multidwelling or multipurpose building and shall include all of such dwelling or building except any portion used exclusively for anything other than the primary dwelling of the owner. The presence of an office in an owner-occupied residential property, which office is used for multiple purposes, including business and personal use, shall not prevent the owner from claiming the exemption provided in this section; and

(b) The tax commission has certified to the board of county commissioners that all properties in the county which are subject to appraisal by the county assessor have, in fact, been appraised uniformly so as to secure a just valuation for all property within the county; and

(c) The owner has certified to the county assessor by April 15 that:

(i) He is making application for the exemption allowed by this section;

(ii) That the residential improvements are his primary dwelling place; and

(iii) That he has not made application in any other county for the exemption, and has not made application for the exemption on any other residential improvements in the county.

(d) For the purpose of this section, the definition of owner shall be the same definition set forth in section 63-701(8), Idaho Code.

When an "owner" is any person who as grantor created a revocable or irrevocable trust and named himself or herself as beneficiary of that trust, or who is a partner of a limited partnership, a member of a limited liability company or shareholder of a corporation, he or she may provide proof of the trust, limited partnership, limited liability company or corporation with an affidavit stating: (i) the name of the grantor, partner, member or shareholder; (ii) a statement that the grantor is the beneficiary of the trust, the person is a partner of the limited partnership, a member of the limited liability company or shareholder of the corporation; and (iii) the grantor, partner, member or shareholder is the owner-occupier of the residential property and uses the property as the primary dwelling place of the owner as of January 1.

The affidavit shall include the attaching of the copies of those portions of the trust which set forth the grantor, the grantor as beneficiary and the signature page of the trust; those portions of the articles of organization or operating agreement of the limited liability company indicating the person's membership in the company; those portions of the limited partnership agreement or other records of the limited partnership indicating that the person has been admitted to the partnership; or those portions of the articles of incorporation indicating that the person is a shareholder of the corporation.

(e) Any owner may request in writing the return of all copies of any documents submitted with the affidavit set forth in paragraph (d) of this subsection that are held by a county assessor, and the copies shall be returned by the county assessor upon submission of the affidavit in proper form.

(f) For the purpose of this section, the definition of "primary dwelling place" shall be the same definition set forth in section 63-701(9), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(7), Idaho Code.

(3) An owner need only make application for the exemption described in subsection (1) of this section once, as long as all of the following conditions are met:

(a) The owner has received the exemption during the previous year as a result of his making a valid application as defined in subsection (2)(c) of this section.

(b) The owner still occupies the same residential improvements for which he made application.

(c) The residential improvements described in subsection (3)(b) of

this section are owner-occupied and used as the primary dwelling place of the owner as of January 1; provided however, that in the event the residential improvements are owner-occupied after January 1 but before April 15, the owner of the property is entitled to the exemption.

(4) The exemption allowed by this section must be taken before the reduction in taxes provided by sections 63-701 through 63-710, Idaho Code, is applied.

(5) The legislature declares that this exemption is necessary and just.

(6) Residential improvements having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to the owner's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the ~~i~~Internal ~~r~~Revenue ~~c~~Code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone, as defined in section 112 of the ~~i~~Internal ~~r~~Revenue ~~c~~Code, and such improvements would have otherwise qualified under this section, then the board of county commissioners of the county in which the residential improvements are located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.

SECTION 2. That Section 63-702, Idaho Code, be, and the same is hereby amended to read as follows:

63-702. CLAIM IS PERSONAL -- EXCEPTIONS. (1) The right to file a claim under the provisions of sections 63-701 through 63-710, Idaho Code, shall be personal to the claimant and shall not survive his death. A property tax reduction shall be allowed pursuant to the provisions of sections 63-701 and 63-710, Idaho Code, if the owner occupies the residential improvements after January 1 but before April 15, and if no other property tax reductions have been claimed. Such right may be exercised on behalf of a living claimant by an agent authorized in writing to so act or by a guardian or other representative acting pursuant to judicial authority. If a claimant dies after having filed a timely claim, the amount thereof shall be allowed to his personal representative, if one is appointed, or to surviving heirs.

(2) In the case of property owned by an estate, the deceased owner's widow or widower:

(a) May file a claim on behalf of his or her deceased spouse if the deceased spouse qualified or would have qualified as a claimant on January 1 of the year in which the claim is filed; or

(b) Shall be deemed the owner of the property in any year after the year of the death of the spouse.

Approved March 23, 2001.

CHAPTER 167
(H.B. No. 212)

AN ACT

RELATING TO THE SOCIAL WORK LICENSING ACT; REPEALING SECTIONS 2, 3 AND 4, CHAPTER 166, LAWS OF 2000; AMENDING SECTION 54-3215, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM THE SOCIAL WORK LICENSING ACT; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Sections 2, 3 and 4, Chapter 166, Laws of 2000, be, and the same are hereby repealed.

SECTION 2. 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. 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.

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 23, 2001.

CHAPTER 168
(H.B. No. 215)

AN ACT

RELATING TO WHAT PERSONS SHALL NOT BE ISSUED A MOTOR VEHICLE DRIVER'S LICENSE; AMENDING SECTION 49-303, IDAHO CODE, TO PROVIDE WHERE A DRIVER'S LICENSE HAS BEEN REVOKED, SUSPENDED, CANCELED OR DISQUALIFIED IN ANY OTHER JURISDICTION, AND THE DRIVER HAS COMPLETED THE PERIOD OF REVOCATION, SUSPENSION, CANCELLATION OR DISQUALIFICATION AS SPECIFIED BY THE JURISDICTION, THAT PERSON MAY BE GRANTED A CLASS D DRIVER'S LICENSE IN THIS STATE IF FIVE YEARS HAVE ELAPSED FROM THE TIME OF ELIGIBILITY FOR REINSTATEMENT IN THE OTHER JURISDICTION, EVEN THOUGH THE DRIVER HAS NOT FULFILLED THE REQUIREMENTS FOR REINSTATEMENT IN THE OTHER JURISDICTION AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.

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

SECTION 1. 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, 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, 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~~ canceled for the duration of the cancellation, nor to any person whose license has been revoked, suspended, ~~cancelled~~ canceled or disqualified ~~by this~~ state or any other jurisdiction; provided however, where a driver's license has been revoked, suspended, canceled or disqualified in any other jurisdiction, and the driver has completed the period of revocation, suspension, cancellation or disqualification as specified by the jurisdiction, that person may be granted a class D driver's license in this state if five (5) years have elapsed from the time of eligibility for reinstatement in the other jurisdiction, even though the driver has not fulfilled the requirements for reinstatement in the 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 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 23, 2001.

CHAPTER 169
(H.B. No. 221)

AN ACT

RELATING TO WATER MEASUREMENT DISTRICTS; AMENDING SECTION 42-711, IDAHO CODE, TO AUTHORIZE AN ANNUAL CHARGE OF UP TO FIFTY DOLLARS PER YEAR FOR EACH DIVERSION MEASURED IF THE CHARGE IS ADOPTED BY RESOLUTION APPROVED BY VOTE OF THE WATER USERS AT A MEETING.

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

SECTION 1. That Section 42-711, Idaho Code, be, and the same is hereby amended to read as follows:

42-711. EXPENSES OF THE DISTRICT -- APPROVAL -- ALLOTMENT AND CHARGE AGAINST WATER USER. (1) District hydrographers shall prepare an accounting of all expenses of the district for the year. The accounting shall show:

(a) The time charged to the district by each employee of the district, the function performed by each employee for the time charged and the cost to the district for the time charged.

(b) The cost to the district for each activity of the advisory committee and for each activity a breakdown of the cost by per diem for committee members, travel costs, goods and services, and other costs with a description of the substance of the other costs.

(c) The cost to the district for travel and services, except as already included in paragraph (b) of this subsection, and a description of the activity performed for the district for each cost.

(d) The cost to the district for all real or personal property, equipment or facilities acquired, and a description and the cost of each.

The accounting shall be certified by the district hydrographer and the chairman of the advisory committee.

(2) The accounting shall be submitted to the director of the

department of water resources for approval.

(3) The expenses of the district shall be a charge against the water users in the district. The expenses of the district shall be apportioned among all water users included within the district in the following manner:

(a) A charge of twenty-five dollars ($25.00) per year for each diversion measured, provided the charge may be up to fifty dollars ($50.00) per year if adopted by resolution approved by vote of the water users at a meeting conducted in accordance with section 42-707, Idaho Code; and

(b) A pro rata share of the total expense of the district, minus the total amount charged for all diversions in the district from paragraph (a) of this subsection determined by the fraction the recorded diversion rate for each water right is to the total recorded diversion rate of all water rights being measured by the district.

(c) Except, if the total charge for all diversions measured in the district from paragraph (a) of this subsection is more than the total expense of the district, the individual charge for each diversion will be the total expense of the district divided by the number of diversions in the district and the pro rata share from paragraph (b) of this subsection will be zero (0).

(4) An allocation of the district expenses among the various users shall be prepared by the district hydrographer and filed with the director of the department of water resources and with the water measurement district treasurer.

Approved March 23, 2001.

CHAPTER 170
(H.B. No. 222)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-408, IDAHO CODE, TO PROVIDE FOR THE AUCTION OF BIGHORN SHEEP TAGS, TO LIMIT THE PORTION OF ALL PROCEEDS THAT MAY BE RETAINED BY AN ORGANIZATION SELECTED TO AUCTION A TAG, TO PROVIDE THAT TAGS FOR CERTAIN AUCTIONS SHALL BE TAKEN FROM THE NONRESIDENT BIGHORN SHEEP TAG QUOTA, TO PROVIDE FOR THE DEPOSIT AND USE OF PROCEEDS FROM CERTAIN AUCTIONS, TO REQUIRE HEARINGS PRIOR TO TRANSPLANTS OF BIGHORN SHEEP MADE WITH PROCEEDS RAISED PURSUANT TO CERTAIN AUCTIONS, TO PROVIDE FOR LOTTERIES FOR BIGHORN SHEEP TAGS, TO STRIKE REFERENCE TO THE DEPOSIT OF NET PROCEEDS FROM CERTAIN LOTTERIES INTO THE BIGHORN SHEEP ACCOUNT AND TO PROVIDE FOR THE DEPOSIT OF NET PROCEEDS INTO THE FISH AND GAME EXPENDABLE TRUST ACCOUNT, TO PROVIDE FOR THE USE OF NET PROCEEDS FROM CERTAIN LOTTERIES, TO STRIKE REFERENCE TO EXPENDITURE OF MONEYS FROM CERTAIN LOTTERIES PURSUANT TO APPROPRIATION, TO STRIKE REFERENCE TO CERTAIN TAGS BEING TAKEN FROM THE NONRESIDENT BIGHORN SHEEP TAG QUOTA, TO STRIKE REFERENCE TO CERTAIN DEPOSITS AND USES OF THE NET PROCEEDS AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 36-2107, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

SECTION 1. That Section 36-408, Idaho Code, be, and the same is hereby amended to read as follows:

36-408. COMMISSION'S AUTHORITY -- TAGS -- PERMITS -- NONRESIDENTS LIMITED -- OUTFITTERS SET-ASIDE. (~~a~~1) Tags and Permits -- Method of Use. The commission is hereby authorized to prescribe the number and kind of wildlife that may be taken under authority of the several types of tags and permits provided for in this title, and the manner in which said tags and permits shall be used and validated.

(~~b~~2) Limit -- Licenses, Tags or Permits -- Controlled Hunts. The commission is hereby authorized to establish a limit annually as to the number of each kind and class of licenses, tags, or permits to be sold or issued and is further authorized to limit the number or prohibit entirely, the participation by nonresidents in controlled hunts.

(~~c~~3) Outfitters Set-aside. When the commission establishes a limit as to the number of nonresident deer tags and nonresident elk tags, it shall set aside annually a maximum of twenty-five ~~per-cent~~ percent (25%) of the nonresident deer tag and nonresident elk tag limit. The set-aside tags shall be sold pursuant to commission rule, only to persons that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

In order for a person to purchase any set-aside nonresident deer tag or nonresident elk tag, that person's outfitter must submit an application with the proper fees as required by the director. If any nonresident deer tags or nonresident elk tags set aside pursuant to this subsection are unsold by July 1 of the year in which they were set aside, they may be sold by the department to the general public who are nonresidents. The commission may promulgate all necessary rules to implement the provisions of this subsection.

(~~d~~4) Deer and Elk Tag Allocation. If the commission limits the number of deer or elk tags available for use in any game management area, unit or zone, the commission may allocate by rule a number of deer or elk tags for use by hunters that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

(~~e~~5) Special Game Tags. The commission is hereby authorized to issue two (2) special bighorn sheep tags per year.

(a) Auction bighorn sheep tag. One special bighorn sheep tag shall be auctioned off by an incorporated nonprofit organization dedicated to wildlife conservation, selected by the commission. The tag shall be issued by the department of fish and game to the highest eligible bidder. No more than five ~~per-cent~~ percent (5%) of ~~the successful bid~~ all proceeds for the tag may be retained by the organization. The tag to be issued pursuant to this subsection shall be taken from the nonresident bighorn sheep tag quota. The net proceeds shall be forwarded to the director for deposit in the fish and game expendable trust account and shall be used for bighorn sheep research and management purposes. Moneys raised pursuant to this subsection may not be used to transplant additional bighorn sheep into that portion of southwest Idaho south of the Snake River and west of U.S. highway no. 93, nor for litigation or environmental impact statements involving bighorn sheep. No transplants of bighorn sheep accom-

plished with moneys raised pursuant to this subsection shall occur in any area until hearings are conducted in the area.

(b) Lottery bighorn sheep tag. The commission is also authorized to issue one (1) special bighorn sheep tag which will be disposed of by lottery. The lottery permit can be marketed by the department of fish and game or a nonprofit organization dedicated to wildlife conservation selected by the commission. The tag will be issued by the department of fish and game to an eligible person drawn from the lottery provided in this subsection. No more than twenty-five ~~per cent~~ percent (25%) of gross revenue can be retained for administrative costs by the organization. All net proceeds for the tag disposed of by lottery pursuant to this subsection shall be remitted to the ~~bighorn-sheep~~ department and deposited in the fish and game expendable trust account ~~which is hereby created in the dedicated fund~~. Moneys in the account from the lottery bighorn sheep tag shall be utilized by the department in solving problems between bighorn sheep and domestic sheep, solving problems between wildlife and domestic animals or improving relationships between sportsmen and private landowners by being utilized in the veterinarian program established in subsection (e)9. of section 36-106, Idaho Code~~,--and may--be--expended--pursuant--to-appropriation.-The-tags-to-be-issued pursuant-to-this-subsection-shall-be-taken-from-the-nonresident-bighorn-sheep-tag-quota.-The-net-proceeds-shall--be--forwarded--to--the director-for-deposit-in-the-fish-and-game-trust-account-and-shall-be used--for--bighorn--sheep-research-and-management-purposes-only-from the-special-bighorn-sheep-tag-auctioned-off-by-an-incorporated--nonprofit--association.--Moneys--raised-pursuant-to-this-subsection-may not-be-used-to-transplant-additional-bighorn-sheep-into-that-portion of-southwest-Idaho-south-of-the-Snake-river-and-west-of-U.S.-highway no.-93,--nor--for--litigation--or--environmental--impact--statements involving--bighorn--sheep.--No--transplants--of-bighorn-sheep-accomplished-with-moneys-raised-pursuant-to-this-subsection--shall--occur in-any-area-until-hearings-are-conducted-in-the-area.~~

SECTION 2. That Section 36-2107, Idaho Code, be, and the same is hereby amended to read as follows:

36-2107. POWERS AND DUTIES OF BOARD. The board which may by written agreement authorize the bureau of occupational licenses as agent to act in its interest, shall have the following duties and powers:

(a) To conduct examinations to ascertain the qualifications of applicants for outfitter's or guide's licenses, and to issue such licenses to qualified applicants, with such restrictions and limitations thereon as the board may find reasonable.

(b) To prescribe and establish rules of procedure and regulations to carry into effect the provisions of this act including, but not limited to, regulations prescribing all requisite qualifications of training, experience, knowledge of rules and regulations of governmental bodies, condition and type of gear and equipment, examinations to be given applicants, whether oral, written or demonstrative, or a combination thereof.

(c) To conduct hearings and proceedings to suspend, revoke or restrict the licenses of outfitters or guides, and to suspend, revoke or restrict said licenses for due cause in the manner hereinafter provided.

(d) The board is expressly vested with the power and the authority to enforce the provisions of this chapter and make and enforce any and all reasonable rules which shall by it be deemed necessary and which are not in conflict with the provisions of this chapter, for the express purpose of safeguarding the health, safety, welfare and freedom from injury or danger of those persons utilizing the services of outfitters and guides, and for the conservation of wildlife and range resources.

(e) The board shall have the power to cooperate with the federal and state government through its appropriate agency or instrumentality in matters of mutual concern regarding the business of outfitting and guiding in Idaho.

(f) The board shall have the power throughout the state of Idaho to request the attendance of witnesses and the production of such books, records and papers as may be required at any hearing before it, and for that purpose the board may request a district court to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers. Subpoenas shall be directed to the sheriff of any county in the state of Idaho where such witness resides or may be found. Subpoenas shall be served and returned in the same manner as subpoenas in a criminal case. The fees and mileage of the sheriff and witnesses shall be the same as that allowed in district court criminal cases, which fees and mileage shall be paid from any funds in the state treasury available therefor in the same manner as other expenses of the board are paid. Disobedience of any subpoena issued by the district court or the refusal by any witness in failing to testify concerning any matter regarding which he may lawfully be interrogated, or the failure to produce any books, records or papers shall constitute a contempt of the district court of any county where such disobedience or refusal occurs, and said court, or any judge thereof, by proceedings for contempt in said court, may, if such contempt be found, punish said witness as in any other case of disobedience of a subpoena issued from such court or refusal to testify therein.

(g) The board shall have the power to appoint an executive director to serve at the pleasure of the board. The executive director shall carry out such administrative duties as delegated to the director by the board. The board may, in its discretion, refuse, sustain or reverse, by majority vote, any action or decision of the executive director. The executive director shall be exempt from the provisions of chapter 53, title 67, Idaho Code, and shall receive a salary that is fixed by the board.

(h) The board shall have the power to hire enforcement agents in order to conduct investigations and enforce the provisions of this chapter. All enforcement agents appointed by the board who are certified by the Idaho peace officer standards and training advisory council, shall have the power of peace officers limited to:

1. Enforcement of the provisions of this chapter.
2. Responding to express requests from other law enforcement agencies for aid and assistance in enforcing other laws. For purposes of this section, such a request from a law enforcement agency shall mean only a request as to a particular and singular violation or suspicion of violation of law, and shall not constitute a continuous request for assistance outside the purview of enforcement of the provisions of this chapter.

(i) By August 1 of each year, the board shall provide to the direc-

tor of the department of fish and game, in a manner and form prescribed by the director, the number of each species of big game taken in each management unit by clients of licensed outfitters between July 1 of the immediately preceding calendar year and June 30 of the current calendar year.

By January 15 of each year, each nonresident licensee, permittee or tagholder shall provide to the department of fish and game, in a manner and form provided by the director, the number of each species of big game taken by that person in each management unit in the previous calendar year. And, if such person was accompanied by or had in employ a licensed outfitter, the name and license number of such outfitter shall also be provided on such form.

(j) The board shall by rule designate the number of deer or elk tags allocated pursuant to section 36-408(~~d~~4), Idaho Code, among the authorized operating areas within the game management area, unit or zone.

Approved March 23, 2001.

CHAPTER 171
(H.B. No. 223)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-409, IDAHO CODE, TO PROVIDE THAT CERTAIN LANDOWNERS OR THEIR DESIGNEES SHALL BE ELIGIBLE FOR DESIGNATED GAME TAGS, FREE OF CHARGE, IN THE EVENT AN EMERGENCY IS DECLARED TO OPEN A SEASON TO PROTECT THE LANDOWNER'S PRIVATE PROPERTY AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 36-409, Idaho Code, be, and the same is hereby amended to read as follows:

36-409. GAME TAGS -- 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 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. In the event an emergency is declared to open a season to protect private property as provided in section 36-106(e)6.(B), Idaho Code, the affected landowner or his designee shall be eligible to receive a resident deer,

elk or antelope tag without charge; provided further, that resident game tags may be issued only to persons who qualify as residents pursuant to section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a 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) 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.

(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 rule.

(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 as specified in section 36-416, Idaho Code.

(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 as specified in section 36-416, Idaho Code.

(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 as specified in section 36-416, Idaho Code.

(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 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.

(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 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.

Approved March 23, 2001.

CHAPTER 172
(H.B. No. 224)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-114, IDAHO CODE, TO PROVIDE THAT SPECIFIED DEDUCTIBLES ASSOCIATED WITH CLAIMS AGAINST DEPREDATION ACCOUNTS SHALL BE WAIVED FOR CERTAIN CLAIMS FOR PROPERTY DAMAGE TO STANDING OR STORED CROPS; AMENDING SECTION 36-115, IDAHO CODE, TO PROVIDE THAT SPECIFIED DEDUCTIBLES SHALL BE WAIVED FOR CERTAIN CLAIMS INVOLVING DAMAGE TO STANDING OR STORED CROPS AND TO PROVIDE THAT SPECIFIED DEDUCTIBLES SHALL BE WAIVED FOR CERTAIN CLAIMS INVOLVING LIVESTOCK 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 36-114, Idaho Code, be, and the same is hereby amended to read as follows:

36-114. BIG GAME PRIMARY DEPREDATION ACCOUNT. (a) The big game primary depredation account is hereby established in the state treasury. Moneys in the account are subject to appropriation for the purposes recited in section 36-1108, Idaho Code. Interest earned on investment of idle moneys in the account shall be paid to the fish and game account.

(b) The state controller shall annually, as soon after July 1 of each year as practical, transfer into the account two hundred thousand dollars ($200,000) from the fish and game account. Unexpended and unencumbered balances in the big game primary depredation account existing on June 30 shall revert to the fish and game account.

(c) Moneys in the account may be appropriated only to:

1. Honor payment agreements made pursuant to section 36-1108(a)3., Idaho Code.

2. Make depredation damages payments pursuant to section 36-1108(b), Idaho Code.

3. Provide for reimbursement of expenses for members of the advisory committee established in section 36-122, Idaho Code.

(d) Any payment for damages pursuant to section 36-1108(b), Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director may order not more than one-third (1/3) of the amount of the approved claim that is to be paid from the big game primary depredation account to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game primary depredation account.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the big game primary depredation account is sufficient to pay the balance of all approved claims, the director shall promptly pay them. If the balance is not sufficient to pay the balance of all approved claims, the director shall pay a proportionate share to each claimant.

(C) The director shall encumber the balance of the moneys in the account, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars ($1,000) must be deducted from each such statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from either the big game primary depredation account or the big game secondary depredation account.

(B) The total amount that may be paid from the big game primary depredation account shall not exceed nine thousand dollars ($9,000) per approved claim.

(C) Approved claims that exceed ten thousand dollars ($10,000) total (one thousand dollars ($1,000) deductible and nine thousand dollars ($9,000) payment from the big game primary depredation account) shall be processed under the provisions of section 36-115, Idaho Code.

(D) Approved claims of any amount that involve damage to livestock, berries or honey by black bear or mountain lion shall be processed under the provisions of section 36-115, Idaho Code.

(E) Approved claims of any amount that involve damage to forage by antelope, deer, elk or moose shall be processed under the provisions of section 36-115, Idaho Code.

(F) Provided however, that for claims in subsequent and consecutive years for damage to standing or stored crops in the same location as the first occurrence, the one thousand dollar ($1,000) deductible shall be waived if the department failed to prevent property loss following the first occurrence.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

SECTION 2. That Section 36-115, Idaho Code, be, and the same is hereby amended to read as follows:

36-115. BIG GAME SECONDARY DEPREDATION ACCOUNT. (a) The big game secondary depredation account is hereby created in the state treasury. Moneys in the account are subject to appropriation for the purposes recited in section 36-1108(b), Idaho Code, section 36-114(d), Idaho Code, section 36-1109 and section 36-1110, Idaho Code. Moneys in the account shall be invested as provided in section 67-1210, Idaho Code, and interest earned on investment of idle moneys in the account shall be paid to the account. The big game secondary depredation account shall be under the administrative direction of the state controller.

(b) In addition to any moneys appropriated to the account from other sources, the state controller shall transfer the earned interest not to exceed two hundred and fifty thousand dollars ($250,000) from the fish and game account to the big game secondary depredation account each fiscal year until a total of one million two hundred fifty thousand dollars ($1,250,000) has been transferred to the account.

(c) The principal amount in the account shall not be appropriated, but only the interest earned on investment of the moneys in the account shall be available for appropriation. The state controller shall annually report to the legislature, the division of financial management, the director of the department of agriculture and the director of the department of fish and game the amount of interest earnings and the availability of such earnings for appropriation. However, should the balance in the account ever exceed three million dollars ($3,000,000), interest earnings that exceed the amount appropriated for any fiscal year shall be transferred to the fish and game set-aside account for habitat rehabilitation. Transferred funds shall be spent pursuant to an appropriation for the set-aside account.

(d) Any payment for damages pursuant to sections 36-1108(b) and 36-114(d), Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order not more than one-third (1/3) of the amount of the approved claim that is to be paid from the big game secondary depredation account to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game secondary depredation account.

(B) The balance of all unpaid approved claim amounts, including claims submitted under the provisions of sections 36-1109 and 36-1110, Idaho Code, shall be accumulated to a total as of June 30. If the balance in the big game secondary depredation account appropriation is sufficient to pay the balance of all

approved claims, the director shall pay them. If the balance is not sufficient to pay all approved claims, the director shall authorize a proportionate amount to be paid to each claimant. However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code.

(C) The director shall encumber the balance of moneys appropriated from the big game secondary depredation account, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars ($1,000) must be deducted from each such statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from either the big game primary depredation account or from the big game secondary depredation account, but the owner or lessee is required to absorb only a single one thousand dollar ($1,000) deductible per claim, whether the claim is paid solely from the big game primary depredation account or from both depredation accounts.

(B) Provided however, that for claims in subsequent and consecutive years for damage to standing or stored crops in the same location as the first occurrence, the one thousand dollar ($1,000) deductible will be waived as provided in section 36-114(d)(2)(F), Idaho Code.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

(e) Any claim for damages pursuant to section 36-1109, Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order that not more than one-third (1/3) of the amount of the approved claim to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game secondary depredation account.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the big game secondary depredation account appropriation is sufficient to pay all approved claims, the director shall promptly pay them. If the balance is not sufficient to pay the balance of all approved claims, the director shall pay a proportionate share to each claimant. However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code.

(C) The director shall encumber the balance of the appropriation, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following condition applies: the amount of one thousand dollars ($1,000) must be deducted from each such statement. Provided however, if an owner or caretaker suffers damage to or destruction of livestock in more than one (1) occurrence during the fiscal year, then only one (1) deductible must be subtracted from the claims and the deductible on subsequent claims will be waived. This deductible is a net loss to the owner or caretaker, and will not be compensated for from the big game secondary depredation account.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

(f) Any claim for damages to forage pursuant to section 36-1110, Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order not more than one-third (1/3) of the amount of the approved claim to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the big game secondary depredation account.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the big game secondary depredation account appropriation is sufficient to pay all approved claims, the director shall pay them. If the balance is not sufficient to pay all approved claims, the director shall authorize a proportionate amount to be paid to each claimant. However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code.

(C) The director shall encumber the balance of the appropriation, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars ($1,000) must be deducted from each statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from the big game secondary depredation account.

(B) The total amount of all claims for damages to forage that may be paid from the big game secondary depredation account shall not exceed twenty-five ~~per--cent~~ percent (25%) of the

amount of interest earned from investments of moneys in that account in any one (1) fiscal year.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

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 July 1, 2000.

Approved March 23, 2001.

CHAPTER 173
(H.B. No. 226)

AN ACT

RELATING TO THE BOARD OF ARCHITECTURAL EXAMINERS; AMENDING SECTION 54-312, IDAHO CODE, TO INCREASE THE HONORARIUM FOR MEMBERS OF THE BOARD OF ARCHITECTURAL EXAMINERS.

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

SECTION 1. That Section 54-312, Idaho Code, be, and the same is hereby amended to read as follows:

54-312. ARCHITECTS -- BOARD OF EXAMINERS -- POWERS AND DUTIES -- COMPENSATION. 1. The board of architectural examiners is hereby created in the department of self-governing agencies. The board of architectural examiners shall consist of six (6) members, to be appointed by the governor, each of whom shall be an architect, and shall have been a resident of and a lawfully practicing architect within the state of Idaho for a period of at least five (5) years next before his appointment. At all times the board shall have at least one (1) member who is engaged primarily in professional architectural education.

2. The board shall have, in addition to the powers conferred elsewhere in this chapter, the following powers and duties:

a. To authorize, by written agreement, the bureau of occupational licenses to act as its agent in its interest.

b. To adopt, pursuant to the administrative procedure act, such rules as the board, in its discretion, deems necessary for the administration and enforcement of this chapter.

c. To conduct investigations into violations of this chapter.

d. The board, or its duly appointed hearing officer, shall have the power in any disciplinary proceeding under this chapter, to administer oaths, take depositions of witnesses within or without the state in the manner provided by law in civil cases, and may apply to any district court of this state for a subpoena to require the attendance of such witnesses and the production of such books, records,

and papers as it deems necessary. The fees and mileage of the witnesses shall be the same as that allowed in the district courts in criminal cases, which fees and mileage shall be paid 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 any district court in this state on application by the board to compel compliance with the subpoena by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or for refusal to testify therein. The licensed person accused in such proceedings shall have the same right of subpoena.

3. Each member of the board of architectural examiners shall be compensated as provided by section 59-509(mo), Idaho Code.

Approved March 23, 2001.

CHAPTER 174
(H.B. No. 233)

AN ACT

RELATING TO REAL ESTATE INVESTMENTS; AMENDING SECTION 41-728, IDAHO CODE, TO SPECIFY THE MAXIMUM AGGREGATE AMOUNT OF REAL ESTATE WHICH MAY BE INVESTED BY A DOMESTIC RECIPROCAL INSURER COMPRISED OF AND EXCLUSIVELY INSURING MEMBERS WHO ARE POLITICAL SUBDIVISIONS OF THE STATE; TO CORRECT CODIFIER'S ERRORS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 41-728, Idaho Code, be, and the same is hereby amended to read as follows:

41-728. REAL ESTATE. (1) An insurer may acquire, invest in, own, maintain, alter, furnish, improve, manage, lease and convey the following real estate only:

(a) Land and buildings used for home office purposes, together with such other real estate as is required for its accommodation in the convenient transaction of its business.

(b) Real estate acquired in satisfaction in full or in part of or through foreclosure of or judgment obtained upon, loans, mortgages, liens or other evidences of indebtedness previously owing to the insurer in the regular course of its business.

(c) Real estate acquired in part payment of the consideration in the sale of other real estate owned by the insurer.

(d) Real estate acquired by gift or devise.

(e) Real estate acquired through a lawful merger or consolidation of another insurer and not required for its accommodation as provided in ~~subdivision~~ paragraph (a) ~~above~~ of this subsection.

(f) Real estate for the production of income, under lease, or being constructed under a definite agreement providing for lease, to sol-

vent institutions for commercial or industrial purposes, other than for agricultural, horticultural, ranch, mining, mineral, oil, recreational, amusement, club, motel, or hotel purposes.

(2) The aggregate amount so invested by the insurer shall not exceed:

(a) If for home office and its other purposes pursuant to ~~subdivision~~ paragraph (a) ~~above~~ of this subsection, ten ~~per-cent~~ percent (10%) of the insurer's assets, subject to the right of the director to approve an additional amount after ~~hearing~~ and for good cause shown.

(b) If for income purposes pursuant to ~~subdivision~~ paragraph (f) ~~above~~ of this subsection, five ~~per--cent~~ percent (5%) of the insurer's assets.

(c) In all categories and for all purposes, not to exceed twenty ~~per-cent~~ percent (20%) of the insurer's assets.

(d) Notwithstanding the provisions of paragraphs (a) through (c) of this subsection, the aggregate amount invested by a domestic reciprocal insurer which is comprised of and exclusively insures members who are political subdivisions of the state, as defined in section 6-902 2., Idaho Code, shall not exceed:

(i) Twenty-five percent (25%) from July 1, 2001, to June 30, 2003;

(ii) Twenty percent (20%) from July 1, 2003, to June 30, 2004; and

(iii) Fifteen percent (15%) on July 1, 2004, and each year thereafter.

(3) An insurer may lease to others part of real property otherwise occupied by it for home office and other purposes under subsection (1)(a) ~~above~~ of this section, but the value of the entire property must be included for the purposes of the limitation upon aggregate real estate investments provided in subsection (2)(a) ~~above~~ of this section.

Approved March 23, 2001.

CHAPTER 175
(H.B. No. 257)

AN ACT

RELATING TO DOMESTIC SEPTAGE MANAGEMENT; AMENDING THE CHAPTER HEADING OF CHAPTER 49, TITLE 31, IDAHO CODE; AMENDING SECTION 31-4901, IDAHO CODE, TO REVISE FINDINGS AND PURPOSE; AMENDING SECTION 31-4902, IDAHO CODE, TO FURTHER DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 31-4903, IDAHO CODE, TO PROVIDE FOR THE FORMATION OF A REGIONAL SOLID WASTE OR DOMESTIC SEPTAGE DISTRICT; AMENDING SECTION 31-4906, IDAHO CODE, TO PROVIDE FOR ADMINISTRATION OF DOMESTIC SEPTAGE REGULATIONS AND STANDARDS OF THE DISTRICT; AND AMENDING SECTION 31-4917, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR OPERATION OF DOMESTIC SEPTAGE RECEIVING STATIONS.

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

SECTION 1. That the Heading of Chapter 49, Title 31, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 49
REGIONAL SOLID WASTE OR DOMESTIC SEPTAGE DISPOSAL DISTRICTS

SECTION 2. That Section 31-4901, Idaho Code, be, and the same is hereby amended to read as follows:

31-4901. FINDINGS AND PURPOSE. (1) The legislature hereby finds and declares that the disposal of solid waste and domestic septage within the state of Idaho is an important public purpose, and that the creation of independent regional districts to administer solid waste or domestic septage disposal is an efficient and cost-effective method of meeting the state's solid waste or domestic septage disposal needs.

(2) The purpose of this chapter is to enable counties to establish regional solid waste or domestic septage districts for the purpose of providing a regional solution to the problem of solid waste or domestic septage disposal through the operation and maintenance of a regional solid waste or domestic septage system.

(3) The foregoing purpose is hereby declared to be a valid public purpose within the police powers of the state of Idaho.

SECTION 3. That Section 31-4902, Idaho Code, be, and the same is hereby amended to read as follows:

31-4902. DEFINITIONS. As used in this chapter:

(1) "Act" or "this act" means this regional solid waste or domestic septage district act.

(2) "Commissioners" means the board of commissioners of each county within a district.

(3) "District" means a regional solid waste or domestic septage district created pursuant to this chapter.

(4) "District board" means the board of directors of a district.

(5) "Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, type III marine sanitation device, or similar treatment works that receive only domestic sewage. Domestic septage does not include liquid or solid material removed from septic tanks, cesspools, or similar treatment works that receive either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

(6) "Facility" or "facilities" means all equipment and other property, including electrical cogeneration equipment, deemed necessary by the district board for the operation of a solid waste disposal and/or resource recovery system or the operation of domestic septage receiving stations, domestic septage treatment processes and domestic septage disposal methods.

(~~6~~7) "Participating county" means a county which elects, through action of the commissioners as provided in this chapter, to become a member of a district.

(~~7~~8) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commer-

cial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. 1342, or source, special nuclear, or ~~by-product~~ byproduct material as defined by the atomic energy act of 1954, as amended.

(~~8~~9) "State" means the state of Idaho.

(~~9~~10) "System" means all components of solid waste operations including, but not limited to, landfill compliance measures, landfill disposal operations, regional transfer operations, domestic septage receiving stations, domestic septage disposal methods, domestic septage treatment operations and resource recovery and management, on any site or sites acquired, constructed, operated, or managed by a district.

SECTION 4. That Section 31-4903, Idaho Code, be, and the same is hereby amended to read as follows:

31-4903. ESTABLISHMENT OF DISTRICTS. Any two (2) or more counties within the state may establish an independent public body corporate and politic to be known as a regional solid waste or domestic septage district (with such additional designation as the district board may select), consisting of such counties as may elect, by resolution of the commissioners of such counties, to become participating counties of such district. The boundaries of a district shall be coterminous with the boundaries of the participating counties. Counties within a district need not be contiguous to each other. No district shall transact any business nor exercise any powers hereunder until or unless the commissioners of two (2) or more of such counties, by resolution, shall declare their intent to participate in a district. Any county which does not so elect to become a participating county shall not be subject to the provisions of this chapter.

In any suit, action, or proceeding involving or relating to any contract, resolution, regulation, or other action of a district, the district shall be conclusively deemed to have been organized and authorized to transact business and to exercise its powers hereunder upon proof of the adoption of a resolution by the commissioners of not less than two (2) counties as provided hereinabove. A duly certified copy of any such resolution shall be admissible in evidence in any suit, action, or proceeding.

A district created pursuant to this chapter shall not be deemed to be an agency of the state of Idaho nor of any of its political subdivisions for purposes of article VIII of the Idaho constitution.

SECTION 5. That Section 31-4906, Idaho Code, be, and the same is hereby amended to read as follows:

31-4906. POWERS OF THE BOARD OF DIRECTORS. A district board shall have and may exercise the following powers and duties:

(1) To sue and be sued;

(2) To develop and administer a system for the regional disposal of solid waste, domestic septage and/or resource recovery within the district;

(3) To authorize any action by motion, resolution, or other official action;

(4) To administer and enforce all solid waste or domestic septage regulations and standards of the district;

(5) To determine the location of its main office and branch offices, if any;

(6) To acquire, hold title to, lease, mortgage or encumber, dispose of, and pledge real and personal property and to acquire, construct, or lease buildings, structures, and solid waste or domestic septage disposal and resource recovery sites and equipment as may be deemed necessary to fulfill its duties, and to have and exercise the power of eminent domain therefor;

(7) To sell, convey, lease or dispose of any property, real or personal, with or without competitive bid, upon such terms and conditions and for such consideration as the district board deems appropriate;

(8) To acquire, construct, operate, and maintain any facilities within the district, and to enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, the state and any of its agencies or instrumentalities, any corporation or person, public or private, any municipality, and any political or governmental subdivision, within or without the state, and to cooperate with any one (1) or more of them in acquiring, constructing, operating, or maintaining a system or facilities within the district;

(9) To acquire, maintain, and operate, as an incident to solid waste disposal or domestic septage, electrical cogeneration facilities, to sell electricity to any person or entity, and to enter into contracts therefor;

(10) To receive moneys and property from participating counties and to receive gifts, grants, and donations from any person or entity, to expend the same for the purposes of the district, to pledge the same for the payment of any indebtedness, to deposit moneys in accordance with the public depository laws of the state, and to invest moneys of the district in investments permitted under sections 67-1210 and 67-1210A, Idaho Code;

(11) To borrow money and incur indebtedness, and to evidence the same by notes, warrants, bonds, or other evidence of indebtedness;

(12) To have the management, control, and supervision of all the business and affairs of the district;

(13) To hire an administrator and provide for the compensation of other employees of the district, and to retain agents, engineers and consultants;

(14) To retain or employ regular legal counsel, and to retain such special legal counsel as may be deemed necessary;

(15) To fix and to increase or decrease rates, fees, tolls, or charges for the use or availability of the facilities of the district;

(16) To adopt rules, regulations, and standards, consistent with state and federal laws and regulations, for the use of the district's system and facilities;

(17) To maintain civil actions for the abatement of any violation of any of the district's rules, regulations, or standards;

(18) To insure its property and to enter into contracts for insurance, including, but not limited to, liability insurance;

(19) To exercise all or any part or combination of the powers set forth in this chapter, and to do all things necessary or incidental to the proper operation of this chapter.

SECTION 6. That Section 31-4917, Idaho Code, be, and the same is hereby amended to read as follows:

31-4917. OPERATION OF LANDFILLS, DOMESTIC SEPTAGE RECEIVING STATIONS OR RESOURCE RECOVERY FACILITIES BY PARTICIPATING COUNTIES PROHIBITED. No participating county shall ac~~quire, constr~~uct or operate, or continue the operation of, any landfill site, domestic septage receiving stations, ~~on~~ or any facility for the recovery of resources or the disposal of solid waste or domestic septage, ~~w~~ithout the consen~~t of the~~ district board, after a solid waste disposal, or domestic septage receiving station, or resource recovery facility of a district is operational. The foregoing restriction shall not apply to a resource recovery facility which was operational at, or which becomes operational within six (6) months after, the date of establishment of the district. The district board may establish exceptions, consistent with applicable federal and state laws and regulations, to this requirement. The commissioners of the participating counties shall take all actions necessary to require that all solid waste or domestic septage collected within their respective jurisdictions be delivered to the district's solid waste or domestic septage disposal or resource recovery site or sites.

Approved March 23, 2001.

CHAPTER 176
(H.B. No. 270)

AN ACT

RELATING TO TEMPORARY REGISTRATION OF CERTAIN MOTOR VEHICLES; AMENDING SECTION 49-432, IDAHO CODE, TO INCREASE THE LENGTH OF TIME A TRIP PERMIT IS VALID, TO INCREASE FEES FOR TRIP PERMITS AND A FUEL PERMIT AND TO INCREASE THE LENGTH OF TIME A TRIP PERMIT IS VALID FOR CERTAIN VEHICLES OPERATED IN A FLEET.

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

SECTION 1. That Section 49-432, Idaho Code, be, and the same is hereby amended to read as follows:

49-432. TEMPORARY REGISTRATION FOR RESIDENTS AND NONRESIDENTS -- FEES. (1) When a vehicle or combination of vehicles subject to registration is to be moved upon the public highways in the state of Idaho, the department may issue a trip permit in lieu of registration for any vehicle or combination of vehicles upon the payment of a fee as set forth in the following schedule:

(a) ~~Ninety-six~~ One hundred twenty (~~96~~120) hour trip permit
Single vehicle.....$~~25~~30.00
Combina~~tion of~~ vehicles .....$~~50~~60.00
(b) Fuel permit .....$~~25~~30.00

(2) A temporary trip permit shall be in a form, and issued under rules adopted by the board, and shall be displayed at all times while the vehicle is being operated on the highways by posting the permit upon the windshield of each vehicle or in another prominent place, where it may be readily legible.

(3) The department may select vendors to serve as agents on state highways for the purpose of selling trip permits where fixed ports of entry do not adequately serve a respective highway entering the state. The vendor shall be remunerated at the rate of two dollars ($2.00) per permit sold, and he shall collect the fees specified in this section, and pay the fees to the department. The vendor shall guarantee payment by giving a bond to the state in a sum as shall be fixed by the board, the premium on the bond to be paid by the department.

(4) An owner-operator vehicle moving between lessee fleets where the vehicle registration was issued in the name of the former lessee, shall be eligible for a ~~ninety-six~~ one hundred twenty (~~96~~120) hour trip permit for movement from the point of entry into the state to the destination of the new lessee's place of business.

Approved March 23, 2001.

CHAPTER 177
(H.B. No. 303)

AN ACT

APPROPRIATING MONEYS FOR THE STATE LIQUOR DISPENSARY FOR FISCAL YEAR 2002; LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND RE-APPROPRIATING CERTAIN UNEXPENDED AND UNENCUMBERED BALANCES TO THE OFFICE OF THE GOVERNOR FOR THE STATE LIQUOR DISPENSARY.

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, 2001, through June 30, 2002:

FOR:	
Personnel Costs	$ 6,624,300
Operating Expenses	2,932,600
Capital Outlay	706,300
TOTAL	$10,263,200
FROM:	
Liquor Control Fund	$10,263,200

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, 2001, through June 30, 2002, for the program specified in Section 1 of this act, unless specifically authorized by the Governor. The Joint Finance-Appropriations Committee will be notified promptly of any increased positions so authorized.

SECTION 3. There is hereby reappropriated to the Office of the Governor for the State Liquor Dispensary any unexpended and unencumbered balance of the Liquor Control Fund appropriated for the Enterprise Accounting System for fiscal year 2001, to be used for the same purpose for the period July 1, 2001, through June 30, 2002. The reappropriation is limited to $880,000 from the Liquor Control Fund.

Approved March 23, 2001.

CHAPTER 178
(H.B. No. 331)

AN ACT

RELATING TO PRESCRIPTION FORMS; AMENDING SECTION 37-2722, IDAHO CODE, TO STRIKE A REQUIREMENT THAT THE OFFICIAL PRESCRIPTION BLANK IS FURNISHED BY THE BOARD OF PHARMACY; AMENDING SECTION 37-2724, IDAHO CODE, TO STRIKE AN EXEMPTION FROM USE OF PRESCRIPTION BLANKS; REPEALING SECTIONS 37-2725, 37-2726, 37-2727, 37-2728, 37-2729 AND 37-2730, IDAHO CODE; AMENDING CHAPTER 27, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-2725, IDAHO CODE, TO PROVIDE AUTHORITY OF THE BOARD OF PHARMACY TO APPROVE FORMS FOR PRESCRIPTIONS AND SPECIFY CERTAIN CONDITIONS; AMENDING CHAPTER 27, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-2726, IDAHO CODE, TO GOVERN FILING OF PRESCRIPTIONS; AND AMENDING SECTION 37-2730A, IDAHO CODE, TO PROVIDE A CORRECT CODE CITATION.

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. Prescriptions 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 37-2724, Idaho Code, be, and the same is hereby amended to read as follows:

37-2724. USE IN HOSPITAL -- FORM OF ORDER -- RECORD -- NURSING HOME, EXTENDED CARE FACILITY. An order for schedule II substance for use by a patient in a county or licensed hospital, or in a licensed nursing home or extended care facility employing a unit dose distribution system, ~~shall be exempt from all requirements of this act with reference to the writing of prescriptions on official duplicate blanks; but~~ shall be in writing on the patient's record, signed by the prescriber, dated, and shall state the name, strength and dosage schedule of the drug ordered. A direct copy of this order will be furnished within seventy-two (72) hours to the pharmacist supplying the medication. The record of said orders and the administration record shall be maintained as a record in the hospital, nursing home or extended care facility for a minimum of three (3) years and shall be available for inspection by all inspectors of the board.

SECTION 3. That Sections 37-2725, 37-2726, 37-2727, 37-2728, 37-2729 and 37-2730, Idaho Code, be, and the same are hereby repealed.

SECTION 4. 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 37-2725, Idaho Code, and to read as follows:

37-2725. PRESCRIPTION REQUIRED -- PRESCRIPTION BLANKS -- POSSESSION -- TRANSFERENCE -- CONTENTS. (1) A prescription shall be required for all scheduled drugs. Except as provided in subsection (5) of this section, written prescriptions shall be on prescription forms approved by the board and shall utilize nonalterable paper that contains security provisions against copying that results in some indication on the copy that it is a copy and therefore rendering it null and void and shall incorporate such other security measures as deemed necessary by the board.

(2) Prescription blanks shall not be transferable. Any person possessing any such blank otherwise than is herein provided is guilty of a misdemeanor.

(3) The prescription blank shall contain the name and address of the prescriber.

(4) Except as provided in section 37-2722, Idaho Code, if a prescription is for a schedule II substance, the prescriber shall indicate

the desired quantity of the scheduled drug on the prescription form by both writing out the quantity and by indicating or writing the quantity in numerical form.

(5) Prescription blanks issued by the board prior to January 1, 2002, shall remain valid and may be used by prescribers until July 1, 2002. After July 1, 2002, only prescription blanks approved by the board pursuant to subsection (1) of this section shall be valid.

(6) Prescription blanks or drugs lost or stolen must be immediately reported to the board.

SECTION 5. 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 37-2726, Idaho Code, and to read as follows:

37-2726. FILING PRESCRIPTIONS. All controlled substances prescriptions shall be filed with the board electronically or by other method as required by board rule. The board may require the filing of other prescriptions by board rule.

SECTION 6. That Section 37-2730A, Idaho Code, be, and the same is hereby amended 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~~2~~6, 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.

Approved March 23, 2001.

CHAPTER 179
(H.B. No. 345)

AN ACT

RELATING TO PAYMENTS OF FINES AND FORFEITURES; AMENDING SECTION 19-4705, IDAHO CODE, TO PROVIDE THAT OF CERTAIN FINES AND FORFEITURES APPORTIONED TO THE STATE TREASURER, A DESIGNATED PORTION SHALL BE DEPOSITED TO THE STATE GENERAL FUND AND A DESIGNATED PORTION SHALL BE DEPOSITED TO THE PEACE OFFICERS STANDARDS AND TRAINING FUND AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 19-4705, Idaho Code, be, and the same is hereby amended to read as follows:

19-4705. PAYMENT OF FINES AND FORFEITURES -- SATISFACTION OF JUDGMENT -- DISPOSITION -- APPORTIONMENT. (a) All fines and forfeitures collected pursuant to the judgment of any court of the state shall be remitted to the court in which the judgment was rendered. The judgment shall then be satisfied by entry in the docket of the court. The clerk of the court shall daily remit all fines and forfeitures to the county auditor who shall at the end of each month apportion the proceeds according to the provisions of this act. Other existing laws regarding the disposition of fines and forfeitures are hereby repealed to the extent such laws are inconsistent with the provisions of this act except as provided in section 49-1013(3), Idaho Code.

(b) Fines and forfeitures remitted for violations of fish and game laws shall be apportioned two and one-half percent (2 1/2%) to the state treasurer for deposit in the state general account, ten percent (10%) to the search and rescue account, twenty-two and one-half percent (22 1/2%) to the district court fund and sixty-five percent (65%) to the fish and game fund.

(c) Fines and forfeitures remitted for violations of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten percent (10%) to the state treasurer ~~for deposit in the state general account~~ of which ninety percent (90%) shall be deposited to the state general fund and ten percent (10%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, forty-five percent (45%) to the state treasurer for deposit in the highway distribution account, twenty-two and one-half percent (22 1/2%) to the district court fund and twenty-two and one-half percent (22 1/2%) to the state treasurer for deposit in the public school income fund; provided, however, that fines and forfeitures remitted for violation of state motor vehicle laws, for violation of state driving privilege laws, and for violation of state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, where an arrest is made or a citation is issued by a city law enforcement official, or by a law enforcement official of a governmental agency under contract to provide law enforcement services for a city, shall be apportioned ten percent (10%) to the state treasurer ~~for deposit in the state general account~~ of which ninety percent (90%) shall be deposited to the state general fund and ten percent (10%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose officer made the arrest or issued the citation.

(d) Fines and forfeitures remitted for violation of any state law not involving fish and game laws, or motor vehicle laws, or state driving privilege laws, or state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten percent (10%) to the state treasurer ~~for deposit in the state general account~~ of which ninety percent (90%) shall be deposited to the state general fund and ten percent (10%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred.

(e) Fines and forfeitures remitted for violation of county ordinances shall be apportioned ten percent (10%) to the state treasurer ~~for deposit in the state general account~~ of which ninety percent (90%) shall be deposited to the state general fund and ten percent (10%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county whose ordinance was violated.

(f) Fines and forfeitures remitted for violation of city ordinances shall be apportioned ten percent (10%) to the state treasurer ~~for deposit in the state general account~~ of which ninety percent (90%) shall be deposited to the state general fund and ten percent (10%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the city whose ordinance was violated.

(g) Fines and ~~forfeitures~~ remitted for violations not specified in this act shall be apportioned ten percent (10%) to the state treasurer ~~for deposit in the state general account~~ of which ninety percent (90%) shall be deposited to the state general fund and ten percent (10%) shall be deposited to the peace officers standards and training fund autho-

rized in section 19-5116, Idaho Code, and ninety percent (90%) to the district court fund of the county in which the violation occurred except in cases where a duly designated officer of any city police department or city law enforcement official shall have made the arrest for any such violation, in which case ninety percent (90%) shall be apportioned to the city whose officer made the arrest.

(h) Fines and forfeitures remitted for violations involving registrations of motorcycles or motor-driven cycles used off highways, snowmobiles, or use of winter recreation parking areas shall be apportioned ten percent (10%) to the state treasurer ~~for deposit to the state general account~~ of which ninety percent (90%) shall be deposited to the state general fund and ten percent (10%) shall be deposited to the peace officers standards and training fund authorized in section 19-5116, Idaho Code, and ninety percent (90%) to the general ~~account~~ fund of the county or city whose law enforcement official issued the citation.

(i) Fines and forfeitures remitted for violations of overweight laws as provided in section 49-1013(3), Idaho Code, shall be deposited one hundred percent (100%) into the highway distribution account.

(j) As used in this section, the term "city law enforcement official" shall include an official of any governmental agency which is providing law enforcement services to a city in accordance with the terms of a contract or agreement, when such official makes the arrest or issues a citation within the geographical limits of the city and when the contract or agreement provides for payment to the city of fines and forfeitures resulting from such service.

Approved March 23, 2001.

CHAPTER 180
(H.B. No. 18, As Amended)

AN ACT

RELATING TO PUBLIC WRITINGS; AMENDING SECTION 9-340B, IDAHO CODE, TO PROVIDE AN EXEMPTION FROM DISCLOSURE FOR CERTAIN RECORDS OF THE IDAHO DEPARTMENT OF CORRECTION.

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(6), 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) ~~Until July 1, 2001,~~ The following records of the department of correction: ~~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 would substantially prejudice or prevent the carrying out of the functions of the department of correction if the public interest in confidentiality clearly outweighs the public interest in disclosure:~~

(i) Records of which the public interest in confidentiality, public safety, security and habilitation clearly outweighs the public interest in disclosure as identified pursuant to the authority of the Idaho board of correction under section 20-212, Idaho Code;

(ii) Records ~~exempt from disclosure shall include, but not be limited to, those containing the names and addresses of witnesses or victims or those containing~~ that contain any identifying information, ~~identifying~~ or any information that would lead to the identification of any victims or witnesses;

(iii) Records that reflect future transportation or movement of a prisoner;

(iv) Records gathered during the course of the presentence investigation;

(v) Records of a prisoner, as defined in section 9-337(9), Idaho Code, or probationer shall not be disclosed to any other prisoner or probationer.

(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, visitors or prisoners in those buildings, or adversely affect the public safety.

(c) Records of the commission of pardons and parole shall be exempt from public disclosure pursuant to section 20-213A, Idaho Code, and section 20-223, Idaho Code. Records exempt from disclosure shall also include those containing the names, addresses and written statements of victims.

(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 Idaho state police 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 Idaho state police. Such records shall be released only in accordance with chapter 30, title 67, Idaho Code.

Approved March 26, 2001.

CHAPTER 181
(H.B. No. 65, As Amended)

AN ACT

RELATING TO CRIMINAL OFFENSES; AMENDING SECTION 18-915, IDAHO CODE, TO PROVIDE PUNISHMENT FOR ASSAULT OR BATTERY COMMITTED AGAINST CERTAIN CURRENT OR FORMER OFFICERS OF THE COURT AND LAW ENFORCEMENT OFFICERS.

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

SECTION 1. 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 Idaho state police, 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, a member, employee or agent of the state tax commission, 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, except as provided in subsections (c) and (d) of this 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, or a county jail, or of a private correctional facility, 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 or other staff of the department of correction, or of a private correctional facility, 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~~ because of the victim's former or present official status, and the victim is engaged in the performance of his duties, the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

(d) For committing a violation of the provisions of section 18-903, Idaho Code, except unlawful touching as described in section 18-903(b), Idaho Code, against the person of a peace officer, sheriff or police officer because of the victim's former or present official status, the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

Approved March 26, 2001.

CHAPTER 182
(H.B. No. 124)

AN ACT

RELATING TO REGISTRATION OF AIRCRAFT; AMENDING SECTION 21-114, IDAHO CODE, TO PROVIDE THAT AIRCRAFT SHALL ONLY BE REGISTERED PRIOR TO OR DURING THE CURRENT ANNUAL REGISTRATION YEAR, AND THAT THERE SHALL BE NO REGISTRATION OF AIRCRAFT FOR ANY REGISTRATION PERIOD WHICH IS PRIOR TO THE CURRENT REGISTRATION YEAR AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 21-114, Idaho Code, be, and the same is hereby amended to read as follows:

21-114. REGISTRATION OF PILOTS AND AIRCRAFT -- REQUISITES. (a) Pilot Registration--Fees. Subject to the limitation of subsections (c) and (d) of this section, the department is authorized to require that every individual who pilots an aircraft within this state is to register with the department and to renew such registration every other year thereafter in which he pilots an aircraft within this state. The department may charge for each such registration, and for each biennial renewal thereof, a fee of twelve dollars ($12.00). Such income shall be used for search and rescue of lost aircraft and airmen, which said search and rescue shall be under the direction and supervision of the director of the department.

(b) Aircraft Registration--Fees.

(1) Private Aircraft. Subject to the limitations of subsections (c) and (d) of this section, every aircraft operating within this state and/or holding a currently valid airworthiness certificate and a currently valid annual inspection or progressive inspection system issued by the appropriate federal agency, shall be registered with the department ~~for~~ prior to or during each annual registration year in which the aircraft is operated within this state. The annual registration year shall commence on the date provided by regulation,

and the holding of a currently valid airworthiness certificate and a currently valid annual inspection or progressive inspection system issued by the appropriate federal agency shall be considered prima facie evidence that the aircraft is operating within this state. The department shall charge for each such registration, and for each annual renewal thereof, the fees at the rate of one cent (1¢) per pound of gross weight authorized in the aircraft listing, aircraft specification or type certificate data sheet of said aircraft issued by the federal aviation agency, and in no case to exceed two hundred dollars ($200) upon any one (1) aircraft, provided that such fee shall be in lieu of all personal property taxes on such aircraft.

Registration certificates shall be kept in the aircraft at all times. In addition to the registration certificate, an identifying decal shall be issued and placed on the left side of the aircraft either upon the vertical stabilizer thereof or upon a window nearest to the rear of the aircraft, fully visible from the outside of the aircraft.

Aircraft shall only be registered prior to or during the current annual registration year. There shall be no registration of aircraft for any registration period which is prior to the current registration year. Registration certificates issued after expiration of the first six (6) months of the current annual registration year, ~~as prescribe~~d by the department, shall be issued at the rate of fifty ~~per-cent~~ percent (50%) of the annual fee. Those aircraft that have been found in violation of the provisions of this section after the first six (6) months will pay the full year's fee.

(2) Manufacturers and Dealers License. It shall be unlawful for any person to carry on or conduct the business of buying, selling, or dealing in aircraft unless registered with the department, as such manufacturer or dealer. Any manufacturer or dealer in aircraft owning, having an interest in, or having in his possession an aircraft for the purpose of sale, shall upon the registration and payment of fees as in this act required, acquire one (1) registration certificate which shall bear the distinctive registration number issued to such manufacturer or dealer, and any number of identifying decals. The registration certificate shall be kept at the main office of the manufacturer or dealer and an identifying decal shall be placed upon the left side of every aircraft that the manufacturer or dealer may have an interest in which is held for sale, on the left side thereof either upon the vertical stabilizer or upon a window nearest to the rear of the aircraft.

An identifying decal issued to a manufacturer or dealer during the calendar year for which issued can be transferred from an aircraft no longer in the possession of the dealer or manufacturer for sale or demonstration to one acquired for the purpose of sale or demonstration during the calendar year.

No identifying decal issued to a manufacturer or dealer as herein provided may be transferred to an aircraft owned or in the possession of such manufacturer or dealer when such aircraft is used solely for commercial purposes.

The fee to be paid by a manufacturer or dealer in aircraft shall be forty dollars ($40.00) for the registration certificate and one dollar ($1.00) for each identifying decal issued to such manufacturer or dealer.

(c) Requirements for Registration, Issuance of Certificate. Possession of the appropriate effective federal certificate, permit, rating or license relating to competency of the pilot or ownership and airworthiness of the aircraft, as the case may be, and payment of the fee duly required pursuant to the provisions of this section shall be the only requisites for registration of a pilot or an aircraft under this section. Registration shall be effected by filing with the department a written statement containing the information reasonably required by the department for such purpose. It shall not be necessary for the registrant to provide the department with originals or copies of federal certificates, permits, ratings or licenses. The department may issue certificates of registration, or such other evidences of registration or payment of fees as it may deem proper, and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences similar to the requirements of section 21-113(b), Idaho Code, for the possession and exhibition of federal airman and aircraft certificates, permits, ratings or licenses. Failure to register, if required, shall be unlawful.

(d) Exemptions. The provisions of this section shall not apply to:

(1) An aircraft owned by, and used exclusively in the service of, any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft which is owned by a bona fide nonresident of this state; provided, however, that this exemption shall not apply to such aircraft operated in the transportation of persons or property for hire, in dusting, seeding, or spraying for hire, or in any other activity for hire in this state, whether such aircraft so operated be engaged casually or continuously;

(3) An aircraft engaged principally in commercial airline or air freight flying constituting an act of interstate or foreign commerce while operating under a certificate, permit or license issued by the appropriate agency of the United States government;

(4) An individual piloting an aircraft owned by, and used exclusively in the service of, any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(5) An individual piloting any aircraft registered under the laws of a foreign country;

(6) A bona fide nonresident of this state piloting aircraft in this state; provided, however, that this exemption shall not apply to any nonresident piloting an aircraft in this state for hire whether such nonresident is so engaged casually or continuously;

(7) An individual piloting an aircraft engaged principally in commercial airline or air freight flying constituting an act of interstate or foreign commerce, while such aircraft is being operated under a certificate, permit or license issued by the appropriate agency of the United States government;

(8) An individual operating model aircraft;

(9) An individual piloting an aircraft which is equipped with fully functioning dual controls when a properly certified pilot is in full

charge of one (1) set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser.

(e) Transfer of Aircraft. When the ownership of an aircraft registered under the provisions of this section is transferred, the new owner will be required to register the aircraft under the provisions of this section. If the transferor wishes to register another aircraft he shall pay the registration fee required by this section less the amount of registration fee already paid on the aircraft which was sold, or if the transferor shall have an aircraft to be registered with a useful load less than the aircraft that was sold, he shall pay a transfer fee of one dollar ($1.00).

Approved March 26, 2001.

CHAPTER 183
(H.B. No. 128)

AN ACT

RELATING TO OFFICE LOCATIONS FOR STATE GOVERNMENT; AMENDING SECTION 22-1203, IDAHO CODE, TO PROVIDE THAT THE EXECUTIVE OFFICE OF THE POTATO COMMISSION IS ESTABLISHED IN ADA COUNTY; AMENDING SECTION 22-2540, IDAHO CODE, TO DELETE REFERENCE TO BOISE AS THE PLACE WHERE THE DISTRICT COURT GIVES NOTICE TO THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 22-2913, IDAHO CODE, TO PROVIDE THAT THE EXECUTIVE OFFICE OF THE BEAN COMMISSION IS ESTABLISHED IN ADA COUNTY; AMENDING SECTION 22-3424, IDAHO CODE, TO DELETE REFERENCE TO THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE RECEIVING NOTICE AT BOISE; AMENDING SECTION 22-4103, IDAHO CODE, TO PROVIDE THAT THE AGRICULTURAL LABOR BOARD SHALL HAVE ITS PRINCIPAL OFFICE IN ADA COUNTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 23-202, IDAHO CODE, TO PROVIDE THAT THE PRINCIPAL PLACE OF BUSINESS OF THE STATE LIQUOR DISPENSARY SHALL BE IN ADA COUNTY; AMENDING SECTION 25-2510, IDAHO CODE, TO PROVIDE FOR RETURN OF BALLOTS TO THE MAIN OFFICE OF THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 33-102, IDAHO CODE, TO PROVIDE THAT THE OFFICE OF THE STATE BOARD OF EDUCATION SHALL BE LOCATED IN ADA COUNTY; AMENDING SECTION 33-118A, IDAHO CODE, TO DELETE REFERENCE TO CURRICULAR MATERIALS BEING MAINTAINED BY THE DEPARTMENT OF EDUCATION IN BOISE; AMENDING SECTION 36-101, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF FISH AND GAME'S PRINCIPAL OFFICE SHALL BE IN ADA COUNTY; AMENDING SECTION 36-102, IDAHO CODE, TO PROVIDE THAT THE PRINCIPAL OFFICE OF THE FISH AND GAME COMMISSION SHALL BE IN ADA COUNTY; AMENDING SECTION 36-104, IDAHO CODE, TO DELETE REFERENCE TO OFFICES BEING IN THE CITY OF BOISE; AMENDING SECTION 40-307, IDAHO CODE, TO PROVIDE THAT PERMANENT OFFICES OF THE TRANSPORTATION BOARD SHALL BE IN ADA COUNTY; AMENDING SECTION 40-2402, IDAHO CODE, TO PROVIDE THAT THE LOCAL HIGHWAY TECHNICAL ASSISTANCE COUNCIL SHALL MAINTAIN OFFICES IN ADA COUNTY; AMENDING SECTION 41-1041, IDAHO CODE, TO DELETE REFERENCE TO EXAMINATIONS BEING AVAILABLE AT BOISE; AMENDING SECTION 41-1046, IDAHO CODE, TO DELETE REFERENCE TO THE DIRECTOR OF THE DEPARTMENT OF INSURANCE HAVING AN OFFICE IN BOISE AND TO MAKE A TECHNICAL CORRECTION; AMENDING

SECTION 42-1733, IDAHO CODE, TO PROVIDE THAT THE PRINCIPAL OFFICE OF THE WATER RESOURCE BOARD SHALL BE IN ADA COUNTY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 42-2011, IDAHO CODE, TO DELETE REFERENCE TO THE DEPARTMENT OF WATER RESOURCES HAVING AN OFFICE IN THE CAPITOL AT BOISE CITY; AMENDING SECTION 43-401, IDAHO CODE, TO DELETE REFERENCE TO A REPORT OF THE DEPARTMENT OF WATER RESOURCES BEING AVAILABLE AT THEIR OFFICE AT THE STATE CAPITOL AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 49-202, IDAHO CODE, TO PROVIDE THAT CERTAIN FORMS BE AVAILABLE AT THE IDAHO TRANSPORTATION DEPARTMENT IN ADA COUNTY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-205, IDAHO CODE, TO PROVIDE THAT THE BOARD OF ACCOUNTANCY SHALL HAVE ITS PRINCIPAL OFFICE IN ADA COUNTY; AMENDING SECTION 54-1906, IDAHO CODE, TO PROVIDE THAT THE PRINCIPAL PLACE OF BUSINESS OF THE PUBLIC WORKS CONTRACTORS BOARD SHALL BE IN ADA COUNTY; AMENDING SECTION 54-1913, IDAHO CODE, TO DELETE REFERENCE TO THE PUBLIC WORKS CONTRACTORS BOARD MAINTAINING AN OFFICE IN BOISE AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 58-106, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT OF LANDS SHALL MAINTAIN A CENTRAL OFFICE IN ADA COUNTY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 58-314, IDAHO CODE, TO PROVIDE THAT STATE LAND SALES BE HELD IN ADA COUNTY UNLESS OTHERWISE DIRECTED BY THE STATE BOARD OF LAND COMMISSIONERS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 61-208, IDAHO CODE, TO PROVIDE THAT THE PUBLIC UTILITIES COMMISSION SHALL MAINTAIN ITS OFFICE IN ADA COUNTY; AMENDING SECTION 61-1205, IDAHO CODE, TO PROVIDE THAT THE NORTHWEST POWER PLANNING COUNCIL SHALL HAVE ITS OFFICES IN ADA COUNTY; AMENDING SECTION 63-101, IDAHO CODE, TO PROVIDE THAT THE STATE TAX COMMISSION SHALL HAVE AN OFFICE IN ADA COUNTY; AMENDING SECTION 63-2518, IDAHO CODE, TO PROVIDE THAT THE STATE TAX COMMISSION HAS THE AUTHORITY TO CITE ANY PERSON TO APPEAR BEFORE IT IN ITS ADA COUNTY OFFICE; AMENDING SECTION 63-3807, IDAHO CODE, TO PROVIDE THAT THE BOARD OF TAX APPEALS SHALL HAVE ITS PRINCIPAL OFFICE IN ADA COUNTY; AMENDING SECTION 63-3810, IDAHO CODE, TO PROVIDE THAT A REHEARING BY THE TAX APPEALS BOARD WILL BE CONDUCTED IN ADA COUNTY; AMENDING SECTION 67-1502, IDAHO CODE, TO PROVIDE THAT THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL BE IN ADA COUNTY; AMENDING SECTION 67-1703, IDAHO CODE, TO PROVIDE THAT THE COMMISSIONERS ON UNIFORM STATE LAWS SHALL MEET IN ADA COUNTY; AMENDING SECTION 67-2502, IDAHO CODE, TO PROVIDE THAT EACH DEPARTMENT SHALL MAINTAIN A CENTRAL OFFICE IN ADA COUNTY AND MAY MAINTAIN OFFICES AT OTHER PLACES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5718, IDAHO CODE, TO DELETE REFERENCE TO BOISE FOR THE LOCATION OF THE DIVISION OF PURCHASING AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 67-5906, IDAHO CODE, TO PROVIDE THAT THE HUMAN RIGHTS COMMISSION SHALL MAINTAIN AN OFFICE IN ADA COUNTY AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 72-509, IDAHO CODE, TO PROVIDE THAT THE PRINCIPAL OFFICE OF THE INDUSTRIAL COMMISSION SHALL BE IN ADA COUNTY.

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

SECTION 1. That Section 22-1203, Idaho Code, be, and the same is hereby amended to read as follows:

22-1203. EXECUTIVE OFFICE. The executive office of said commission is hereby established ~~at Boise, Idaho~~ in Ada county.

SECTION 2. That Section 22-2540, Idaho Code, be, and the same is hereby amended to read as follows:

22-2540. REVIEW OF ACTION OF DIRECTOR. Any individual who has exhausted all administrative remedies available within the department and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with chapter 52, title 67, Idaho Code. The review may be obtained by filing in the district court within thirty (30) days following the action of the director a written petition praying that such action be set aside. A copy of such petition shall forthwith be delivered to the director and within thirty (30) days thereafter, the director shall certify and file in the district court of the area affected a transcript of any record pertaining thereto, including a transcript of evidence received at any hearing of referendum. The district court shall give notice by United States mail, to the director~~, at Boise, Idaho,~~ and to the petitioner or petitioners of the time and place at which the court will hear such petition, at which time any interested party may be heard. Upon completion of the hearing, the court shall affirm, set aside or modify the action of the director, except that the finding of the director as to the facts, if supported by substantial evidence, shall be conclusive.

SECTION 3. That Section 22-2913, Idaho Code, be, and the same is hereby amended to read as follows:

22-2913. EXECUTIVE OFFICE. The executive office of the commission is hereby established ~~at Boise, Idaho~~ in Ada county.

SECTION 4. That Section 22-3424, Idaho Code, be, and the same is hereby amended to read as follows:

22-3424. REVIEW OF ACTION OF DIRECTOR. Any person who has exhausted all administrative remedies available within the department and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with the provisions of the administrative procedure act, chapter 52, title 67, Idaho Code. The review may be obtained by filing in the district court within thirty (30) days' notice of the action of the director, a written petition praying that such action be set aside. A copy of such petition shall forthwith be delivered to the director, and within thirty (30) days thereafter the director shall certify and file in the district court of the area affected a transcript of any record pertaining thereto, including a transcript of evidence received at any hearing of referendum. The district court shall give notice, by United States mail, to the director of the department of agriculture, ~~at Boise, Idaho,~~ and to the petitioner or petitioners, of the time and place at which the court will hear such petition, at which time any interested party may be heard. Upon completion of the hearing the court shall affirm, set aside or modify the action of the director, except that the findings of the director as to the facts, if supported by substantial evidence, shall be conclusive.

SECTION 5. That Section 22-4103, Idaho Code, be, and the same is hereby amended to read as follows:

22-4103. AGRICULTURAL LABOR BOARD AND FUND CREATED. (1) There is hereby created and maintained in the department of employment pursuant to section 20, article IV, of the constitution of the state of Idaho a board to be known as the Idaho agricultural labor board, herein called the "board," which shall be composed of five (5) members, appointed by the governor and subject to confirmation by the senate. Two (2) of the members shall be appointed from a list of names submitted by labor organizations. Two (2) shall be appointed from a list of names submitted by agricultural producer groups. One (1) member shall be a representative of the public and shall be selected from a mutually agreed upon list of not less than three (3) persons submitted to the governor by the four (4) other members of the board. The public representative of the board will act as its chairman. The initial terms of office of the members of the board shall be two (2) years for one (1) of the labor representatives and one (1) of the management representatives, and four (4) years for the other labor representative and the other management representative and three (3) years for the chairman. Thereafter all terms shall be for a period of four (4) years. Each member of the board shall be eligible for reappointment and shall hold office until his successor is appointed and qualified. In the event of vacancy, the governor shall, within one (1) month, appoint a successor to fill the unexpired term of his predecessor. All appointments to the board shall be made in conformity with the foregoing plan.

(2) A vacancy on the board shall not impair the right of the remaining members to exercise all the powers of the board, and three (3) members of the board shall constitute a quorum. The board may adopt an official seal and prescribe the purposes for which it shall be used.

(3) The board shall, at the end of every year, make a report in writing to the governor, stating the work it has done in hearing and deciding cases and otherwise, and it shall sign and report in full an opinion in every case decided by it.

(4) Each member of the board shall be compensated as provided by section 59-509(f), Idaho Code.

(5) The board may employ clerical and other employees as necessary, or may authorize, by written agreement, the director of the department of employment to provide such clerical or other services as the board deems necessary.

(6) The principal office of the board shall be in ~~Boise~~ Ada county, but it may meet and exercise any or all of its powers at any other place within the state. The board may, by one (1) or more of its members or by such board agents as it may designate, conduct in any part of this state any proceeding, hearing, investigation, inquiry or election necessary to the performance of its functions. A member who participates in any such proceeding shall not be disqualified from subsequently participating in a decision of the board in the same case.

(7) The board shall have the authority from time to time to make, amend, and rescind such rules ~~and regulations~~ as may be necessary to carry out the provisions of this act. Rules ~~and regulations~~ under this act shall be promulgated and governed according to the provisions of chapter 52, title 67, Idaho Code.

SECTION 6. That Section 23-202, Idaho Code, be, and the same is hereby amended to read as follows:

23-202. PRINCIPAL PLACE OF BUSINESS. The principal place of business of the dispensary shall be ~~at Boise City, Idaho~~ in Ada county.

SECTION 7. That Section 25-2510, Idaho Code, be, and the same is hereby amended to read as follows:

25-2510. REFERENDUM FOR HORSE OWNERS. (1) Within three (3) years from July 1, 2000, a referendum shall be held to determine if horse owners favor an increase from one dollar ($1.00) to three dollars ($3.00) in the mandatory assessment prescribed in section 25-2505, Idaho Code. The question shall be submitted to all horse owners who had a brand inspection the year prior to the referendum. Horse owners who have been issued a lifetime brand inspection after July 1, 2000, are also eligible to participate in the referendum and may do so by requesting a ballot from the Idaho horse board. Voting shall be by secret ballots upon which the words "Do you favor the increase from one dollar ($1.00) to three dollars ($3.00) in the mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the proposition which the voter favors. If a majority of the referendum vote is in favor of the mandatory assessment of three dollars ($3.00), the provisions of section 25-2505, Idaho Code, shall be extended indefinitely or until such time that the horse board deems it necessary to hold another referendum on the issue. If a majority of the referendum vote is against the three dollar ($3.00) assessment provided in section 25-2505, Idaho Code, the assessment shall revert to one dollar ($1.00) on the date the director of the department of agriculture announces the results of the referendum.

(2) After five (5) years from the effective date of the referendum required in subsection (1) of this section, and every five (5) years thereafter, a referendum on the continuation of the mandatory assessment to fund the Idaho horse board may be held at the petition of horse owners, or at the request of the Idaho horse board. The question shall be submitted to all horse owners who paid an assessment the year before the referendum and by owners who hold a lifetime brand inspection issued since July 1, 1993. The question shall be submitted by secret ballots upon which the words, "Do you favor the continuation of a mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the question which the voter favors. If a majority of the referendum vote is in favor of continuing the mandatory assessment, all of the provisions of chapter 25, title 25, Idaho Code, shall continue. If a majority of the referendum vote is against continuing the mandatory assessment, the assessment imposed in section 25-2505, Idaho Code, shall cease to be mandatory on the date the director of the department of agriculture announces the results of the referendum vote. The procedures necessary to initiate a referendum under this subsection are as follows:

(a) A referendum shall be held if the Idaho department of agriculture receives a petition requesting such a referendum signed by ten percent (10%) or more of horse owners who have had a brand inspec-

tion, in either of the two (2) immediate past years; or

(b) A referendum shall be held if the Idaho department of agriculture receives a written request for such referendum from the Idaho horse board.

(3) Any referendum held pursuant to subsections (1) and (2) of this section shall be conducted as follows:

(a) Any referendum must be supervised by the Idaho department of agriculture.

(b) Any referendum shall be held, and the result determined and declared by the director of the department of agriculture, and recorded in the office of the secretary of state.

(c) Notice of any referendum must be given by the Idaho horse board in a manner determined by it. The ballots must be prepared by the Idaho horse board and forwarded to eligible owners. Returned ballots shall be delivered to the Idaho department of agriculture, main office~~, Boise, Idaho~~.

(d) The Idaho horse board shall pay the costs of any referendum.

SECTION 8. That Section 33-102, Idaho Code, be, and the same is hereby amended to read as follows:

33-102. MEMBERSHIP -- APPOINTMENT -- TERM OF OFFICE -- QUALIFICATIONS -- PLACE OF OFFICE. The state board of education shall consist of the state superintendent of public instruction, who shall be an ex officio voting member and who shall serve as executive secretary of the board for all elementary and secondary school matters, and seven (7) members appointed by the governor, each for a term of five (5) years. Annually on the first day of March the governor shall appoint members to fill the board positions for which the terms of office have expired. The governor shall, by appointment, fill any vacancy on the board, such appointment to be for the unexpired term of the retiring member. Appointment to the board shall be made solely upon consideration of the ability of such appointees efficiently to serve the interests of the people, and education, without reference to locality, occupation, party affiliation or religion. Any person appointed to said board shall have been a resident of the state for not less than three (3) years prior to the date of appointment; and shall qualify and assume the duties in accordance with laws governing similar appointments to, and qualifications for, office on other state boards. All appointments of members to the state board of education made after the effective date of this act must be confirmed by the senate.

Members of the state board of education holding office on the effective date of this act shall continue in office for the balance of the term to which they were appointed.

The state board shall have and maintain its office ~~at the state capitol~~ in Ada county.

SECTION 9. That Section 33-118A, Idaho Code, be, and the same is hereby amended to read as follows:

33-118A. CURRICULAR MATERIALS -- ADOPTION PROCEDURES. All curricular materials adoption committees appointed by the state board of education shall contain at least two (2) persons who are not public educators or school trustees. All meetings of curricular materials adoption com-

mittees shall be open to the public. Any member of the public may attend such meetings and file written or make oral objections to any curricular materials under consideration. A complete and cataloged library of all curricular materials adopted and used in Idaho public schools is to be maintained at the state department of education ~~in Boise~~ at all times and open to the public.

"Curricular materials" is defined as textbook and instructional media including software, audio/visual media and internet resources.

SECTION 10. That Section 36-101, Idaho Code, be, and the same is hereby amended to read as follows:

36-101. FISH AND GAME DEPARTMENT. A department of fish and game is hereby established. Said 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. The department shall have its principal office in ~~the city of Boise, state of Idaho~~ Ada county.

SECTION 11. That Section 36-102, Idaho Code, be, and the same is hereby amended to read as follows:

36-102. IDAHO FISH AND GAME COMMISSION. (a) Creation. There is hereby created the Idaho fish and game commission. The department of fish and game of the state of Idaho is hereby placed under the supervision, management and control of said Idaho fish and game commission, hereinafter referred to as the commission or as said commission.

(b) Membership -- Appointment -- Qualifications. The commission shall consist of seven (7) members, to be appointed by the governor of the state of Idaho, who shall hold office during the pleasure of the governor and who shall be subject to removal by him. The selection and appointment of said members shall be made solely upon consideration of the welfare and best interests of fish and game in the state of Idaho, and no person shall be appointed a member of said commission unless he shall be well informed upon, and interested in, the subject of wildlife conservation and restoration. No member shall hold any other elective or appointive office, state, county or municipal, or any office in any political party organization. Not more than four (4) of the members of said commission shall at any time belong to the same political party. Each of the members of said commission shall be a citizen of the United States, and of the state of Idaho, and a bona fide resident of the region from which he is appointed as hereinafter set forth. Said members so appointed shall act and assume full powers and duties upon appointment, as herein provided, but such appointments shall be subject to confirmation by the senate at its next session.

(c) Creation of Regions. For the purpose of this act, the state of Idaho is divided into seven (7) regions, which shall be named:

(1) Panhandle region to consist of the counties of Boundary, Bonner, Kootenai, Shoshone and Benewah;

(2) Clearwater region to consist of the counties of Latah, Clearwater, Nez Perce, Lewis and Idaho;

(3) Southwestern region to consist of the counties of Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore and Owyhee;

(4) Magic Valley region to consist of the counties of Camas,

Blaine, Gooding, Lincoln, Minidoka, Jerome, Twin Falls and Cassia;

(5) Southeastern region to consist of the counties of Bingham, Power, Bannock, Caribou, Oneida, Franklin and Bear Lake;

(6) Upper Snake River region to consist of the counties of Clark, Fremont, Butte, Jefferson, Madison, Teton and Bonneville;

(7) Salmon region to consist of the counties of Lemhi and Custer.

Each of the above enumerated regions shall, at all times, be represented by one (1) member of the commission, appointed from said region by the governor.

(d) Terms of Office.

(1) Except as provided in paragraph (2) of this subsection, the members of said commission shall be appointed for a term of four (4) years; provided, that in the case of the death of any commissioner, or his removal from office as hereinbefore provided, the governor shall appoint a successor from the same region for the unexpired term. Beginning in 1999 and thereafter, the term of each member shall expire on June 30. The term of any member which would otherwise expire prior to June 30 shall be extended to June 30. No member shall serve more than two (2) terms, except that a member appointed to fill an unexpired term may be appointed to two (2) additional, full terms. Members serving on the effective date of this act shall be eligible to complete the term they are then serving, and shall thereafter be governed by the provisions of this subsection limiting the length of any additional terms to four (4) years and the number of terms to two (2).

(2) In appointing successors for the members whose terms expire in 1999, the governor shall designate two (2) members to be appointed for a term of three (3) years and two (2) members to be appointed for a term of four (4) years. Successors to the members appointed for a term of three (3) years shall be appointed for a term of four (4) years thereafter.

(e) Oath of Office -- Bond. Each commissioner shall, before entering upon his official duties, take and subscribe to the official oath, in writing, as provided by section 59-401, Idaho Code, to which said official oath there shall be added a declaration as to the name of the political party to which such commissioner belongs, and said commissioner shall be bonded to the state of Idaho in the time, form, and manner prescribed by chapter 8, title 59, Idaho Code.

(f) Compensation and Reimbursement for Expenses. Each member of the commission shall be compensated as provided by section 59-509(h), Idaho Code. All such compensation and expenses shall be paid from the fish and game account.

(g) Quorum. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power.

(h) Office and Supplies. The commission shall have its principal office in ~~the city of Boise~~ Ada county and is authorized to purchase supplies, equipment, printed forms, and notices, and to issue such publications as may be necessary.

SECTION 12. That Section 36-104, Idaho Code, be, and the same is hereby amended to read as follows:

36-104. GENERAL POWERS AND DUTIES OF COMMISSION. (a) Organization -- Meetings. The members of the commission shall annually meet at their offices ~~in the city of Boise~~ and organize by electing from their membership a chairman, who shall hold office for a period of one (1) year, or until his successor has been duly elected. In addition to the regular annual meeting, to be held in January, said commission shall hold other regular quarterly meetings in April, July and October of each year at such places within the state as the commission shall select for the transaction of business. Special meetings may be called at any time and place by the chairman or a majority of the members of the commission. Notice of the time, place and purpose of any and all special meetings shall be given by the secretary to each member of the commission prior to said meeting.

(b) Authorization for Commission Powers and Duties. For the purpose of administering the policy as declared in section 36-103, Idaho Code, the commission is hereby authorized and empowered to:

1. Investigate and find facts regarding the status of the state's wildlife populations in order to give effect to the policy of the state hereinbefore announced.

2. Hold hearings for the purpose of hearing testimony, considering evidence and determining the facts as to when the supply of any of the wildlife in this state will be injuriously affected by the taking thereof, or for the purpose of determining when an open season may be declared for the taking of wildlife. Whenever said commission determines that the supply of any particular species of wildlife is being, or will be, during any particular period of time, injuriously affected by depletion by permitting the same to be taken, or if it should find a longer or different season, or different bag limit should be adopted for the better protection thereof, or if it finds that an open season may be declared without endangering the supply thereof, then it shall make a rule 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 as specified in section 36-416, Idaho Code, shall be charged each applicant for a controlled hunt permit. 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 nonrefundable application fee for transmittal to the reward fund of citizens against poaching, inc., an Idaho nonprofit corporation. 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 13. That Section 40-307, Idaho Code, be, and the same is hereby amended to read as follows:

40-307. OFFICE OF BOARD -- ORGANIZATION MEETINGS -- OFFICERS. The permanent offices of the board shall be maintained ~~at Boise City, Idaho~~ in Ada county, in suitable offices and quarters, with equipment, records and supplies as may be deemed necessary to carry out the provisions of this title. The members of the board shall select a vice chairman at the February meeting of each year, and the board shall adopt a seal having upon it the words, "Idaho Transportation Board--State of Idaho." The secretary of the board shall have care and custody of the seal. The board shall appoint a secretary and fix his compensation. The secretary shall hold office subject to the pleasure of the board, and carry out administrative duties as delegated to him. For the administration of their functions the board may employ other employees and personnel as may be deemed necessary, prescribe their duties, and fix their compensation.

SECTION 14. That Section 40-2402, Idaho Code, be, and the same is hereby amended to read as follows:

40-2402. COUNCIL ORGANIZATION -- PERSONNEL. (1) The offices of the council shall be maintained ~~at Boise, Idaho~~ in Ada county, and the members shall meet and organize as soon as all appointments have been made, or as provided in section 40-2401, Idaho Code. At the in~~itia~~l meeting, and each year thereafter, the members shall, by a majority vote of the total membership, elect a chairman and a vice chairman.

(2) The council shall meet quarterly for regular business sessions, and at such other times at the call of the chairman, or at the request of any three (3) members.

(3) The council may appoint a local highway administrator and fix his compensation, and the administrator shall hold office at the pleasure of the council. The administrator shall serve as secretary and executive officer of the council and carry out such duties as are delegated by the council. The council may employ other personnel, prescribe duties, and fix compensation.

SECTION 15. That Section 41-1041, Idaho Code, be, and the same is hereby amended to read as follows:

41-1041. CONDUCT OF EXAMINATION. (1) The director shall make any examination required under section 41-1038, Idaho Code, available to applicants from time to time with reasonable frequency, and at places in this state reasonably accessible to such applicants. The director shall make each such examination available ~~at Boise~~ on at least one (1) day of each week.

(2) The director may permit the applicant to take, on the same day and at the same place, all examinations required for the license or licenses for which his application has theretofore been completed and is then pending, and for which the examinations fees have been paid. This provision shall not apply as to examination for license as to variable annuity contracts.

(3) The director shall give, conduct and grade all examinations in a fair and impartial manner, and without unfair discrimination as between individuals examined.

SECTION 16. That Section 41-1046, Idaho Code, be, and the same is hereby amended to read as follows:

41-1046. CONTINUATION, EXPIRATION OF LICENSE. (1) All agent, broker, consultant, limited agent, adjuster, and surplus line broker licenses issued under this code shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to payment of the applicable continuation fee to the director at his office ~~in Boise~~ no less often than biennially on or before the expiration date referred to in subsection (2) of this section, accompanied by written request for such continuation and a continuing education statement verifying that the licensee has completed any continuing education requirements imposed by the director of insurance. An application for renewal is not complete and sufficient unless it is submitted with both the applicable fee and the completed continuing education statement. The continuation fees as stated in section 41-401, Idaho Code (fee schedule), are for a one (1) year continuation; and licenses continued for two (2) years shall be subject to payment of a two (2) year continuation fee. Request for continuation shall be made in writing on forms to be supplied by the director.

(2) The director may, in his discretion, fix the dates of expiration of respective licenses and appointments in such manner as is deemed by him to be advisable for an efficient distribution of the work load of his office. If as to a particular license or appointment the expiration date so fixed would upon first occurrence shorten the period for which license or appointment continuation fee has theretofore been paid, no refund of unearned fee shall be made; and if the expiration date so fixed as to a particular license or appointment would upon first occurrence lengthen the period for which license or appointment continuation fee had theretofore been paid, the director shall charge no additional fee for such lengthened period. If another date is not so fixed by the director, each such license shall, unless continued as hereinabove provided, expire at midnight on March 31.

(3) Any license referred to in subsection (1) of this section as to which request for continuation, fee and completed continuing education

statement is not so received by the director shall be deemed to have expired at midnight on the applicable expiration date. Request for continuation of any such license or payment of the continuation fee therefor which is received by the director within thirty (30) days after such expiration date may be accepted and effectuated by the director, in his discretion, if accompanied by a continuation fee of two (2) times the amount otherwise required.

(4) As a condition to or in connection with the continuation of any agent or broker license the director may require the licensee to file with him information relative to use made of the license during the next preceding two (2) calendar years, and especially showing whether the license has been used principally for the writing of controlled business, as defined in section 41-1033, Idaho Code.

(5) All sums tendered as fee for continuation of license as agent, broker, consultant, limited agent, adjuster and surplus line broker shall be deemed earned when paid and shall not be subject to refund; except that the director shall refund any duplicate payment of any such fee.

(6) (a) For the protection of the people of this state the director shall, by rule, establish additional educational requirements designed to maintain and improve the insurance skills and knowledge of agents, brokers and consultants after being duly licensed by the department of insurance. The director shall also, by rule, establish an advisory committee, including limits on the term of service for members of the committee, comprised of representatives from each segment of the insurance industry, to assist the director in prescribing additional educational requirements and fulfilling the purposes of this legislation.

(b) Subject to subsection (3) ~~above~~ of this section, the director shall not permit to be continued the license of any agent, broker or consultant who is licensed pursuant to section 41-1030, Idaho Code, and who is a resident of this state, unless such person has demonstrated to the satisfaction of the director that in addition to meeting the standards contained in section 41-1034, Idaho Code (qualifications for agents or brokers), or section 41-1035, Idaho Code (qualifications for consultants), as may be applicable, all the additional educational requirements as the director may prescribe by rule adopted pursuant to this subsection have been met. The provisions of this paragraph shall not apply to employees or owners of travel agencies if the employee's or owner's license allows the sale of travel or trip insurance to customers booking travel plans with the travel agency, or to a limited agent who is licensed pursuant to section 41-1045, Idaho Code, or to persons regulated or licensed by the department of finance pursuant to chapter 46, title 28, Idaho Code, national or state chartered banks, federal or state chartered savings and loan associations, or federal or state chartered credit unions dealing with insurance licensed pursuant to section 41-1045, Idaho Code (limited agent's license).

SECTION 17. That Section 42-1733, Idaho Code, be, and the same is hereby amended to read as follows:

42-1733. ORGANIZATION. The business of the board shall be conducted as follows:

(a) The first meeting of the board shall be held in the city of Boise within thirty (30) days following its appointment and thereafter the board shall hold no less than four (4) regular meetings annually on dates and at places set by the board. The board shall maintain its principal office in ~~the city of Boise~~ Ada county. Special meetings of the board may be held by call of the chairman, four (4) of the members of the board, or the governor. A majority of board members at any meeting shall constitute a quorum for the transaction of any business. No notice shall be required for regular, special or adjourned meetings, providing the time and place of the meeting is fixed at a meeting at which all of the board members are in attendance. Otherwise, five (5) days written or telegraphic notice setting out the time, place and purpose of the meeting shall be required. Any meeting of the board at which all of the members are present shall be as valid as if held pursuant to notice. Members may waive notice in writing either before or at the time of the meeting.

(b) All meetings at which official action is taken by the board shall be open to the public; the board may hold executive sessions at which no official action is taken.

(c) At its first meeting the board shall elect one (1) of its members chairman and one (1) of its members vice chairman. Such officers shall hold their respective offices for a period of two (2) years and until their successors are elected and qualified. Should a vacancy occur in either office, the board shall elect a member to fill such vacancy for the remainder of the term.

(d) The chairman shall preside at all meetings of the board, perform the normal duties of that office and such other duties as may be required of him by the board.

(e) The vice chairman shall possess all of the powers and perform all of the duties of the chairman in the event of the death, absence, disability or refusal to act on the part of the chairman, and such authority shall extend until a new chairman has been elected and qualified. He shall also perform such other duties as may be required of him by the board.

(f) The board shall select a secretary who may be a member of the board. The secretary shall be responsible for full and accurate minutes of all meetings of the board, a record of its proceedings, and every ruling, order and decision made by it. He shall also perform such other duties as may be required of him.

(g) The board shall adopt a seal having upon it the words, "Idaho water resource board," which shall be placed in the care and custody of the director.

(h) Each member of the board shall, before entering upon the discharge of his official duties, file with the secretary of state the statutory oath of office to which, and as a part thereof, shall be added a declaration of the political party to which said board member belongs.

SECTION 18. That Section 42-2011, Idaho Code, be, and the same is hereby amended to read as follows:

42-2011. FORFEITURE OF CONTRACT FOR CONTRACTOR'S DEFAULT -- SALE OF PROJECT. Upon the failure of any parties having contracts with the state for the reclamation of lands segregated under the Carey Act to commence the construction of such ditches, canals or other irrigation works within the time specified by the contract or to perform all of the requirements of said contract within the time specified in said contract with the state to the satisfaction of the director of the department of water resources, it shall be the duty of the director to give such parties written notice of such failure, and if, after a period of sixty (60) days from the sending of such notice, they shall have failed to proceed with the work or to conform to the provisions of their contract with the state, the bond and contract of such parties and all works constructed thereunder shall be at once and thereby forfeited to the state.

It shall be the duty of the director at once so to declare and give notice once each week for a period of four (4) weeks in some newspaper of general circulation in the county in which the work is situated and in one (1) newspaper at the state capital in like manner and for a like period of the forfeiture of said contract, and that upon a fixed day proposals will be received at the office of the department ~~in the capitol at Boise City~~ for the purchase of ditches, canals, other irrigation works, water rights and all other rights, privileges and benefits obtained under the provisions of the said contract and for the performance of the provisions of said contract with the state. The time for receiving said bids shall be at least sixty (60) days subsequent to the issuing of the last notice of forfeiture. Upon the request of any bidder the director shall specify in particular the needful things to be done in order to accomplish the substantial and satisfactory performance of said contract, and the director may require good and sufficient bond for such performance before confirming such sale. The money received by the department from the sale under the provisions of this section shall first be applied to the expenses incurred by the state in the forfeiture and disposal and to satisfying the bond, and the surplus, if any exists, shall be paid into the Carey Act trust fund created under section 42-2018, Idaho Code.

SECTION 19. That Section 43-401, Idaho Code, be, and the same is hereby amended to read as follows:

43-401. PLAN OF CONSTRUCTION -- ISSUANCE OF BONDS -- INDEBTEDNESS -- ELECTION. As soon as practicable after the organization of any such district the board of directors shall, by a resolution entered on its records, formulate a general plan of its proposed operations, in which it shall state what constructed works or other property it proposes to purchase and the cost of purchasing the same; and further what construction work it proposes to do and how it proposes to raise the funds for carrying out said plan. For the purpose of ascertaining the cost of any such construction work, said board shall cause such surveys, examinations and plans to be made as shall demonstrate the practicability of such plan, and furnish the proper basis for an estimate of the cost of carrying out the same. All such surveys, examinations, maps, plans and estimates, shall be made under the direction of a competent irrigation engineer and certified by him. Said board shall then submit a copy of the same to the department of water resources, and within ninety (90) days thereafter the department shall file a report upon the same with

said board, which report shall contain such matters as, in the judgment of the department may be desirable.

Upon receiving said report said board of directors shall proceed to determine the amount of money necessary to be raised, and shall immediately thereafter call a special election, at which shall be submitted to the electors of said district possessing the qualifications hereinafter prescribed the question whether or not the bonds of said district, or the right to enter into an obligation with the United States in the manner hereinafter in this title provided, or whether a contractual arrangement with a money-lending institution in the amount as determined, shall be authorized.

Notice of such election must be given by posting notices in three (3) public places in each election precinct in said district at least four (4) weeks before the date of said election, and the publication thereof for the same length of time in some newspaper published in the district, and in case no paper is published in the district, then in a paper published in each county in which the district or any part thereof is located. Such notice must specify the time of holding the election, the qualifications of voters, the amount of bonds proposed to be issued, and, in case such maps and estimates have been made, it shall further state that copies thereof, and in all cases it shall state that said report of the department of water resources, are on file and open to public inspection by the people of the district, at the office of said board and at the office of the department of water resources. ~~at--the state-capitol.~~

No person who is not a resident holder of title or evidence of title to lands located and subject to assessment within such district, or the wife or husband of such holder of title or evidence of title, shall be entitled to vote at such election. Otherwise said election must be held and the results thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this title governing the election of officers: provided, that no informalities in conducting such an election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "bonds--yes" or "bonds--no," or other words equivalent thereto. If two-thirds (2/3) of the votes cast are "bonds--yes" the board of directors shall cause bonds in said amount to be issued; if more than one-third (1/3) of the votes cast at any bond election are "bonds--no" the result of such election shall be so declared and entered of record.

And whenever thereafter said board in its judgment deems it for the best interest of the district that the question of the issuance of bonds in said amount, or any other amount, shall be submitted to the electors, it shall so declare of record in its minutes, and may thereupon submit such questions to said electors in the same manner and with like effect as at such previous election.

SECTION 20. That Section 49-202, Idaho Code, be, and the same is hereby amended to read as follows:

49-202. DUTIES OF DEPARTMENT. (1) All registration and driver's license records in the office of the department shall be public records and open to inspection by the public during normal business hours, except for those records declared by law to be for the confidential use

of the department, or those records containing personal information subject to restrictions or conditions regarding disclosure. If the department has contracted for a service to be provided by another entity, an additional fee shall be charged by that contractor whether the service is rendered during normal business hours, other than normal business hours or on weekends.

(2) In addition to other fees required by law to be collected by the department, the department shall collect the following:

(a) For certifying a copy of any record pertaining to any vehicle license, any certificate of title, or any driver's license ... $8.00

(b) For issuing every Idaho certificate of title $8.00

(c) For furnishing a duplicate copy of any Idaho certificate of title $8.00

(d) For issuance or transfer of every certificate of title on a new or used vehicle or other titled vehicle in an expedited manner (rush titles), in addition to any other fee required by this section $15.00

(e) For recording a transitional ownership document, in addition to any other fee required by this section $15.00

(f) For furnishing a replacement of any receipt of registration $3.00

(g) For furnishing copies of registration or ownership of motor vehicles or driver's license records, per vehicle registration, accident report records, title or per driver's license record $4.00

Additional contractor fee, not to exceed $4.00

(h) For services in searching files of vehicle or other registrations, vehicle titles, or driver's licenses per hour $10.00

(i) Placing "stop" cards in vehicle registration or title files, each $12.00

(j) For issuance of an assigned or replacement vehicle identification number (VIN) $10.00

(k) For a vehicle identification number (VIN) inspection whether conducted by a city or county peace officer or any other peace officer or designated agent of the state of Idaho, per inspection $3.00

(l) For all replacement registration stickers, each $1.00

(m) For issuing letters of temporary vehicle clearance to Idaho based motor carriers $10.00

(n) For all sample license plates, each $12.00

(o) For filing release of liability statements $2.00

(p) For safety and insurance programs for each vehicle operated by a motor carrier $2.00

A lesser amount may be set by rule of the board.

(3) The fees required in this section shall not apply when the service is furnished to any federal, state, county or city peace officer when such service is required in the performance of their duties as peace officers.

(4) The department may enter into agreements with private companies or public entities to provide the services for which a fee is collected in subsection (2)(g) of this section. Such private contractor shall collect the fee prescribed and remit the fee to the department. The contractor shall also collect and retain the additional fee charged for his services.

(5) (a) The department shall pay three dollars ($3.00) of the fee collected by a county assessor or other agent of the department as provided in subsection (2)(a) through (f) of this section, and four dollars ($4.00) as provided in subsection (2)(g) of this section, to the county assessor or sheriff of the county or agent collecting such fee, which shall be deposited with the county treasurer and credited to the county current expense fund. The remainder of the fees collected as provided in that subsection shall be paid by the department to the state treasurer and placed in the state highway fund.

(b) The fee collected under subsection (2)(k) of this section for a VIN inspection shall be placed in the city general fund if conducted by a city peace officer, in the county current expense fund if conducted by a county peace officer, shall be retained by the special agent authorized to perform the inspection, or paid to the state treasurer and placed to the credit of the Idaho state police if conducted by the Idaho state police or in the state highway fund if conducted by the department.

(c) The fee collected under subsection (2)(p) of this section for motor carriers shall be paid by the department to the state treasurer and placed in the state highway fund. The director and the director of the Idaho state police shall jointly determine the amount to be transferred from the state highway fund to the law enforcement fund for motor carrier safety programs conducted by the Idaho state police pursuant to the provisions of section 67-2901A, Idaho Code.

(6) The department as often as practicable may provide to law enforcement agencies the record of suspensions and revocations of driver licenses via the Idaho law enforcement telecommunications system (ILETS).

(7) The department shall provide the forms prescribed in chapter 5 of this title, shall receive and file in its office in ~~Boise, Idaho~~ Ada county, all instruments required in chapter 5 of this title to be filed with the department, shall prescribe a uniform method of numbering cer~~tificates~~s of title, and maintain in the department indices for such certificates of title. All indices shall be by motor or identification number and alphabetical by name of the owner.

(8) The department shall file each registration received under a distinctive registration number assigned to the vehicle and to the owner thereof.

(9) The department shall not renew a driver's license or identification card when fees required by law have not been paid or where fees for past periods are due, owing and unpaid including insufficient fund checks, until those fees have been paid.

(10) The department shall not grant the registration of a vehicle when:

(a) The applicant is not entitled to registration under the provisions of this title; or

(b) The applicant has neglected or refused to furnish the department with the information required in the appropriate form or reasonable additional information required by the department; or

(c) The fees required by law have not been paid, or where fees for past registration periods are due, owing and unpaid including insufficient fund checks.

(11) The department or its authorized agents have the authority to request any person, to submit to medical, vision, highway, or written examinations, to protect the safety of the public upon the highways. The department or its authorized agents may exercise such authority based upon evidence which may include, but is not limited to, observations made.

(12) The department shall revoke the registration of any vehicle:

(a) Which the department shall determine is unsafe or unfit to be operated or is not equipped as required by law;

(b) Whenever the person to whom the registration card or registration plate has been issued shall make or permit to be made any unlawful use of the same or permit their use by a person not entitled thereto;

(c) For any violation of vehicle registration requirements by the owner or operator in the current or past registration periods;

(d) Whenever a motor carrier requests revocation, or whenever an interstate carrier's federal operating authority has been revoked;

(e) For failure of the owner or operator to file the reports required or nonpayment of fees assessed against the owner by the department pursuant to audit under the provisions of section 49-439, Idaho Code;

(f) Identified by any city or county administering a program established by ordinance for the inspection and readjustment of motor vehicles (which program is part of an approved state implementation plan adopted by both the state and federal governments under 42 USC section 7410) as having failed to comply with an ordinance requiring motor vehicle emission inspection and readjustment; provided that no vehicle shall be identified to the department under this subsection (f) unless:

(i) The city or county certifies to the department that the owner of the motor vehicle has been given notice and had the opportunity for a hearing concerning compliance with the ordinance and has exhausted all remedies and appeals from any determination made at such hearing; and

(ii) The city or county reimburses the department for all direct costs associated with the registration revocation procedure.

(13) The department shall not reregister or permit a vehicle to operate on a special trip permit until all fees, penalties and interest have been paid.

(14) The department shall institute educational programs, demonstrations, exhibits and displays.

(15) The department shall cancel a driver's license or identification card when fees required by law have not been paid or where fees are due, owing and unpaid including insufficient fund checks, until those fees have been paid.

(16) The department shall examine persons and vehicles by written, oral, vision and skills tests without compulsion except as provided by law.

(17) The department shall employ expert and special help as needed in the department.

(18) The department shall compile accident statistics and disseminate information relating to those statistics.

(19) The department shall cooperate with the United States in the

elimination of road hazards, whether of a physical, visual or mental character.

(20) The department shall place and maintain traffic-control devices, conforming to the board's manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this title or to regulate, warn, or guide traffic. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the department except by the latter's permission, except where the duly elected officials of an incorporated city have established speed limits lower than those set by the department on the portion of state highways, excluding controlled-access and interstate highways, that pass through residential, urban or business districts within the jurisdiction of the incorporated city. The placement and maintenance of such a traffic-control device by a local authority shall be made according to the board's manual and specifications for a uniform system of traffic-control devices.

(21) The department may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall find that the structure cannot with safety to itself withstand vehicles traveling at a speed otherwise permissible under this title, shall determine and declare the maximum speed of vehicles which the structure can safely withstand, and shall cause or permit suitable signs stating the maximum speed to be erected and maintained before each end of the structure.

(22) Whenever the department shall determine on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the department may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law, and that limit shall be effective when posted upon appropriate fixed or variable signs, except in cases where the duly elected officials of an incorporated city have established speed limits lower than those set by the department on portions of state highways, excluding controlled-access and interstate highways, that pass through residential, urban or business districts within the jurisdiction of the incorporated city.

(23) The department shall regulate or prohibit the use of any controlled-access highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(24) The department shall erect and maintain traffic-control devices on controlled-access highways on which any prohibitions are applicable.

(25) Wherever a highway crosses one (1) or more railroads at grade, the department or local authorities within their respective jurisdictions shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when in the determination of public highway agencies the existence of stop signs at a given crossing would constitute a greater hazard than their absence based on a recognized engineering study.

Nothing in this subsection shall be construed as granting immunity to any railroad company as to liability, if any, for an accident which might occur at a crossing where stop signs are erected and in place, but liability, if any, shall be determined as provided by law. Liability on

the part of governmental authorities on account of absence of any stop sign at a crossing shall be determined as provided by law.

(26) The department and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left side of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of those zones and when signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey those directions.

(27) The department and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this title or title 40, Idaho Code.

(28) The department and local highway authorities within their respective jurisdictions may place official traffic-control devices prohibiting, limiting or restricting the stopping, standing or parking of vehicles on any highway where such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles unduly interferes with the free movement of traffic thereon.

(29) On any informational material printed after July 1, 1995, by or at the order of the department and distributed to counties, school districts or individuals for the purpose of assisting a person to successfully pass a driver's license test, the department shall include material about the state's open range law and responsibilities, liabilities and obligations of drivers driving in the open range.

SECTION 21. That Section 54-205, Idaho Code, be, and the same is hereby amended to read as follows:

54-205. MEETINGS -- COMPENSATION -- EXECUTIVE DIRECTOR. The board shall have its principal office ~~at Boise, Idaho~~ in Ada county. Four (4) members of the board shall constitute a quorum, a majority of whom may act. The board shall meet no less than three (3) times each year; provided, however, special meetings may be called at any time during the year after notice to all members of the board of such special meetings. The board shall elect annually a chair, a vice chair, a secretary and a treasurer from its members. The offices of secretary and treasurer may be in the same person. The members of the board shall be compensated as provided by section 59-509(i), Idaho Code.

The board shall have the power to name an executive director who need not be a member of the board or a licensee and who may be a full-time or part-time employee of the state of Idaho. The board shall prescribe the duties of the executive director. Such duties shall include but are not limited to:

(1) Maintenance of a licensee registry;

(2) The preparation of all papers and records for the board; and

(3) Enforcement or investigative activities as directed by the board.

SECTION 22. That Section 54-1906, Idaho Code, be, and the same is hereby amended to read as follows:

54-1906. PRINCIPAL PLACE OF BUSINESS. The principal place of business of the board shall be in ~~Boise, Idaho~~ Ada county. The board shall meet at ~~Boise, Idaho~~ its principal place of business.

SECTION 23. That Section 54-1913, Idaho Code, be, and the same is hereby amended to read as follows:

54-1913. RECORDS, LISTS AND INFORMATION. The board shall maintain at its office, ~~in Boise, Idaho,~~ open to public inspection during office hours, a complete record of all retained applications, licenses issued, licenses renewed and all revocations, ~~cancelations~~ cancellations and suspensions of licenses, and shall furnish a certified copy of any license issued, upon receipt of the sum of fifty cents (50¢), which certified copy shall be received in all courts and elsewhere as evidence of the facts stated therein.

Whenever funds are available for the purpose, the board shall publish a list of the names and addresses of contractors licensed under this act and such further information with respect to this act and its administration as the board deems proper. The board may furnish the lists to such public works and building departments, public officials or public bodies, and other persons interested in or allied with the building and construction industry in this or any other state as deemed advisable, and at such intervals as deemed necessary, whenever funds therefor are available. Copies of the lists may also be furnished by the board upon request to any firm or individual upon payment of a reasonable fee fixed by the board.

Whenever funds are available for the purpose, the board may publish and disseminate to licensees of the board and to public officials or other persons interested in or allied with the building and construction industry, such information with relation to the administration and enforcement of this act as deemed necessary to carry out its purposes.

SECTION 24. That Section 58-106, Idaho Code, be, and the same is hereby amended to read as follows:

58-106. OFFICES. The department shall maintain a central office ~~at the capital~~ in Ada county. The director may in his discretion and with the approval of the state board of land commissioners, establish and maintain, at places other than the seat of government, branch offices for the conduct of any one (1) or more functions of his department.

SECTION 25. That Section 58-314, Idaho Code, be, and the same is hereby amended to read as follows:

58-314. PLACE AND TERMS OF SALE -- CASH SALES -- NOXIOUS WEED DISTRICTS. All sales of state lands shall be held ~~at the state capitol~~ in Ada county unless otherwise directed by the state board of land commissioners. Any such sale held away from ~~the state capitol~~ Ada county shall take place at the county seat of the county or one (1) of the counties in which such lands are situated unless otherwise directed ~~by~~ the board.

Terms of payment shall be cash on the day of sale, except that the

state board of land commissioners may sell state lands on installments with the down payment, number of installments and interest on deferred payments to be set by the board, but in no case shall the down payment be less than ten ~~per-cent~~ percent (10%) of the purchase price or the number of annual payments greater than twenty (20). The purchaser shall always have the right to make full payment with accrued interest at any time. Interest on deferred payments shall be payable annually in advance on January first, and interest for the first year to January first next succeeding shall be paid at the time of purchase.

When, in an installment sale, the conditions hereinbefore prescribed have been complied with, the state board shall make and deliver to the purchaser a certificate of purchase containing the name of the purchaser, a description of the land, the sum paid, the amount remaining due, and the date at which each of the deferred payments falls due and the amount thereof, and the amount and date of the several payments of interest to be made thereon. Such certificate shall be signed by the governor and countersigned by the director of the department of lands and a record of the same kept by him in a suitable book. When, in the judgment of the board, a bond by a purchaser of state lands is necessary, the state board shall require such purchaser to give a bond upon such conditions as the said board may determine.

Whenever a purchaser of state lands shall have complied with all of the conditions of the sale, paid all purchase money with the lawful interest thereon, and shall furnish the director with satisfactory proof of payment of taxes levied and assessed against his equity in said lands for the current year, or with satisfactory proof that such taxes are otherwise secured, he shall receive a deed for the land purchased. Such deed shall be signed by the governor, and countersigned by the secretary of state and by the director and attested with the great seal of the state and the seal of the state board of land commissioners, and said deed shall operate to convey to the purchaser a good and sufficient title in fee simple: provided that the conveyance by said deed shall be subject to reasonable easements for all roads used by the public which exist at the time of sale, unless the county commissioners of the county in which such roads are situated approve the release of such easements and the deed expressly conveys said easements.

Interest on all deferred payments to be at the rate per annum set by the state board of land commissioners. All payments shall be made to the director.

On state lands hereafter sold under contract of sale in noxious weed control districts, or which may become a part of a noxious weed control district, it shall be the duty of the contract purchaser if the lands are, or may become, infested with noxious weeds to join such a district and pay for the eradication and/or control of noxious weeds on these lands. If within ninety (90) days after receiving a notice by registered mail from the state land department that the lands are infested with noxious weeds, he does not join such a weed control program the director may request the treatment of such lands by those in charge of the weed control district. When the cost of such treatment has been determined, the supervisor of the weed control district shall send a bill to the purchaser for such eradication of noxious weeds, and if the amount of said bill be not paid within ninety (90) days the state board of land commissioners may declare the contract of sale forfeited and cancel the same, and if the contract is canceled said bill for noxious weed eradi-

cation and/or control shall be paid from the state noxious weed control fund appropriated for the treatment of noxious weeds upon state lands.

SECTION 26. That Section 61-208, Idaho Code, be, and the same is hereby amended to read as follows:

61-208. OFFICE AND MEETINGS. The office of the commission shall be in ~~the city of Boise and county of~~ Ada county. The office shall always be open, legal holidays and nonjudicial days excepted. The commission shall hold its session at least once in each calendar month, ~~in said city of Boise,~~ and may also meet at such other times and in such other places as may be expedient and necessary for the proper performance of its duties. For the purpose of holding sessions in places other than the ~~city of Boise~~ office of the commission, the commission shall have the power to rent quarters or offices, and the expense thereof and in connection therewith, shall be paid in the same manner as the other expenses authorized by this act. The sessions of the commission shall be public.

SECTION 27. That Section 61-1205, Idaho Code, be, and the same is hereby amended to read as follows:

61-1205. OFFICE -- TECHNICAL ASSISTANCE. (1) The office of the council members shall be in ~~the city of Boise, county of~~ Ada county. The department of administration shall furnish suitable office space for council members and staff ~~in the Idaho state capitol mall complex,~~ and the department shall be reimbursed for such office space at the rates applicable to state agencies. ~~in the mall complex.~~

(2) Subject to available resources, state agencies may provide technical assistance to council members upon request. State agencies providing technical assistance shall be reimbursed in full for all costs incurred in providing such assistance.

SECTION 28. That Section 63-101, Idaho Code, be, and the same is hereby amended to read as follows:

63-101. DEPARTMENT OF REVENUE AND TAXATION -- STATE TAX COMMISSION -- BOARD OF TAX APPEALS. (1) There is hereby created the department of revenue and taxation, which shall consist of a state tax commission and a board of tax appeals. The department of revenue and taxation shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of state government.

(2) The state tax commission shall be the constitutional tax commission prescribed in section 12, article VII, of the constitution of the state of Idaho.

(3) The board of tax appeals shall be as provided in chapter 38, title 63, Idaho Code.

(4) The state tax commission may organize itself, or may organize such administrative units under the direction and control of the state tax commission, as deemed necessary for proper and efficient operation in order to exercise the constitutional and statutory authority and functions assigned to the state tax commission by the provisions of this title, or by other laws.

(5) The state tax commission shall consist of four (4) members, not

more than two (2) of whom shall belong to the same political party. The members of the state tax commission shall be appointed by the governor, by and with the consent of the senate; and shall be subject to removal by impeachment as provided in chapter 40, title 19, Idaho Code.

(6) Appointments, except appointments to fill vacancies, shall be for a term of six (6) years. Appointments to fill a vacancy shall be made by the governor, and the name of the appointee shall be submitted to the senate for confirmation at the next regular or extraordinary session, and upon confirmation of the appointment, the appointee shall hold office for the unexpired term.

(7) Each member of the state tax commission shall take, subscribe and file with the secretary of state an oath of office in the form, time and manner prescribed in chapter 4, title 59, Idaho Code. Each state tax commissioner shall be bonded to the state of Idaho in the form, time and manner prescribed in chapter 8, title 59, Idaho Code.

(8) The state tax commission shall have an office in ~~the city of Boise~~ Ada county and may establish temporary offices at any place within the state whenever necessary for the discharge of the state tax commission'~~s duties~~.

(9) The state tax commission shall have an official seal, of which an impression and description shall be filed with the secretary of state. Judicial notice shall be taken of the seal of the state tax commission. Copies of papers, records, proceedings and documents in the possession of the state tax commission may be authenticated by affixation of the seal of the commission and the attestation of the chairman of the commission, and when so sealed and attested shall be received in evidence in all courts with the same effect as the originals.

SECTION 29. That Section 63-2518, Idaho Code, be, and the same is hereby amended to read as follows:

63-2518. REVOCATION OF PERMITS. In addition to the aforesaid authority of enforcement and collection, the state tax commission whenever it shall discover a violation of this act or of any rules, regulations or directions, shall have the authority to cite any person to appear before it in its ~~Boise, Idaho~~ Ada county office to show cause why any permit or license should not be revoked or why other corrective measurement should not be taken or imposed. Notice of the hearing shall not be less than fifteen (15) days by registered or certified mail addressed to the person's last known address or in lieu thereof, by personal service.

SECTION 30. That Section 63-3807, Idaho Code, be, and the same is hereby amended to read as follows:

63-3807. MEETINGS -- CALL FOR HEARINGS -- OFFICE -- QUORUM. The first board shall meet within thirty (30) days after its appointment to organize. The board shall meet annually at the state capitol at a date to be determined by the board and shall hold hearings and meetings at the call of the chairman or a majority of the board. The principal office of the board shall be ~~at the state capitol~~ in Ada county, but the board or any of its members may sit and hold hearings at any other place within the state. A majority of the board shall constitute a quorum for the transaction of any official business other than the conduct of hear-

ings and the board may act even though one (1) position on the board is vacant.

SECTION 31. That Section 63-3810, Idaho Code, be, and the same is hereby amended to read as follows:

63-3810. MOTION FOR REHEARING -- REHEARING BY ENTIRE BOARD. A party adversely affected by a decision may move for rehearing if such motion is filed within ten (10) days of the time the decision of the board is mailed to him. If requested in the motion, the matter may be determined by the entire board of tax appeals. If a rehearing by the entire board is requested, it will be conducted at a regular meeting in Boise or a meeting convened for that purpose ~~at Boise~~ in Ada county or such other place as may be designated by the chairman.

SECTION 32. That Section 67-1502, Idaho Code, be, and the same is hereby amended to read as follows:

67-1502. OFFICE -- DUTIES -- SEAL. He shall have an office ~~at the capitol~~ in Ada county, where a seal shall be kept which shall be the official seal of the state board of education by which all official acts may be ~~authenticated~~, and all records, books and papers pertaining to the business of this office. He shall file all papers, reports and public documents transmitted to him by the county superintendents of the several counties, and hold the same in readiness to be exhibited to the governor, or to any committee of any house of the legislature, or to any citizen of the state.

SECTION 33. That Section 67-1703, Idaho Code, be, and the same is hereby amended to read as follows:

67-1703. MEETING AND ORGANIZATION. The commissioners shall meet ~~at the state capitol~~ in Ada county at least once in two (2) years and shall organize by the election of one (1) of their number as chairman and another as secretary, who shall hold their respective offices for a term of two (2) years and until their successors are elected and qualified.

SECTION 34. That Section 67-2502, Idaho Code, be, and the same is hereby amended to read as follows:

67-2502. OFFICES -- BRANCH OFFICES. Each department shall maintain a central office ~~at the capitol~~ in Ada county. The director of each department may in his discretion and with the approval of the governor, establish and maintain, at other places, ~~other than the seat of government,~~ branch offices for the conduct of any one (1) or more functions of his department.

No department or unit of a department may share office space, facilities, equipment or personnel with any private group or association except upon written approval of the governor.

SECTION 35. That Section 67-5718, Idaho Code, be, and the same is hereby amended to read as follows:

67-5718. REQUISITIONS FOR PROPERTY -- NOTICE -- FORM -- GUARANTEE -- PROCEDURE FOR BIDDING. The administrator of the division of purchasing shall not make or cause to be made any acquisition until a requisition for the property to be acquired has been filed in his office, and such requisition must bear the certificate of the head of the agency making the requisition that there are proper funds or sufficient balance in appropriations out of which the amount of the requisition may lawfully be paid, except as provided to the contrary under provisions of this chapter allowing emergency purchases.

If the property to be acquired may reasonably be expected to cost in excess of twenty-five thousand dollars ($25,000) if purchased, or one thousand dollars ($1,000) per month if procured, there must be accompanying the requisition a copy of the specifications proposed for use in the acquisition. Upon receipt of the requisition, notice must be commenced within a reasonable period of time and must allow not less than ten (10) days from notice to bid opening date.

Provided, however, that in cases where the total value of the property to be acquired is not in excess of twenty-five thousand dollars ($25,000) if purchased, or one thousand dollars ($1,000) per month if procured, the administrator shall notify registered vendors in such manner as he deems appropriate. To enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from registered vendors having a significant Idaho economic presence as defined in the Idaho Code. If he finds that it is impractical or impossible to obtain three (3) bids for the proposed transaction, he may acquire the property in any manner he deems best. For any acquisition not otherwise requiring specifications, the same may be required by rule drawn by the administrator.

Provided further, however, that in connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections 60-101 and 60-103, Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

Notice shall be sent to each registered vendor of the property to be acquired, except that if there are more than ten (10) registered vendors for the property to be acquired, the administrator of the division of purchasing may, in his discretion, limit the notices sent to ten (10). Nothing shall prevent all registered vendors from bidding on the property to be acquired. The administrator shall cause all invitations to bid to be posted in a conspicuous place in his office.

The notice shall describe the property to be acquired in sufficient detail to apprise a bidder of the exact nature or functionality of the property required; and shall give the time when, and the place where, bids will be opened. The bid opening date shall be set forth in the specifications. Each bid shall be in writing, sealed and marked, "sealed bid for ...., to be opened ...., ~~19~~20.." and shall be mailed or delivered to the office of the administrator of the division of purchasing. ~~at Boise, Idaho.~~

All sealed bids received shall be opened at the time and place specified in the invitation for bids, and in the public view, and a record of each bid shall then and there be made. Contracts shall be awarded to

and orders placed with the lowest responsible bidder. If the competitive sealed proposal method is used, award shall be made to the lowest responsible bidder on the basis of initial proposals received or following receipt and evaluation of best and final offers. The administrator shall have the right to reject any and all bids pursuant to rules established for the division.

Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in the Idaho Code.

SECTION 36. That Section 67-5906, Idaho Code, be, and the same is hereby amended to read as follows:

67-5906. POWERS AND DUTIES OF COMMISSION. The Idaho commission on human rights shall have the following powers and duties:

(1) To investigate complaints of alleged violation of this act and act upon its findings pursuant to the provisions contained in this chapter;

(2) To make bylaws for its own government and procedure not inconsistent with the laws of this state;

(3) To maintain an office in ~~the city of Boise~~ Ada county and other offices within the state as it may deem necessary;

(4) To meet and exercise its powers at any place within the state;

(5) To appear in court and before other administrative bodies;

(6) To cooperate or contract with individuals and state, local and other agencies, both public and private, including agencies of the federal government and of other states;

(7) To accept public grants or private gifts, bequests, or other payments;

(8) To receive and act on complaints;

(9) To furnish technical assistance requested by persons subject to this act to further compliance with the act or an order issued thereunder;

(10) To make studies appropriate to effectuate the purposes and policies of this act and to make the results thereof available to the public;

(11) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the commission for legislative or other action to effectuate the purposes and policies of this act.

(12) In accordance with chapter 52, title 67, Idaho Code, to adopt, promulgate, amend and rescind rules ~~and regulations~~ to effectuate the purposes and policies of this act, including ~~regulations~~ rules requiring the posting or inclusion in advertising material of notices prepared or approved by the commission.

SECTION 37. That Section 72-509, Idaho Code, be, and the same is hereby amended to read as follows:

72-509. OFFICES AND SUPPLIES. (1) The principal office of the commission shall be located in ~~the capital city of the state~~ Ada county.

(2) The commission may establish such branch offices, divisions, sections and advisory committees in such localities in this state as it

deems necessary to administer this act, in addition to the offices and committees herein otherwise provided for, and shall have power to rent temporary quarters deemed requisite for the purpose of administering this law.

(3) The commission may acquire office furniture, furnishings, equipment, stationery and supplies deemed requisite for the purpose of administering this law.

Approved March 26, 2001.

CHAPTER 184
(H.B. No. 209)

AN ACT

RELATING TO POWERS OF THE BOARDS OF COUNTY COMMISSIONERS; AMENDING CHAPTER 8, TITLE 31, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 31-877, IDAHO CODE, TO AUTHORIZE THE BOARDS OF COUNTY COMMISSIONERS TO PROVIDE NECESSARY WATER AND SEWER SERVICES; AMENDING SECTION 63-4104, IDAHO CODE, TO CLARIFY AUTHORITY OF THE BOARD OF COUNTY COMMISSIONERS WHEN AN EMERGENCY EXISTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 8, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-877, Idaho Code, and to read as follows:

31-877. WATER AND SEWER SERVICES. The boards of county commissioners in their respective counties shall have the authority to provide necessary water and sewer services to any part of the county which does not receive water and sewer services, or any part of the county where a water and sewer or a water or sewer district has been dissolved pursuant to chapter 41, title 63, Idaho Code. For purposes of this section, a board of county commissioners shall have the authority granted to water and sewer districts pursuant to chapter 32, title 42, Idaho Code, and the authority granted to municipalities pursuant to the provisions of title 50, Idaho Code.

SECTION 2. That Section 63-4104, Idaho Code, be, and the same is hereby amended to read as follows:

63-4104. NONFUNCTIONING DISTRICT. Any special district which fails or has ceased to function for two (2) or more years may be dissolved by the board or boards of county commissioners of the county or counties in which it is located. The county commissioners may initiate such action upon their own volition or it may be initiated by petition. If by resolution a board of county commissioners finds that an emergency exists, the board may immediately take all steps necessary to operate and provide services of the district and preserve and maintain the property owned by the district.

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 26, 2001.

CHAPTER 185
(H.B. No. 214)

AN ACT

RELATING TO REGISTRATION OF MOTOR VEHICLES WEIGHING IN EXCESS OF SIXTY THOUSAND POUNDS GROSS VEHICLE WEIGHT; AMENDING SECTION 49-434, IDAHO CODE, TO PROVIDE FOR QUARTERLY PAYMENTS OF THE ANNUAL REGISTRATION FEE; AMENDING SECTION 17, CHAPTER 418, LAWS OF 2000, TO DELETE LEGISLATIVE INTENT FOR FULL PAYMENT OF THE ANNUAL REGISTRATION FEE ON THE REGISTRATION FEE ONLY SYSTEM AT THE TIME OF REGISTRATION OR RENEWAL OF REGISTRATION FOR REGISTRATIONS AND RENEWAL OF REGISTRATIONS OCCURRING ON AND AFTER OCTOBER 1, 2001; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 49-434, Idaho Code, be, and the same is hereby amended to read as follows:

49-434. OPERATING FEES. (1) There shall be paid on all commercial vehicles, noncommercial vehicles, and on all farm vehicles having a maximum gross weight not in excess of sixty thousand (60,000) pounds, an annual registration fee in accordance with the following schedule.

Maximum Gross Weight (Pounds)	Annual Registration Fee Noncommercial and Farm Vehicles	Commercial Vehicles
8,001-16,000 inc.	$ 48.00	$ 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 prescribed by subsection (8) of this section, as applicable.

(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. Refunds may be given for any unexpired portion of the vehicle registration fee if the plate is not transferred by the owner to another vehicle. Any request for refund shall include surrender of the license plate, validation sticker and registration document. Owners of vehicles registered under the international registration plan may request a refund of the unexpired portion of the Idaho vehicle registration fee by presenting evidence from the base jurisdiction that the license plate, validation sticker and registration document have been surrendered. 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 illegible.

(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 subsection (1) or (8)(a) of this section. Vehicles registered under subsection (8)(b) of this section shall pay the fee provided in section 49-435(2), Idaho Code.

(8) There shall be paid on all commercial and farm vehicles having

a maximum gross weight in excess of sixty thousand (60,000) pounds, a registration fee based upon the maximum gross weight of a vehicle as declared by the owner and the total number of miles driven on roads and highways in the state, county, city and highway district systems in Idaho, and if registered under the international registration plan (IRP), in all other jurisdictions. The appropriate registration fee shall be determined as follows:

(a) If the owner registers vehicles under the international registration plan (IRP), the appropriate mileage column shall be determined by the total miles an owner operated a fleet of vehicles on roads and highways in the state, county, city and highway district systems in Idaho and in all other jurisdictions in the preceding year, as defined in section 49-117, Idaho Code, and by the maximum gross weight of each vehicle within a fleet.

(b) If the owner registers vehicles under the international registration plan and determines that the average international registration plan fleet miles, calculated by dividing the total IRP fleet miles in all jurisdictions by the number of registered vehicles, is less than fifty thousand one (50,001) miles, the owner may apply to the department for refund of a portion of the registration fees paid, consistent with the fee schedules set forth in this section. The department shall provide an application for the refund. An owner making application for refund under this section shall be subject to auditing as provided in section 49-439, Idaho Code.

(c) If the owner is not registering vehicles under the international registration plan, the appropriate mileage column shall be determined by the total miles the owner operated each of the vehicles to be registered on roads and highways in the state, county, city and highway district systems in Idaho in the preceding year and by the maximum gross weight of each vehicle.

Maximum Gross Weight of Vehicle (Pounds)	Total Miles Driven		
	1-7,500	7,501-50,000	Over 50,000
60,001-62,000	$210	$ 840	$1,400
62,001-64,000	240	960	1,600
64,001-66,000	270	1,080	1,800
66,001-68,000	300	1,200	2,000
68,001-70,000	330	1,320	2,200
70,001-72,000	360	1,440	2,400
72,001-74,000	390	1,560	2,600
74,001-76,000	420	1,680	2,800
76,001-78,000	450	1,800	3,000
78,001-80,000	480	1,920	3,200
80,001-82,000	495	1,980	3,300
82,001-84,000	510	2,040	3,400
84,001-86,000	525	2,100	3,500
86,001-88,000	540	2,160	3,600
88,001-90,000	555	2,220	3,700
90,001-92,000	570	2,280	3,800
92,001-94,000	585	2,340	3,900
94,001-96,000	600	2,400	4,000
96,001-98,000	615	2,460	4,100
98,001-100,000	630	2,520	4,200

Maximum Gross Weight of Vehicle (Pounds)	Total Miles Driven		
100,001-102,000	645	2,580	4,300
102,001-104,000	660	2,640	4,400
104,001-106,000	675	2,700	4,500
106,001-108,000	690	2,760	4,600
108,001-110,000	705	2,820	4,700
110,001-112,000	720	2,880	4,800
112,001-114,000	735	2,940	4,900
114,001-116,000	750	3,000	5,000
116,001-118,000	765	3,060	5,100
118,001-120,000	780	3,120	5,200
120,001-122,000	795	3,180	5,300
122,001-124,000	810	3,240	5,400
124,001-126,000	825	3,300	5,500
126,001-128,000	840	3,360	5,600
128,001-129,000	855	3,420	5,700

(d) Any commercial or farm vehicle registered for more than sixty thousand (60,000) pounds up to one hundred six thousand (106,000) pounds traveling fewer than two thousand five hundred (2,500) miles annually on roads and highways in the state, county, city and highway district systems in Idaho shall pay an annual registration fee of two hundred fifty-five dollars ($255). The provisions of section 49-437(2), Idaho Code, shall not apply to vehicles registered under this subsection (8)(d).

(9) (a) During the first registration year that the fee schedule in subsection (8)(c) of this section is in use, an owner shall use the mileage data from the records used to report the mileage use fee in the immediately preceding year as the basis for determining the appropriate registration fee schedule.

(b) Any owner who registers a motor vehicle for the first time and who has no mileage history for the vehicle shall estimate the miles to determine the appropriate fee schedule in subsection (8)(c) of this section. When estimating the miles, the owner shall provide a statement on the application of the method used to arrive at the estimated miles.

(c) Any owner using any fee schedule other than the highest fee schedule under subsection (8)(c) of this section, shall certify at the time of registration that the miles operated in the preceding year do not exceed the schedule applied for. Any owner using a fee schedule under subsection (8)(c) of this section that is less than the highest schedule shall maintain records to substantiate the use of the schedule as required by section 49-439, Idaho Code.

(10) An owner registering under subsection (8)(a) or (8)(c) of this section may elect to pay the full annual registration fee at the time of registration or renewal of registration, or an owner may pay at least one-quarter (1/4) of the annual registration fee due. The remainder of the annual Idaho registration fee shall be paid in three (3) equal installments on dates as billed by the department.

(11) An owner registering or renewing a registration under subsection (8)(a) of this section electing to use installment payments as provided in subsection (10) of this section, shall pay all of the fees due to other IRP jurisdictions in addition to one quarter (1/4) of the Idaho

fee due at the time of registration or reregistration. The remainder of the annual Idaho registration fee shall be paid in three (3) equal installments on dates as billed by the department.

(12) 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.

SECTION 2. That Section 17, Chapter 418, Laws of 2000, be, and the same is hereby amended to read as follows:

SECTION 17. LEGISLATIVE INTENT. It is legislative intent that, contingent upon certification by the Secretary of State that he has received notice from the appropriate court of the Fourth Judicial District that the court has granted final approval of a settlement pursuant to Case No. CV OC 9700724D, American Trucking Association, et al. v. State of Idaho, et al., the following provisions setting forth the process for transitioning from a combination of registration fees and weight-distance use fees to a system of registration fees only, shall take effect as provided herein. These following provisions are both integral and necessary for the administration and implementation of the new registration system. It is legislative intent that the following provisions for vehicle registrations shall be in effect, subject to the contingencies stated above, from October 1, 2000, through September 30, 2001. Subsection (5) shall continue to be in effect until the expiration of the applicable limitations period under that subsection.

(1) With regard to registrations for vehicles exceeding sixty thousand pounds gross vehicle weight which expire on December 31, 2000, the Idaho Transportation Department may accept payment for registration fees that will become effective on January 1, 2001, beginning October 1, 2000, and the owners of those vehicles shall cease to accrue new liability for repealed weight-distance use fees on January 1, 2001, and shall be liable for the new registration fees on January 1, 2001. An owner shall pay at least one-quarter of the annual Idaho registration fee due. The remainder of the annual Idaho registration fee shall be paid in three equal installments on dates as billed by the department.

(2) With regard to registration under the International Registration Plan for foreign-based vehicles exceeding sixty thousand pounds gross vehicle weight which expire in any month beginning October 1, 2000, through September 30, 2001, the owners of those vehicles shall cease to accrue new liability for the repealed weight-distance use fees and shall be liable for the new registration fees on the first day of the month during which their registration is due. Owners of vehicles whose registration has not yet expired during a given calendar quarter shall continue to accrue, report and remit the weight-distance use fees until the quarter in which their registration expires under the repealed weight-distance statutes.

(3) With regard to registration under the International Registration Plan for Idaho-based vehicles exceeding sixty thousand pounds gross

vehicle weight which expire in any month beginning October 1, 2000, through September 30, 2001, the owners of those vehicles shall have the option of converting from the weight-distance use fee system to the registration fee only system at the time their registration is scheduled to expire, or may convert any time during the period from October 1, 2000, through September 30, 2001. At the time of conversion, the owner shall pay all weight-distance use fees due and shall pay at least one-quarter of the annual Idaho registration fee due, less any unexpired portion of registration fees already paid. The remainder of the annual Idaho registration fee shall be paid in three equal installments on dates as billed by the department.

(4) With regard to registration under the International Registration Plan for Idaho-based vehicles exceeding sixty thousand pounds gross vehicle weight which are being registered for the first time during the period from October 1, 2000, through September 30, 2001, the owner shall pay at least one-quarter of the annual Idaho registration fee and shall pay all other amounts due and owing to all other jurisdictions in which the owner intends to operate. The remainder of the annual registration fee due to Idaho shall be paid in three equal installments on dates as billed by the department.

(5) The Idaho Transportation Department may continue to enforce the repealed statutes addressing payment and collection of weight-distance use fees to audit and collect weight-distance use fees for the limitation period that would be in effect if the weight-distance use fees had not been repealed.

~~Further, it is legislative intent that for registrations or renewals occurring on and after October 1, 2001, all owners of vehicles exceeding sixty thousand pounds gross vehicle weight who are registering in Idaho for the first time, or who are renewing registrations on the registration fee only system, shall pay the full annual Idaho registration fee at the time of registration or renewal of registration.~~

SECTION 3. This act shall be in full force and effect on and after October 1, 2001.

Approved March 26, 2001.

CHAPTER 186
(H.B. No. 308)

AN ACT

RELATING TO CITY IRRIGATION SYSTEMS; AMENDING SECTION 50-1807, IDAHO CODE, TO CLARIFY THE PROVISIONS GOVERNING THE DATE FOR MAKING AN ESTIMATE OF THE EXPENSES FOR THE SYSTEM FOR PURPOSES OF ASSESSMENTS AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 50-1807, Idaho Code, be, and the same is hereby amended to read as follows:

50-1807. LEVYING OF ANNUAL ASSESSMENTS TO DEFRAY OPERATING AND MAINTENANCE COSTS. The clerk of such city which shall acquire and operate a city irrigation system under sections 50-1801 through 50-1835, Idaho Code, shall act as the assessor of such irrigation system and shall, on or before the ~~4th~~ fourth Monday of January of each year, prepare an assessment book containing a full and accurate list and description of all of the lots, parcels, pieces and tracts of land within the boundaries of such city irrigation system to which irrigation water is being supplied by such system, and a list of the persons who own, claim or have in possession or control thereof during said year, giving the number of acres in the unplatted portion of such city and the number of the lots and blocks within the boundaries of such city irrigation system listed to each person. The mayor and council of such city shall, on or before the second ~~Monday~~ Wednesday of February of each year~~, unless a legal holiday, then on the next succeeding work day~~, meet and make an estimate of the necessary funds for the expenses of maintaining, operating, improving, extending and enlarging said city irrigation system for the ~~ensuing calendar~~ current fiscal year. Said estimate shall also include a reasonable sum not to exceed ten ~~per cent~~ percent (10%) of the total estimate for anticipated unpaid and delinquent taxes and such sum as may be necessary to retire outstanding warrants, indebtedness, sinking funds, bonds and interest of a city irrigation system, and shall spread the same upon their minutes and shall thereupon apportion to each lot, piece or parcel of land within the ~~boundiaries~~ boundaries of such irrigation system in proportion to the benefits received by such lot, piece or parcel of land growing out of the maintenance and operation of such irrigation system. Such assessment shall be immediately carried out by the city clerk and entered under appropriate columns on the assessment roll. Said assessment roll shall contain an appropriate column for each item assessed and shall be subject to review by the mayor and council of the city as hereinafter provided. On or before the ~~1st~~ first day of March of each year the city clerk must give notice of the time the mayor and council shall meet to correct the assessments so made; said notice shall be published twice at intervals of not less than six (6) days in the official newspaper to give notice when the mayor and council will meet to correct such assessments so levied and assessed as herein provided. The time fixed for such meeting shall not be later than the ~~20th~~ twentieth day of March of each year and in the meantime the assessment books shall remain in the office of the city clerk for the inspection ~~of any person~~ interested.

Approved March 26, 2001.

CHAPTER 187
(H.B. No. 338)

AN ACT

RELATING TO ADMINISTRATIVE RULES; CONTINUING CERTAIN RULES IN FULL FORCE AND EFFECT UNTIL JULY 1, 2002; CONTINUING RULES APPROVED OR EXTENDED BY ADOPTION OF A CONCURRENT RESOLUTION OF THE FIRST REGULAR SESSION OF THE FIFTY-SIXTH IDAHO LEGISLATURE IN FULL FORCE AND EFFECT UNTIL JULY 1, 2002 OR UNTIL SUCH TIME AS THEY SHALL EXPIRE; PROVIDING THAT

RULES REJECTED BY CONCURRENT RESOLUTION SHALL BE NULL, VOID AND OF NO FORCE AND EFFECT; AUTHORIZING AGENCIES TO AMEND OR REPEAL CERTAIN RULES PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT AND DECLARING THE EFFECT OF THIS ACT UPON ADMINISTRATIVE RULES; AND PROVIDING SEVERABILITY.

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

SECTION 1. Except as provided in Sections 2, 3 and 4 of this act, every rule, as that term is defined in Section 67-5201, Idaho Code, that would expire on July 1, 2001, pursuant to the provisions of subsections (1) and (2) of Section 67-5292, Idaho Code, shall continue in full force and effect until July 1, 2002, at which time they shall expire as provided in Section 67-5292, Idaho Code.

SECTION 2. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been affirmatively approved or extended by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the First Regular Session of the Fifty-sixth Idaho Legislature shall continue in full force and effect in such approved or extended language until July 1, 2002, at which time they shall expire as provided in Section 67-5292, Idaho Code, or until such earlier time as provided in the rule or as otherwise provided by statute, unless further extended by statute.

SECTION 3. All rules, as that term is defined in Section 67-5201, Idaho Code, which have been rejected by the adoption of a Concurrent Resolution by both the Senate and the House of Representatives in the First Regular Session of the Fifty-sixth Idaho Legislature shall be null, void and of no force and effect as provided in Section 67-5291, Idaho Code.

SECTION 4. Nothing contained in this act shall be deemed to prohibit an agency, as that term is defined in Section 67-5201, Idaho Code, from amending or repealing rules which have been continued in full force and effect until July 1, 2002, pursuant to Sections 1 and 2 of this act, according to the procedures contained in Chapter 52, Title 67, Idaho Code, and subject to submission to the Legislature for approval. Nothing contained in this act shall endow any administrative rule continued in full force and effect under this act with any more legal stature than that of an administrative rule. Nothing contained in this act shall be deemed to be a legislative approval of any rule whose force and effect has been extended by this act, and nothing contained herein shall constitute a legislative finding that any of the rules whose force and effect have been extended hereunder are consistent with the legislative intent of the statute(s) pursuant to which they were promulgated.

SECTION 5. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

Approved March 26, 2001.

CHAPTER 188
(S.B. No. 1038, As Amended)

AN ACT

RELATING TO PUBLIC CHARTER SCHOOLS; AMENDING SECTION 33-5211, IDAHO CODE, TO REVISE THE INFORMATION WHICH THE STATE DEPARTMENT OF EDUCATION MUST DISTRIBUTE UPON REQUEST AND TO MAKE TECHNICAL CHANGES; AND AMENDING SECTION 33-5212, IDAHO CODE, TO PROVIDE THAT THE STATE BOARD OF EDUCATION SHALL REVIEW THE EDUCATIONAL EFFECTIVENESS OF CHARTER SCHOOLS AND REPORT TO THE LEGISLATURE.

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

SECTION 1. That Section 33-5211, Idaho Code, be, and the same is hereby amended to read as follows:

33-5211. ASSISTANCE WITH PETITIONS -- INFORMATION. (1) The state department of education shall provide technical assistance to persons or groups preparing or revising charter petitions.

(2) Upon request, the state department of education shall distribute the following information concerning ~~the~~ a charter school whose petition has been approved:

(a) The charter school's petition~~;~~.

(b) The annual audit performed at ~~each~~ the charter school pursuant to the charter school petition~~;~~.

(c) ~~By--not--later-than-July-1,-2004,-the~~ Any written report by the state board of education to the legislature reviewing the educational effectiveness of charter schools.

SECTION 2. That Section 33-5212, Idaho Code, be, and the same is hereby amended to read as follows:

33-5212. REVIEW. The state board of education shall review the educational effectiveness of charter schools under the provisions of this chapter and shall report to the legislature not later than July 1, 2004.~~,-with-recommendations-which-may-include-modification,-expansion-or termination-of-the-provisions-of-this-chapter.~~

Approved March 26, 2001.

CHAPTER 189
(S.B. No. 1069)

AN ACT

RELATING TO PORT DISTRICTS; AMENDING SECTION 70-1101, IDAHO CODE, TO INCLUDE THE PROVISION OF ECONOMIC DEVELOPMENT FACILITIES AMONG THE PURPOSES FOR WHICH PORT DISTRICTS ARE AUTHORIZED; AMENDING SECTION 70-1501, IDAHO CODE, TO PROVIDE THAT A PORT DISTRICT MAY FINANCE, CONSTRUCT, CONDEMN, PURCHASE, ACQUIRE, ADD TO, EQUIP, MAINTAIN AND OPERATE CERTAIN FACILITIES INCIDENT TO THE OPERATION OF A PORT TOGETHER WITH INDUSTRIAL AND ECONOMIC DEVELOPMENT FACILITIES WHICH

MAINTAIN OR INCREASE EMPLOYMENT OPPORTUNITIES IN A PORT DISTRICT; AMENDING SECTION 70-1802, IDAHO CODE, TO INCLUDE INDUSTRIAL AND ECONOMIC DEVELOPMENT FACILITIES AND PORT PROPERTIES AND FACILITIES WITHIN THE PURPOSES FOR WHICH PORT DISTRICT REVENUE BONDS MAY BE ISSUED; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

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

SECTION 1. That Section 70-1101, Idaho Code, be, and the same is hereby amended to read as follows:

70-1101. PORT DISTRICTS AUTHORIZED -- OBJECTS AND PURPOSES. Port districts are hereby authorized for the acquirement, construction, maintenance, operation, development and regulation of harbor improvements, land and water transfer and terminal facilities, industrial and economic development, and other development, facilities, and services, reasonably incident to a modern, efficient and competitive port, and may be established under this act in any county bordering upon any continuous waterway system, limited to the port area, which will float commercial tug and barge vehicles to ports handling transoceanic traffic, as in this act provided.

SECTION 2. That Section 70-1501, Idaho Code, be, and the same is hereby amended to read as follows:

70-1501. ACQUISITION OF PROPERTY AND FACILITIES -- OPERATION. A port district may finance, construct, condemn, purchase, acquire, add to, equip, maintain and operate any and all facilities and services reasonably incident to ~~the~~ operation of a modern, efficient and competitive port, ~~including by way of illustration and not of limitation, sea walls, jetties, piers, wharves, docks, marinas, boat landings and other harbor improvements, public park facilities, recreation facilities or areas, warehouses, storehouses, elevators, grain bins, coal storage plant, terminals, icing plants, bunkers, oil tanks, ferries, dredges, tugs and other waterborne vehicles, canals, locks, tidal basins, bridges, subways, tramways, cableways, conveyors, belt line railroads, administration buildings, fishing terminals, facilities for the freezing or processing of goods, agricultural products, meats or perishable commodities, rail and motor vehicle transfer and terminal facilities, water transfer and terminal facilities, improvements relating to industry and manufacturing and to commercial transportation, together with all modern appliances and facilities for the economical handling, packaging, storing and transportation of freight and passengers, and/or any combination thereof~~ together with industrial and economic development facilities of any kind or nature which maintain or increase employment opportunities in a port district. In connection with its operations, a port district may perform all customary services including, but not limited to, the handling, weighing, measuring, reconditioning and storage for hire, processing and/or holding for transshipment of all commodities.

SECTION 3. That Section 70-1802, Idaho Code, be, and the same is hereby amended to read as follows:

70-1802. REVENUE BONDS -- PURPOSES. All such revenue bonds authorized under the terms of this act may be issued and sold by the port district from time to time and in such amounts as is deemed necessary by the port commission to provide sufficient funds for the carrying out of all port district powers and, without limiting the generality thereof, shall include the following: acquisition, construction, reconstruction, maintenance, repair and operation of industrial and economic development facilities and port properties and facilities, including the cost thereof, engineering, inspection, accounting, fiscal and legal expenses, the cost of issuance of bonds, including printing, engraving and advertising and other similar expenses, the establishment of bond reserves, and the payment of interest on bonds issued for any project during the period of actual construction and for not exceeding twelve (12) months after the completion thereof.

SECTION 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2001.

Approved March 26, 2001.

CHAPTER 190
(S.B. No. 1100)

AN ACT

RELATING TO MOTOR VEHICLE DEALERS; AMENDING CHAPTER 16, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-1609A, IDAHO CODE, TO PROVIDE THAT A LICENSED DEALER TAKING POSSESSION OF A VEHICLE FOR PURPOSES OF RESALE SHALL SATISFY ALL LIENS PERFECTED ON THE VEHICLE AT TIME OF TAKING POSSESSION WITHIN A TIME CERTAIN, UNLESS THE OWNER AGREES IN WRITING TO DIRECTLY SATISFY ALL LIENS, TO PROVIDE THAT NO SUCH VEHICLE SHALL BE RESOLD OR TRANSFERRED TO ANY RETAIL PURCHASER UNTIL ALL PERFECTED LIENS HAVE BEEN SATISFIED IN FULL AND TO PROVIDE A PENALTY.

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

SECTION 1. That Chapter 16, 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 49-1609A, Idaho Code, and to read as follows:

49-1609A. SATISFACTION OF LIENS PRIOR TO RESALE OF VEHICLE. (1) When a motor vehicle dealer licensed pursuant to this chapter takes possession of a vehicle for purposes of resale, the dealer shall have ten (10) business days from the date of possession to satisfy in full any and all lienholders who are perfected at the time of taking possession, unless the owner relinquishing possession of the vehicle agrees in writing to directly pay the perfected lienholder.

(2) No such vehicle shall be resold or transferred to any retail purchaser until all perfected liens have been satisfied in full.

(3) It shall be a misdemeanor punishable as provided in section 49-236, Idaho Code, for any person or licensee to violate the provisions of this section.

Approved March 26, 2001.

CHAPTER 191
(S.B. No. 1111)

AN ACT

RELATING TO THE POWERS AND DUTIES OF THE BOARD OF TRUSTEES OF A SCHOOL DISTRICT; AMENDING SECTION 33-601, IDAHO CODE, TO PROVIDE CONDITIONS GOVERNING THE SALE OR OTHER DISPOSAL OF PROPERTY OWNED BY THE SCHOOL DISTRICT.

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

SECTION 1. That Section 33-601, Idaho Code, be, and the same is hereby amended to read as follows:

33-601. REAL AND PERSONAL PROPERTY -- ACQUISITION, USE OR DISPOSAL OF SAME. The board of trustees of each school district shall have the following powers and duties:

1. To rent to or from others, school buildings or other property used, or to be used, for school purposes.

2. To contract for the construction, repair, or improvement of any real property, or the acquisition, purchase or repair of any equipment, or other personal property necessary for the operation of the school district.

Except for the purchase of curricular materials as defined in section 33-118A, Idaho Code, no such contract shall be executed which entails the expenditure of fifteen thousand dollars ($15,000) or more without notice first being given by publishing twice in the manner required by subsections g. and h. of section 33-402, Idaho Code, unless in cooperation with the division of purchasing or cooperative agency established pursuant to chapter 23, title 67, and/or sections 33-315 through 33-318, Idaho Code. The board of trustees may let the contract to the lowest responsible bidder, or reject any bid, or reject all bids and publish notice for bids, as before. If, thereafter, no satisfactory bid is received, the board may proceed under its own direction, subject to the approval of the state board of education.

3. To designate and purchase any real property necessary for school purposes or in the operation of the district, or remove any building, or dispose of any real property. Prior to, but not more than one (1) year prior to, any purchase or disposal of real property, the board shall have such property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real property. The board of trustees shall determine the size of the site necessary for school purposes. The site shall be located within the incorporated limits of any city within the district; provided, however, that if the board finds that it is not in the best interests of the electors and the

students of the district to locate the site within the incorporated limits of a city, the board, by duly adopted resolution setting forth the reasons for its finding, may designate a site located elsewhere within the district. In elementary school districts, except upon removal for highway purposes, a site may be designated or changed only after approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

4. (a) To convey, except as provided by paragraph (b) of this subsection, by deed, bill of sale, or other appropriate instrument, all of the estate and interest of the district in any property, real or personal. In elementary school districts, except such conveyance as is authorized by subsection 6. of this section, any of the transactions authorized in this subsection shall be subject to the approval of two-thirds (2/3) or more of the electors voting at the annual meeting.

Prior to such sale or conveyance, the board shall have the property appraised pursuant to this section, which appraisal shall be entered in the records of the board of trustees. The property may be sold at public auction or by sealed bids, as the board of trustees shall determine, to the highest bidder. Such property may be sold for cash or for such terms and conditions as the board of trustees shall determine for a period not exceeding ten (10) years, with the annual rate of interest on all deferred payments not less than seven percent (7%) per annum. The title to all property sold on contract shall be retained in the name of the school district until full payment has been made by the purchaser, and title to all property sold under a note and mortgage or deed of trust shall be transferred to the purchaser at the point of sale under the terms and conditions of the mortgage or deed of trust as the board of trustees shall determine. Notice of the time and the conditions of such sale shall be published twice, and proof thereof made, in accordance with subsections g. and h. of section 33-402, Idaho Code, except that when the appraised value of the property is less than ~~five--hundred~~ one thousand dollars ($51,000), one (1) single notice by publication shall be sufficient and the property shall be sold by sealed bids or at public auction.

The board of trustees may accept the highest bid, may reject any bid, or reject all bids. If the real property was donated to the school district the board may, within a period of one (1) year from the time of the appraisal, sell the property without additional advertising or bidding. Otherwise, the board of trustees must have new appraisals made and again publish notice for bids, as before. If, thereafter, no satisfactory bid is made and received, the board may proceed under its own direction to sell and convey the property. In no case shall any real property of the school district be sold for less than its appraisal.

The board of trustees may sell personal property, with an estimated value of less than ~~five--hundred~~ one thousand dollars ($51,000), without appraisal, by sealed bid or at public auction, provided that there has been not less than one (1) published advertisement prior to the sale of said property. If the board, by a unanimous vote of those members present, finds that the property has an estimated value of less than five hundred dollars ($500) and is of insufficient value to defray the costs of arranging a sale, the

property may be disposed of in the most cost-effective and expedient manner by an employee of the district empowered for that purpose by the board.

(b) Real and personal property may be exchanged hereunder for other property. Provided, however, that aside from the provisions of this paragraph, any school district may by a vote of one-half (1/2) plus one (1) of the members of the full board of trustees, by resolution duly adopted, authorize the transfer or conveyance of any real or personal property owned by such school district to the government of the United States, any city, county, the state of Idaho, any hospital district organized under chapter 13, title 39, Idaho Code, any other school district, any library district, any community college district, or any recreation district, with or without any consideration accruing to the school district, when in the judgment of the board of trustees it is for the interest of such school district that said transfer or conveyance be made. Prior to any transfer or conveyance of any real or personal property pursuant to this paragraph 4.(b), the board shall have the property appraised by an appraiser certified in the state of Idaho, which appraisal shall be entered in the records of the board of trustees, and shall be used to establish the value of the real or personal property.

5. To enter into contracts with any city located within the boundaries of the school district for the joint purchase, construction, development, maintenance and equipping of playgrounds, ball parks, swimming pools, and other recreational facilities upon property owned either by the school district or the city.

6. To convey rights-of-way and easements for highway, public utility, and other purposes over, upon or across any school property and, when necessary to the use of such property for any such purpose, to authorize the removal of school buildings to such new location, or locations, as shall be determined by the board of trustees, and such removal shall be made at no cost or expense to the school district.

7. To authorize the use of any school building of the district as a community center, or for any public purpose, and to establish a policy of charges, if any, to be made for such use.

8. To exercise the right of eminent domain under the provisions of chapter 7, title 7, Idaho Code, for any of the uses and purposes provided in section 7-701, Idaho Code.

9. If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or it is necessary to do emergency work to safeguard life, health or property, the board of trustees may pass a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health or property. Upon adoption of the resolution, the board may expend any sum required in the emergency without compliance with this section.

Approved March 26, 2001.

CHAPTER 192
(S.B. No. 1121)

AN ACT

RELATING TO ANNEXATION AND EXCLUSION OF IRRIGATION DISTRICT LANDS; AMENDING SECTION 43-1010, IDAHO CODE, TO REQUIRE THAT AN ORDER OF THE BOARD OF DIRECTORS OF AN IRRIGATION DISTRICT CHANGING THE BOUNDARIES OF AN IRRIGATION DISTRICT SHALL BE FILED IN THE RECORDER'S OFFICE OF THE COUNTY WITHIN WHICH THE ANNEXED LANDS ARE SITUATED; AND AMENDING SECTION 43-1108, IDAHO CODE, TO REQUIRE THAT AN EXCLUSION ORDER SHALL BE FILED IN THE RECORDER'S OFFICE OF THE COUNTY WITHIN WHICH ARE SITUATED THE EXCLUDED LANDS.

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

SECTION 1. That Section 43-1010, Idaho Code, be, and the same is hereby amended to read as follows:

43-1010. ORDER TO BE RECORDED. Upon a change of the boundaries of a district becoming effective, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the recorder's office of ~~each~~ the county within which the annexed lands are situated, ~~any of the lands of the district,~~ and thereupon the district shall be and remain an irrigation district, as fully and to every intent and purpose, as if the lands which are included in the district by the change of the boundaries as aforesaid, had been included therein at the original organization of the district.

SECTION 2. That Section 43-1108, Idaho Code, be, and the same is hereby amended to read as follows:

43-1108. CHANGES TO BE FILED FOR RECORD. The decision and order of the board of directors or the district court, in case of appeal, excluding the petitioner's land and changing the boundaries of such irrigation district shall be filed for record in the recorder's office of the county ~~or counties~~ within which are situated the excluded lands. ~~of such irrigation district.~~

Approved March 26, 2001.

CHAPTER 193
(S.B. No. 1153)

AN ACT

RELATING TO COLLECTION OF DELINQUENCY ON PROPERTY; AMENDING SECTION 63-1007, IDAHO CODE, TO PROVIDE THAT THE RIGHT OF REDEMPTION EXPIRES ONE YEAR FROM THE DATE OF ISSUANCE OF A TAX DEED AND TO PROVIDE THAT IF A TAX DEED IS ISSUED AND PAYMENT IS NOT RECEIVED WITHIN ONE YEAR THE TAX DEED IS PRESUMPTIVE EVIDENCE OF THE REGULARITY OF PROCEEDINGS AND FEE SIMPLE TITLE RESTS WITH THE COUNTY; AMENDING SECTION

63-1011, IDAHO CODE, TO PROVIDE THAT POSSESSION UNDER A TAX DEED IS CONCLUSIVE AFTER ONE YEAR AND TO PROVIDE THAT NO ACTION SHALL BE MAINTAINED TO CONTEST A DELINQUENCY, ASSESSMENT OR CERTAIN PROCEEDINGS IF THE PURCHASER OR HIS SUCCESSORS IN INTEREST HAVE PAID ALL PROPERTY TAXES FOR ONE YEAR; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 63-1007, Idaho Code, be, and the same is hereby amended to read as follows:

63-1007. REDEMPTION -- EXPIRATION OF RIGHT. (1) After the issuance of a tax deed, real property may be redeemed only by the record owner or owners, or party in interest, up to the time the county commissioners have entered into a contract of sale or the property has been transferred by county deed. In order to redeem real property, the record owner or owners, or party in interest shall pay any delinquency including the late charges, accrued interest, and costs, including, but not limited to, title search and other professional fees. The property taxes accrued against such property subsequent to the issuance of a tax deed to the county shall be extended upon a valuation to be given by the assessor upon application of the tax collector. The property taxes shall be computed according to the authorized levies for the year or years to be extended, including the current calendar year which shall be calculated using the previous year's levies until the current levies are authorized.

(2) Should such payments be made, a redemption deed shall be issued by the county tax collector into the name of the redemptioner and the rights, title and interest acquired by the county shall cease and terminate; provided however, that such right of redemption shall expire ~~three~~ one (~~3~~1) years from the date of issuance of a tax deed to the county, in the event the county commissioners have not extinguished the right of redemption by contract of sale or transfer by county deed during said redemption period. In the event a tax deed is issued and payment is not received within ~~three~~ one (~~3~~1) years of the issuance of such tax deed, then said tax deed to the county is presumptive evidence of the regularity of all proceedings prior thereto and the fee simple title, after the issuance of said tax deed, rests in the county.

SECTION 2. That Section 63-1011, Idaho Code, be, and the same is hereby amended to read as follows:

63-1011. POSSESSION UNDER TAX DEED CONCLUSIVE AS TO REGULARITY OF PROCEEDINGS. (1) Any and all tax deeds issued by counties, or any other municipal or quasi-municipal corporations of the state of Idaho, authorized by law to issue deeds for delinquencies or assessments, shall, when the property has been sold by such counties or other municipal or quasi-municipal corporations and held and peaceably possessed by the purchaser or his successors in interest for more than ~~three~~ one (~~3~~1) years and upon which the purchaser or his successors in interest have paid all property taxes lawfully assessed thereon for such period, be conclusive as to the regularity and validity of all proceedings required by law to be done in making the levy, assessment, or sale of such property for the delinquency or assessment for which such property was sold.

(2) No action shall be maintained to contest any delinquency or assessment, or the proceedings upon which the tax deed has been issued after such property has been sold by the taxing agency, and the purchaser or his successors in interest have paid all property taxes legally levied or assessed thereon for a period of ~~three~~ one (~~3~~1) years, and such purchaser's deed from such county or other taxing agency, shall be conclusive evidence of the doing of each and all of the acts, and taking of each and all proceedings required by law as to the issuance of a valid tax deed to such property.

SECTION 3. This act shall be in full force and effect on and after January 1, 2002.

Approved March 26, 2001.

CHAPTER 194
(S.B. No. 1170)

AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRATION ACT; AMENDING SECTION 18-8303, IDAHO CODE, TO DEFINE "AGGRAVATED OFFENSE"; AMENDING SECTION 18-8304, IDAHO CODE, TO DELETE INCORRECT TERMINOLOGY; AND AMENDING SECTION 18-8310, IDAHO CODE, TO PROVIDE THAT PERSONS CONVICTED OF AN AGGRAVATED OFFENSE SHALL NOT BE EXEMPTED FROM THE REGISTRATION REQUIREMENTS OF THE SEXUAL OFFENDER REGISTRATION ACT AND TO MAKE A TECHNICAL CORRECTION.

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) "Aggravated offense" means any of the following crimes as set forth in section 18-8304, Idaho Code: 18-1508 (lewd conduct, when the victim is less than twelve (12) years of age); 18-4003(d) (murder committed in the perpetration of rape); 18-6101 (rape, but excluding section 18-6101(1) where the victim is at least twelve (12) years of age or the defendant is eighteen (18) years of age or younger); 18-6108 (male rape); and 18-6608 (forcible sexual penetration by use of a foreign object).

(2) "Board" means the sexual offender classification board described in section 18-8312, Idaho Code.

(~~2~~3) "Central registry" means the registry of convicted sexual offenders maintained by the Idaho state police pursuant to this chapter.

(~~3~~4) "Department" means the Idaho state police.

(~~4~~5) "Employed" means full-time 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~~6) "Incarceration" means committed to the custody of the Idaho department of correction, but excluding cases where the court has retained jurisdiction.

(~~6~~7) "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~~8) "Offense" means a sexual offense listed in section 18-8304, Idaho Code.

(~~8~~9) "Predatory" means actions directed at an individual who was selected by the offender for the primary purpose of engaging in illegal sexual behavior.

(~~9~~10) "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~~11) "Recidivist" means an individual convicted two (2) or more times of any offense requiring registration under this chapter.

(~~11~~12) "Residence" means the offender's present place of abode.

(~~12~~13) "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.

(~~13~~14) "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 18-8304, Idaho Code, be, and the same is hereby amended to read as follows:

18-8304. APPLICATION OF CHAPTER. (1) The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section 18-909 (assault with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-911 (battery with attempt to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A (ritualized abuse of a child), 18-1507 (sexual exploitation of a child), 18-1507A (possession of sexually exploitative material for other than a commercial purpose), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-4003(d) (murder committed in perpetration of rape ~~or in perpetration of lewd conduct with a child less than twelve years of age~~), 18-4116 (indecent exposure, but excluding a misdemeanor conviction), 18-4502 (first degree kidnapping committed for the purpose of rape, committing the infamous crime against nature or for committing any lewd and lascivious act upon any child under the age of sixteen, or for purposes of sexual gratification or arousal), 18-4503 (second degree kidnapping where the victim is an unrelated minor child), 18-6101 (rape, but

excluding 18-6101(1) where the defendant is eighteen years of age or younger), 18-6108 (male rape), 18-6602 (incest), 18-6605 (crime against nature), or 18-6608, Idaho Code (forcible sexual penetration by use of a foreign object);

(b) Enters the state on or after July 1, 1993, and who has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section.

(c) Pleads guilty to or has been found guilty of a crime covered in this chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail facility or a penal facility or is under probation or parole supervision, on or after July 1, 1993.

(d) Is a nonresident regularly employed or working in Idaho or is a student in the state of Idaho and was convicted, found guilty or pleaded guilty to a crime covered by this chapter and, as a result of such conviction, finding or plea, is required to register in his state of residence.

(2) The provisions of this chapter shall not apply to any such person while the person is incarcerated in a correctional institution of the department of correction, a county jail facility or committed to a mental health institution of the department of health and welfare.

(3) A conviction for purposes of this chapter 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 18-8310, 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 a recidivist, an offender who has been convicted of an aggravated offense, 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.

Approved March 26, 2001.

CHAPTER 195
(S.B. No. 1192)

AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRY; AMENDING SECTION 18-8323, IDAHO CODE, TO DELETE LANGUAGE REQUIRING A WRITTEN REQUEST FOR INFORMATION, TO PROVIDE THAT THE DEPARTMENT MAY PROVIDE PUBLIC ACCESS TO THE SEX OFFENDER REGISTRY BY MEANS OF THE INTERNET AND TO PROVIDE THAT A FEE MAY BE COLLECTED FOR EACH RESPONSE TO A WRITTEN REQUEST FOR INFORMATION.

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

SECTION 1. That Section 18-8323, Idaho Code, be, and the same is hereby amended to read as follows:

18-8323. PUBLIC ACCESS TO SEXUAL OFFENDER REGISTRY INFORMATION. Information within the sexual offender registry collected pursuant to this chapter is subject to release only as provided by this section.

(1) The department or sheriff shall provide public access to information contained in the central sexual offender registry. ~~by written request only.~~ The department shall promulgate rules defining the processes for providing information to the public and the requirements for retention of inquiry records by the department and sheriff. The department may provide public access to the sex offender registry by means of the internet.

(2) The department and sheriff will respond to requests for sexual offender registry information within ten (10) working days of receipt of the written request.

(a) Any person may inquire about a named individual by submitting an information request form obtained from the department or sheriff. The department shall promulgate rules outlining the methods and means of submitting requests. Information required for inquiry shall include the individual's full name and address, or full name and date of birth. The requester shall provide his full name, street address and driver's license or social security number.

(b) Any person may request a list of registered sexual offenders by geographic area, such as by county or by zip code area, as deter-

mined by rule, by submitting an information request form obtained from the department or sheriff. The requester shall provide his full name, street address and driver's license, social security number, or state identification number.

(c) Schools, organizations working with youth, women or other vulnerable populations may request a statewide list or lists by geographic area within the state.

(d) The department and sheriff may collect a fee of five dollars ($5.00) for each ~~inquiry~~ response to a written request.

(e) Information to be provided includes the offender's name, address, any aliases or prior names, date of birth, the crime of conviction, and the place of conviction. The information provided shall also state whether the offender is a violent sexual predator.

(f) Identity of the offender's employer or educational institution currently attended will not be provided for any registered sexual offender.

(g) Where a crime category such as "incest" may serve to identify a victim, that crime will be reported as section 18-1506, Idaho Code.

(h) Any information identifying any person related to, living with, working for, employing or otherwise associated with a registered sexual offender shall be excluded from release.

(3) The department shall provide to any person, upon written request and at a reasonable cost, determined by the department, a photograph of any registered sexual offender which the department maintains in its central sexual offender registry. The department shall respond to requests for photographs within ten (10) working days of receipt.

(4) Fees received by the department pursuant to this section shall be deposited in the department's miscellaneous revenue fund and used to support the operation of the central registry. Fees received by the sheriff pursuant to this section shall be used to defray the cost of sexual offender registration.

(5) The department shall include a cautionary statement relating to completeness, accuracy and use of registry information when releasing information to the public or noncriminal justice agencies as well as a statement concerning the penalties provided in section 18-8326, Idaho Code, for misuse of registry information.

(6) Information released pursuant to this section may be used only for the protection of the public.

(7) Further dissemination of registry information by any person or entity shall include the cautionary statements required in subsection (5) of this section.

Approved March 26, 2001.

CHAPTER 196
(S.B. No. 1194)

AN ACT

RELATING TO THE IDAHO LOTTERY COMMISSION; AMENDING SECTION 67-7404, IDAHO CODE, TO PROVIDE DEFINITIONS FOR "VALUE" AND "REDEMPTION VALUE" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-7410, IDAHO CODE, TO PROVIDE FOR BACKGROUND INVESTIGATIONS OF BINGO AND

RAFFLE OPERATORS AND FOR VENDORS; AND AMENDING SECTION 67-7448, IDAHO CODE, TO PROVIDE FELONY PENALTIES IF A PERSON PRESENTS A PREVIOUSLY PAID OR ILLEGALLY OBTAINED STATE LOTTERY TICKET OR KNOWINGLY TRANSFERS A PREVIOUSLY PAID OR ILLEGALLY OBTAINED LOTTERY TICKET OR SHARE TO ANOTHER PERSON FOR PRESENTATION OF PAYMENT AND TO PROVIDE THE VALUE OF A LOSS INVOLVING THE THEFT OF LOTTERY TICKETS SHALL BE THE FACE VALUE OF THE TICKETS PLUS THE REDEMPTION VALUE AND TO MAKE TECHNICAL CORRECTIONS.

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

SECTION 1. That Section 67-7404, Idaho Code, be, and the same is hereby amended to read as follows:

67-7404. DEFINITIONS. As used in this chapter:

(1) "Administrative costs" means personnel costs, capital outlay, and reasonable expenses incurred by other state agencies to effectuate the purposes of this chapter.

(2) "Commission" means the Idaho state lottery commission.

(3) "Director" means the director of the lottery.

(4) "Expenses" means all costs of doing business including, but not limited to, prizes, commissions and other compensation paid to retailers, advertising and marketing costs, personnel costs, capital outlay, reasonable expenses incurred by other state agencies to effectuate the purposes of this chapter, depreciation of property and equipment, and other operating costs, all of which are to be recorded on the accrual basis of accounting in accordance with generally accepted accounting principles.

(5) "Lottery" or "state lottery" means the state lottery established and operated pursuant to this chapter.

(6) "Lottery contractor" means a person with whom the lottery has contracted for the purposes of providing goods and services for the state lottery.

(7) "Lottery game retailer" or "retailer" means a person with whom the lottery has contracted for the purpose of selling tickets or shares in lottery games to the public.

(8) "Lottery revenue" means revenue derived from the sale of lottery tickets and shares. Such revenues shall be recorded on the accrual basis of accounting in accordance with generally accepted accounting principles.

(9) "Lottery vendor" or "vendor" means any person who submits a bid, proposal or offer as part of a major procurement for goods or services as defined in subsection (11) of this section.

(10) "Low, medium and high tier claims" means the dollar amount of prizes awarded in accordance with rules ~~and regulations~~ of the state lottery.

(11) "Major procurement" means any contract with a vendor supplying lottery tickets or shares, data processing systems utilized to track, sell, distribute or validate lottery tickets or shares, any goods or services involving the determination or generation of winners in any lottery game or any auditing services.

(12) "Net income" means lottery revenue and nonlottery revenue, less expenses, as defined in this chapter.

(13) "Person" shall be construed to mean and include an individual,

association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also be construed to mean and include departments, commissions, agencies and instrumentalities of the state of Idaho, including counties and municipalities and agencies or instrumentalities thereof.

(14) "Redemption value" means the sum total of all winnings upon the ticket presented for payment.

(15) "Share" means any intangible evidence of participation in a game conducted by the state lottery.

(~~15~~16) "Ticket" means any tangible evidence issued by the lottery to provide participation in a game conducted by the state lottery.

(17) "Value" means any ticket shall be taken at face value.

SECTION 2. That Section 67-7410, Idaho Code, be, and the same is hereby amended to read as follows:

67-7410. DIRECTOR OF LOTTERY SECURITY. The director shall hire a security director who shall manage the lottery's security division. The security division shall be responsible for the performance of background investigations of employees, lottery retailers, bingo and raffle operators, vendors and major procurement contractors and for the enforcement of the criminal provisions of this chapter. In ad~~dition, the security division~~ shall develop a security plan to be implemented by the lottery. The lottery's security division is herein designated as an Idaho law enforcement agency. The director of security has the authority to:

(1) Issue administrative subpoenas during the conduct of investigations in accordance with commission rules and this chapter;

(2) Require fingerprint and background checks of prospective employees and contractors; and

(3) Access criminal offender record information from the Idaho state police for the purpose of background or other investigations performed in accordance with this chapter.

Such information obtained and kept by the security director shall be subject to disclosure according to chapter 3, title 9, Idaho Code. Nothing herein shall prohibit the lottery from disclosing information obtained by it to law enforcement agencies or other lottery organizations for security or enforcement purposes.

SECTION 3. That Section 67-7448, Idaho Code, be, and the same is hereby amended to read as follows:

67-7448. PROHIBITED ACTS -- PENALTIES. (1) Any person may provide gift tickets or shares. With the approval of the commission, the director or a lottery retailer may provide gift tickets for promotional purposes which are approved by the commission. A ticket or share shall not be sold at a price greater than that fixed by the state lottery, and a sale shall not be made other than by a lottery game retailer or by an employee of a lottery game retailer who is authorized by the license to sell tickets.

A person may not sell a lottery ticket or share to any person under the age of eighteen (18) years. A minor may not purchase lottery tickets or shares and may not redeem winning tickets or shares.

A lottery retailer may not ~~wilfully~~ willfully withhold funds due and owing to the state lottery. A person may not impersonate a state lottery representative.

Any person violating any of the provisions of this chapter except as provided in subsection (2) of this section shall be guilty of a misdemeanor and upon conviction be fined up to five thousand dollars ($5,000) or imprisoned up to six (6) months or be both so fined and imprisoned.

(2) A person shall be guilty of a felony if he knowingly presents a counterfeit, previously paid, illegally obtained or altered state lottery ticket or share for payment or knowingly transfers a counterfeit, previously paid, illegally obtained or altered state lottery ticket or share to another person for presentation for payment or with intent to ~~defraud~~, fa~~lsely~~ make, alter, forge, pass or counterfeit a lottery ticket or share. A person violating the provisions of this subsection shall be punished by imprisonment not in excess of five (5) years, a fine not in excess of twenty-five thousand dollars ($25,000) or both such fine and imprisonment.

(3) Determination of loss. The value of a loss involving the theft of lottery tickets shall be the face value of the tickets plus the redemption value as defined in section 67-7404, Idaho Code.

Approved March 26, 2001.

CHAPTER 197
(S.B. No. 1086)

AN ACT

RELATING TO THE PRACTICE OF PHYSICAL THERAPY; REPEALING CHAPTER 22, TITLE 54, IDAHO CODE; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 22, TITLE 54, IDAHO CODE, TO GOVERN THE PRACTICE OF PHYSICAL THERAPY IN IDAHO BY PROVIDING A SHORT TITLE, PROVIDING A DECLARATION OF POLICY, DEFINING TERMS, SPECIFYING EXEMPTIONS FROM THE CHAPTER, CREATING A PHYSICAL THERAPY ADVISORY COMMITTEE, PROVIDING FOR AN APPLICATION FOR LICENSURE AND EXAMINATION AND PROVIDING FOR FEES, PROVIDING FOR DENIAL OF APPLICATION, PROVIDING FOR EXAMINATIONS, PROVIDING QUALIFICATIONS FOR LICENSURE, PROVIDING FOR LICENSURE BY ENDORSEMENT, PROVIDING FOR LICENSURE OF FOREIGN-EDUCATED PHYSICAL THERAPISTS, PROVIDING EXEMPTIONS FROM THE PROVISIONS OF THIS CHAPTER, PROVIDING FOR LICENSE RENEWAL, PROVIDING FOR REINSTATEMENT OF LICENSE, PROVIDING FOR THE LAWFUL PRACTICE OF PHYSICAL THERAPY, PROVIDING FOR USE OF TITLES AND RESTRICTIONS, PROVIDING FOR THE SUPERVISION OF PHYSICAL THERAPIST ASSISTANTS AND SUPPORTIVE PERSONNEL, PROVIDING GROUNDS FOR DISCIPLINARY ACTION, PROVIDING FOR DISCIPLINARY ACTIONS AND PROCEDURES, PROVIDING FOR DISCIPLINARY PENALTIES, PROVIDING FOR JUDICIAL REVIEW AND DEFINING UNLAWFUL PRACTICE AND PROVIDING FINES AND PENALTIES.

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

SECTION 1. That Chapter 22, Title 54, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 22, Title 54, Idaho Code, and to read as follows:

CHAPTER 22
PRACTICE OF PHYSICAL THERAPY

54-2201. SHORT TITLE. This chapter shall be known and may be cited as the "Physical Therapy Practice Act."

54-2202. DECLARATION OF POLICY. To protect the public health, safety and welfare, and to provide for state administrative supervision, licensure and regulation, every person practicing or offering to practice physical therapy who meets and maintains prescribed standards of competence and conduct shall be licensed as provided in this chapter. This chapter shall be liberally construed to promote the public interest and to accomplish the purpose stated herein.

54-2203. DEFINITIONS. As used in this chapter:

(1) "Board" means the Idaho state board of medicine.

(2) "Committee" means the physical therapy advisory committee.

(3) "Physical therapist" means a person who meets all the requirements of this chapter and who engages in the practice of physical therapy.

(4) "Physical therapist assistant" means a person who meets the requirements of this chapter and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist.

(5) "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist.

(6) The "practice of physical therapy" means the exercise of the profession of physical therapy by a person who engages in the following health care activities:

(a) Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations, and disability or other health and movement related conditions in order to determine a diagnosis for physical therapy and prognosis for physical therapy, plan of therapeutic intervention, and to assess the ongoing effects of intervention.

(b) Alleviating impairments and functional limitations by designing, implementing and modifying therapeutic interventions that include, but are not limited to: therapeutic exercise; functional mobility training in self-care and in-home, community or work reintegration; manual therapy; assistive, adaptive, protective and supportive devices and equipment; bronchopulmonary hygiene; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient related instruction; and to reduce the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and quality of life in all age populations. The practice of physical therapy shall not include the use of radiology, surgery or medical diagnosis of disease.

(c) Engaging in administration, consultation, testing, education and research as related to paragraphs (a) and (b) of this subsection.

(7) "Supportive personnel" means a person or persons trained under the direction of a physical therapist who performs designated and supervised routine physical therapy tasks.

54-2204. EXEMPTIONS. Nothing in this chapter shall be construed to restrict any persons licensed or regulated by the state of Idaho from engaging in the profession or practice for which they are licensed or regulated, including, but not limited to, any athletic trainer, chiropractor, dentist, nurse, physician, podiatrist, occupational therapist, optometrist, osteopath, surgeon, or any other licensed or regulated practitioner of the healing arts, nor restrict employees working under the direct supervision of those persons referred to in this section, so long as such person does not hold himself or herself out as a physical therapist, physical therapist assistant or a person engaged in the practice of physical therapy.

54-2205. PHYSICAL THERAPY ADVISORY COMMITTEE. There is hereby established a physical therapy advisory committee to the Idaho state board of medicine. The committee shall consist of three (3) licensed physical therapists, nominated by the Idaho physical therapy association and appointed by the Idaho state board of medicine. Each member will serve a term of four (4) years and terms shall be staggered. The initial committee shall have one (1) member whose term expires July 1, 2002, one (1) member whose term expires July 1, 2003, and one (1) member whose term expires July 1, 2004. A member may be appointed to serve for one (1) additional four (4) year term upon the expiration of the member's first term. The committee shall elect a chairman from its membership.

The committee shall work in conjunction with the Idaho state board of medicine and shall perform the duties and functions assigned to the committee by the board, including:

(1) Evaluating the qualifications of applicants for licensure, administering examinations, and issuing and renewing licenses;

(2) Performing investigations of misconduct and making recommendations regarding discipline; and

(3) Maintaining a list of licensed physical therapists and physical therapist assistants in this state.

54-2206. APPLICATION FOR LICENSURE AND FEES. An applicant for licensure as a physical therapist or physical therapist assistant shall file an application with the board on forms prescribed and furnished by the board. The application shall be made under oath, and shall show the applicant's address, education, evidence of graduation from a nationally accredited school of physical therapy or nationally accredited school for physical therapist assistants with a curriculum acceptable to the board and a detailed summary of any other qualifications deemed relevant to licensure by the board. The application shall also require the disclosure of any criminal conviction or charge against the applicant other than minor traffic infractions, the disclosure of any disciplinary action against the applicant by any professional regulatory agency, including any agency within the state or any other state, and the disclosure of any denial of registration or licensure by any state or dis-

trict regulatory body. An applicant shall also furnish not less than two (2) references from persons having personal knowledge of the applicant's moral character. A non-refundable application fee and payment for the cost of the examination shall accompany the completed written application. Fees shall be established by the administrative rules of the board.

54-2207. DENIAL OF APPLICATION. An application for licensure that has been denied by the board shall be considered a contested case as provided for in chapter 52, title 67, Idaho Code, and be subject to the provisions of that chapter, as well as the administrative rules adopted by the board governing contested cases.

54-2208. EXAMINATIONS. (1) The board shall authorize examinations and permit any applicant whose application for licensure has been accepted by the board to take the board approved examinations. The board shall determine the passing score for examinations. Examinations shall test for entry-level competence and requisite knowledge and skills in the technical application of physical therapy services.

(2) An applicant who fails an examination may retake an examination one (1) additional time without reapplication for licensure, provided that the second examination occurs within six (6) months from the notification of the first failure.

(3) The board shall have the authority to prescribe additional course work or clinical work for any applicant who has failed an examination two (2) or more times. An applicant applying for licensure who has failed any board authorized examination two (2) or more times shall reapply and demonstrate to the board's satisfaction evidence of successful completion of additional clinical training or course work as determined by the board.

54-2209. QUALIFICATIONS FOR LICENSURE. To be eligible for licensure as a physical therapist or physical therapist assistant, a person must:

(1) Be of good moral character; and

(2) Submit a completed written application to the board on forms furnished by the board which shall require proof of graduation from a nationally accredited school, with a curriculum acceptable to the board, for physical therapists or physical therapist assistants, and have completed the application process; and

(3) Have either passed to the satisfaction of the board, an examination authorized by the board to determine his or her fitness to practice as a physical therapist or physical therapist assistant, or be entitled to and apply for licensure by endorsement as provided for in section 54-2210, Idaho Code.

54-2210. QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT. A person who can show to the satisfaction of the board that he or she has met the qualifications set forth in section 54-2209(1) and (2), Idaho Code, and who, at the time of application, is a licensed or registered physical therapist or physical therapist assistant in good standing under the laws of another state or territory, and who can show to the satisfaction of the board that the person has passed a physical therapist or physical therapist assistant examination which is substantially similar to an examination authorized by the board, as determined by the board, shall

be entitled to licensure without examination upon payment to the board of the licensure fee.

54-2211. QUALIFICATIONS FOR LICENSURE OF FOREIGN-EDUCATED PHYSICAL THERAPISTS. (1) An applicant for licensure as a physical therapist or physical therapist assistant who has been educated outside of the United States shall:

(a) Be of good moral character; and

(b) Submit a completed written application to the board on forms furnished by the board which shall require proof of graduation from a school for physical therapists or physical therapist assistants with a curriculum acceptable to the board; and

(c) Have his or her education credentials evaluated by a board approved credential evaluation agency and provide satisfactory evidence that his or her education is substantially equivalent to the requirements of physical therapists or physical therapist assistants educated in accredited educational programs as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require successful completion of additional course work before proceeding with the application process;

(d) Provide written proof that the school of physical therapy education is recognized by its own ministry of education;

(e) If the applicant has actually practiced as a physical therapist or physical therapist assistant abroad, the applicant shall provide written proof of authorization to practice as a physical therapist without limitations in the country where the professional education occurred;

(f) Provide proof of legal authorization to reside and seek employment in the United States or its territories;

(g) Have successfully passed an examination authorized by the board.

(2) Notwithstanding the provisions of this section, if the foreign-educated physical therapist or physical therapist assistant applicant is a graduate of a professional physical therapy education program accredited by an agency approved by the board, requirements in subsections (1)(c) and (1)(d) of this section shall be waived.

54-2212. EXEMPTIONS -- MILITARY, STUDENTS, EDUCATORS. In addition to the exemptions provided in section 54-2204, Idaho Code, the following persons shall also be exempt from licensure under this chapter:

(1) A physical therapist while practicing in the United States armed services, United States public health service or veterans administration as based on requirements under federal regulations for state licensure of health care providers.

(2) A person who is pursuing a course of study leading to a degree as a physical therapist or physical therapist assistant in an accredited or board approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapy education.

(3) A physical therapist licensed and in good standing in another U.S. jurisdiction, or a foreign-educated physical therapist credentialed in another country, performing physical therapy as part of teaching or

participating in an educational seminar of no more than sixty (60) days in a calendar year.

54-2213. LICENSE RENEWAL. (1) A license shall be issued for a period of not less than one (1) year nor more than five (5) years, in conformance with administrative rules adopted by the board. Each license shall set forth its expiration date on the face of the certificate. The failure of any licensee to renew his or her license, as required herein and by the administrative rules of the board shall not deprive such person of the right to renewal, except as provided for in section 54-2214(2), Idaho Code.

(2) Fees for licensure of physical therapists and physical therapist assistants shall be fixed by the board in its administrative rules. All fees shall be transmitted to the state treasurer for credit to the board's account.

(3) All licensed physical therapists or physical therapist assistants shall report to the board any name change or changes in business and home addresses prior to the expiration of thirty (30) days after the change becomes final.

54-2214. REINSTATEMENT OF LICENSE. (1) Reinstatement of a lapsed license shall require the payment of a renewal fee and reinstatement fee in accordance with the administrative rules adopted by the board, provided however, that no reinstatement fee shall be greater in amount than fifty dollars ($50.00).

(2) Reinstatement of a license that has lapsed for a period of more than three (3) consecutive years shall require reapplying for a license and payment of fees in accordance with the administrative rules adopted by the board. The individual shall successfully demonstrate to the board competency in the practice of physical therapy. The board may also require the applicant to take an examination, remedial courses, or both, as shall be determined by the board.

54-2215. LAWFUL PRACTICE OF PHYSICAL THERAPY. (1) A physical therapist or physical therapist assistant duly licensed in accordance with this chapter is authorized to practice physical therapy as defined in this chapter.

(2) A physical therapist shall refer persons under his or her care to appropriate health care practitioners including, but not limited to, licensed medical physicians, osteopathic physicians, podiatrists, dentists or chiropractic physicians, if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice of physical therapy or when the physical therapist has reasonable cause to believe that physical therapy is contraindicated.

(3) Physical therapists and physical therapist assistants shall adhere to the standards of ethics of the physical therapy profession as set forth in the administrative rules adopted by the board.

54-2216. USE OF TITLES AND RESTRICTIONS. (1) A physical therapist may use the letters "PT" in connection with his or her name or place of business to denote licensure under this chapter.

(2) It is unlawful for any person, or for any business entity, its employees, agents or representatives to use in connection with his or

her name, or the name of activity of the business, the words "physical therapy," "physical therapist," "physiotherapist," "registered physical therapist," or "licensed physical therapist," or the letters "PT," "LPT," "RPT," or any other words, abbreviations or insignia indicating or implying directly or indirectly that such person, business entity, its employees, agents or representatives are engaged in the practice of physical therapy, unless such services are provided by or under the direction of a physical therapist licensed in accordance with this chapter.

(3) A physical therapist assistant shall use the letters "PTA" in connection with his or her name to denote licensure under this chapter.

(4) It is unlawful for any person to use the title "physical therapist assistant," "licensed physical therapist assistant," or "registered physical therapist assistant," or the letters "PTA," "RPTA," or "LPTA," or any other words, abbreviations or insignia in connection with his or her name to indicate or imply, directly or indirectly, that he or she is a physical therapist assistant without being licensed in accordance with this chapter as a physical therapist assistant.

54-2217. SUPERVISION OF PHYSICAL THERAPIST ASSISTANTS AND SUPPORTIVE PERSONNEL. (1) A licensed physical therapist shall supervise and be responsible for patient care given by physical therapist assistants and supportive personnel. A physical therapist who delegates tasks or procedures that fall within the scope of the practice of physical therapy shall supervise such tasks and procedures in conformance with administrative rules adopted by the board.

(2) A physical therapist shall adhere to the policies and procedures that delineate the functions, responsibilities and supervisory relationships of physical therapist assistants and supportive personnel as established by the board, on the advice and counsel of the committee, in the board's administrative rules.

54-2218. GROUNDS FOR DISCIPLINARY ACTION. The following conduct, acts, or conditions shall constitute grounds for disciplinary action:

(1) Violating any provision of this chapter or any administrative rule adopted by the board;

(2) Practicing or offering to practice beyond the scope of physical therapy practice as defined in this chapter or which fails to meet the standard of physical therapy provided by other qualified physical therapists and physical therapist assistants in the same or similar communities;

(3) Obtaining or attempting to obtain a license by fraud, misrepresentation or omission;

(4) Engaging in the performance of substandard care by a physical therapist due to an intentional, negligent, or reckless act or failure to act;

(5) Engaging in the performance of substandard care by a physical therapist assistant, due to an intentional, negligent, or reckless act or failure to act, or performing tasks not selected or delegated by the supervising licensed physical therapist;

(6) Inadequate supervision by a physical therapist of a physical therapist assistant and/or supportive personnel, or inadequate supervision by a physical therapist assistant of supportive personnel in accor-

dance with this chapter and the administrative rules adopted by the board;

(7) Having been convicted of a crime involving moral turpitude in the courts of this state or any other state, territory or country. Conviction, as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere or its equivalent;

(8) Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances or other drugs, chemicals or alcohol;

(9) Having had a license revoked or suspended, other disciplinary action taken or an application for licensure refused, revoked or suspended by the proper authorities of another state, territory or country, or omitting such information from any application to the board, or failure to divulge such information when requested by the board;

(10) Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or former patient or related to the licensee's practice of physical therapy as a physical therapist or physical therapist assistant.

(a) Consent of the patient shall not be a defense.

(b) This section shall not apply to sexual contact between a physical therapist or physical therapist assistant and the physical therapist's or physical therapist assistant's spouse or a person in a domestic relationship who is also a patient.

(c) A former patient includes a patient for whom the physical therapist or physical therapist assistant has provided physical therapy services within the last twelve (12) months.

(d) Sexual or romantic relationships with former patients beyond the period of time set forth herein may also be a violation if the physical therapist or physical therapist assistant uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the patient.

(11) Directly or indirectly requesting, receiving or participating in the dividing, transferring or assigning, of any referral fee from any health care professional licensed or regulated by the state of Idaho, or any other third party, or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. Nothing in this paragraph prohibits the members, owners, shareholders or partners of any regularly and properly organized business entity recognized by the laws of the state of Idaho and comprised of physical therapists from dividing fees received for professional services amongst themselves.

(12) Failing to adhere to the recognized standards of ethics of the physical therapy profession as published in the administrative rules adopted by the board.

(13) Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter or in the practice of the profession, or in the application process.

(14) Having been adjudged mentally incompetent by a court of competent jurisdiction.

(15) Aiding or abetting a person not licensed in this state who directly or indirectly performs activities requiring a license.

(16) Failing to report to the board any act or omission of a licen-

see, applicant, or any other person, which violates any provision of this chapter.

(17) Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding, investigation or other legal action.

(18) Failing to maintain patient confidentiality unless otherwise required by law.

(19) Failing to maintain adequate records. For purposes of this paragraph, "adequate patient records" means legible records that contain, at a minimum, an evaluation of objective findings, the plan of care, and the treatment record.

(20) Promoting unnecessary devices, treatment, intervention or service for the financial gain of the practitioner or of a third party.

(21) Providing treatment intervention unwarranted by the condition of the patient.

54-2219. DISCIPLINE ACTIONS AND PROCEDURES. (1) The board shall regulate the practice of physical therapy in the state of Idaho. The physical therapy advisory committee shall serve as an advisor to the board as prescribed in section 54-2205, Idaho Code. The board is authorized to institute any investigation, hearing or other legal proceeding necessary to effect compliance with this chapter.

(2) The board or its hearing officer, upon a finding that action is necessary, shall have the power pursuant to this chapter to administer oaths, take depositions of witnesses within or without the state in the manner provided by the administrative rules adopted by the board, and shall have power throughout the state of Idaho to require the attendance of such witnesses and the production of such books, records and papers as it may desire at any hearing and for that purpose the board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers, directed to the sheriff of any county of the state of Idaho, where such witness resides or may be found which shall be served and returned. The board may require a licensee to be examined to determine his or her mental or physical competence when the board has probable cause to believe the licensee is suffering from an impairment that might impede his or her ability to practice competently.

(3) When it is brought to the attention of the board by the written statement of any person that a person licensed under this chapter has done any act or thing in violation of any provision of this chapter, the board shall immediately make an investigation of such person, and if the board finds that there is probable cause to institute proceedings against such person, it shall without unnecessary delay transmit to that person by mail, a copy of the charges and shall fix a day not less than fourteen (14), nor more than ninety (90), days after said mailing for a hearing upon the matter, said hearing shall be conducted in accordance with chapter 52, title 67, Idaho Code, and with the administrative rules adopted by the board.

(4) The board may investigate any person to the extent necessary to determine if the person is engaged in the unlawful practice of physical therapy. If an investigation indicates that a person may be practicing physical therapy unlawfully, the board shall inform the person of the alleged violation. The board may refer the matter for prosecution

whether or not the person ceases the unlawful practice of physical therapy.

(5) The board may, in the name of the people of the state of Idaho, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of this chapter. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this chapter.

54-2220. DISCIPLINARY ACTIONS -- PENALTIES. The board may, upon proof that a person has violated any provision contained in this chapter, take the following disciplinary actions singly or in combination:

(1) Issue a censure or reprimand by informal admonition for minor misconduct found by the board. Such reprimand by the board shall have the same effect and shall be subject to the same requirements for disclosure as a reprimand given by the board as provided in section 54-1806A, Idaho Code;

(2) Impose restrictions and/or conditions as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client served. The board may require a licensee to report regularly to the board on matters regarding the restricted license;

(3) Suspend a license, the duration of which shall be determined by the board;

(4) Revoke a license;

(5) Refuse to issue or renew a license;

(6) Impose a reasonable fine for violation of this chapter in an amount not to exceed a maximum amount as set forth in the administrative rules adopted by the board;

(7) Accept a voluntary surrender of a license;

(8) Assess costs and attorney's fees against a licensee for any investigation and/or administrative proceeding.

54-2221. JUDICIAL REVIEW. Any person who shall be aggrieved by any action of the board in denying, refusing to renew, suspending or revoking a certificate of licensure, issuing a censure, imposing any restriction upon a license, or imposing any fine, may seek judicial review thereof in accordance with the provisions of chapter 52, title 67, Idaho Code.

54-2222. UNLAWFUL PRACTICE -- FINES AND PENALTIES. (1) It shall be unlawful for any person to practice or offer to practice physical therapy in this state, or to use in connection with his or her name or otherwise assume, use or advertise any title or description tending to convey the impression that he or she is a physical therapist or a physical therapist assistant, unless such person has been licensed under the provisions of this chapter.

(2) It shall be unlawful for any person to aid, abet, or require another person, licensed or unlicensed, to directly or indirectly violate or evade any provision of this chapter, or to combine or conspire with another person, or permit one's license to be used by another person, or act as an agent, partner, associate, or otherwise, of another person with the intent to violate or evade the provisions of this chapter.

(3) A violation of the provisions of this chapter shall constitute

a misdemeanor, and any person convicted thereof shall be fined an amount not to exceed one thousand dollars ($1,000). A second conviction for a violation of any provision of this chapter shall also constitute a misdemeanor, and a person convicted of a second violation of this chapter shall be imprisoned in a county jail for a period not to exceed six (6) months, or shall be fined an amount not to exceed five thousand dollars ($5,000), or shall be punished by both such fine and imprisonment. Any third or more conviction for a violation of any provision of this chapter shall constitute a felony, and a person convicted of a third or more violation of this chapter shall be imprisoned in the state prison for a period not to exceed three (3) years, or shall be fined an amount not to exceed ten thousand dollars ($10,000), or shall be punished by both such fine and imprisonment.

Approved March 26, 2001.

CHAPTER 198
(H.B. No. 140)

AN ACT

RELATING TO THE STATE VETERANS HOMES; AMENDING SECTION 65-202, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF VETERANS SERVICES; AMENDING SECTION 65-203, IDAHO CODE, TO REVISE THE DEFINITION OF VETERAN AND TO PROVIDE A DEFINITION OF WARTIME VETERAN; AMENDING SECTION 66-901, IDAHO CODE, TO PROVIDE THAT MALE AND FEMALE VETERANS DISCHARGED UNDER HONORABLE CONDITIONS SHALL BE ELIGIBLE FOR ADMISSION TO THE STATE'S VETERANS HOMES AND TO DELETE ELIGIBILITY FOR ADMISSION TO THE STATE'S VETERANS HOMES 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.

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

SECTION 1. 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~~ veterans of the armed forces of the United States, to oversee the management and operation of the veterans homes in the state, and provide such care ~~and extend such financial relief and assistance~~ to ~~said disabled or destitute, honorably discharged servicemen and servicewomen~~ veterans of the armed forces of the United States. Further, the administrator shall extend financial relief and assistance to disabled or destitute wartime veterans and to those dependent upon such ~~honorably discharged,~~ disabled or destitute ~~servicemen and servicewomen~~ wartime veterans as the commission shall determine to be reasonably required ~~by such disabled or destitute servicemen and servicewomen and their dependents~~ under such rules as the administrator may, from time to time, adopt~~; and said administra-~~

~~tor--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~~ the division of veterans services.

SECTION 2. That Section 65-203, Idaho Code, be, and the same is hereby amended to read as follows:

65-203. "VETERAN" DEFINED. (1) The ~~word~~ term "veteran," as used in this chapter, shall include any ~~honorably-discharged~~ person who is a bona fide resident of the state of Idaho, ~~and~~ who served on active duty in the ~~armed-forces-of-the~~ United States military, naval, or air service and was discharged or separated under honorable conditions after ninety (90) days of continuous active duty, or was separated or discharged from military service earlier than ninety (90) days under honorable conditions because of a service-connected disability.

(2) The term "wartime veteran," as used in this chapter, shall include any person who is a bona fide resident of the state of Idaho who served on active duty in the United States armed forces at some time 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,--who,--served-on-active-duty-in-the-naval,-military-or-air-forces-of any-of-the-governments-associated-with-the--United--States--during--said periods;--provided,--that--no--person--shall-be-entitled-to-any-benefits under-this-chapter-who-being-in-the-armed-forces-of-the-United-States-or of-any-of-the-governments-associated-with-the-United-States-during--said periods,--refused--on--conscientious,-political,-or-other-grounds,-to-be subject-to-military-discipline-or-unqualified--service;--provided,--however,--that--nothing--in-this-chapter-contained-shall-prevent-said-Idaho veterans-affairs-commission-from-rendering-every-possible-aid-and-assistance-to-any-honorably-discharged-veteran,-or--his--or--her--dependents, except--grants--of-direct-relief-shall-be-confined-to-veterans-and-their dependents-as-defined-herein.-Any-aid-or-assistance,-which-is-determined by-the-commission-to-be-duplicated-in-any-manner-by-any-other-agency--or organization,--may--not-be-rendered-by-said-commission~~ who was separated or discharged under honorable conditions after ninety (90) days of continuous active duty or was separated or discharged from military service earlier under honorable conditions because of a service-connected disability.

SECTION 3. 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, there shall be established in the division of veterans services in the department of self-governing agencies in this state homes for veterans which

shall hereafter be known and designated as Idaho state veterans 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~~ discharged under honorable conditions 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.

Approved March 26, 2001.

CHAPTER 199
(H.B. No. 141)

AN ACT

RELATING TO THE DIVISION OF VETERANS SERVICES; AMENDING SECTION 65-107, IDAHO CODE, TO PROVIDE THAT BENEFITS PAID BY THE FEDERAL DEPARTMENT OF VETERANS AFFAIRS FOR BURIAL AND PLOT ALLOWANCE FOR PERSONS INTERRED AT THE STATE VETERANS CEMETERY SHALL BE DEPOSITED IN THE VETERANS CEMETERY MAINTENANCE FUND; AMENDING SECTION 65-202, IDAHO CODE, TO REVISE THE POWERS AND DUTIES OF THE ADMINISTRATOR OF THE DIVISION OF VETERANS SERVICES; AMENDING SECTION 65-204, IDAHO CODE, TO PROVIDE RULEMAKING AUTHORITY TO THE ADMINISTRATOR FOR ESTABLISHING STANDARDS AND CRITERIA FOR INTERMENT AT THE STATE VETERANS CEMETERY; AND REPEALING SECTION 65-205, IDAHO CODE.

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

SECTION 1. That Section 65-107, Idaho Code, be, and the same is hereby amended to read as follows:

65-107. VETERANS CEMETERY MAINTENANCE FUND. (1) There is hereby created in the state treasury a fund to be known as the "veterans cemetery maintenance fund" to which shall be deposited the revenues derived from the program fees for special veterans motor vehicle license plates as provided in section 49-418, Idaho Code, and any other moneys as may be provided by law. Interest earned on idle moneys in the veterans cemetery maintenance fund shall be paid to such fund.

(2) Benefits paid by the United States department of veterans affairs for burial and plot allowance for persons interred at the state veterans cemetery shall be deposited by the administrator as authorized and directed in section 65-202, Idaho Code.

(3) Moneys in the fund shall be used exclusively for the purposes of operating and maintaining a state veterans cemetery, and moneys shall be continuously appropriated for such purposes.

(~~3~~4) The administrator of the division of veterans services shall have the authority and the responsibility, with the advice and approval of the Idaho veterans affairs commission created in section 65-201, Idaho Code, to administer moneys for the purposes indicated.

SECTION 2. 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~~ veterans of the armed forces of the United States, to oversee the management and operation of the veterans homes in the state and the state veterans cemetery, and provide such care ~~and-extend-such-financial-relief-and-assistance~~ to ~~said-disabled-or-destitute,-honorably-discharged-servicemen-and servicewomen~~ veterans of the armed forces of the United States. Further, the administrator shall extend financial relief and assistance to disabled or destitute wartime veterans and to those dependent upon such ~~honorably-discharged,~~ disabled or destitute ~~servicemen-and--servicewomen~~ wartime veterans as the commission shall determine to be reasonably required ~~by-such-disabled-or-destitute-servicemen-and--servicewomen--and their-dependents~~ under such rules 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~~. The administrator is further authorized to collect benefits paid by the United States department of veterans affairs for burial and plot allowance for persons interred at the state veterans cemetery and directed to cause such benefits to be deposited in the veterans cemetery maintenance fund established in section 65-107, 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 the division of veterans ~~homes~~ services.

SECTION 3. That Section 65-204, Idaho Code, be, and the same is hereby amended to read as follows:

65-204. RULES -- EMPLOYMENT OF ASSISTANTS. The commission shall advise the administrator of the division of veterans services in the adoption of rules with respect to all matters of administration hereunder, including the establishment of standards and criteria for interment at the state veterans cemetery, 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 4. That Section 65-205, Idaho Code, be, and the same is hereby repealed.

Approved March 26, 2001.

CHAPTER 200
(H.B. No. 181)

AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRATION ACT; AMENDING SECTION 18-8319, IDAHO CODE, TO DESIGNATE THE COURTS WHERE CERTAIN OFFENDERS MAY APPLY TO CHALLENGE DESIGNATIONS AS VIOLENT SEXUAL PREDATORS.

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 district court of the county in which the offender resides if the offender has been released from incarceration, or the county where the offender intends to reside if the offender has not been released from incarceration, on or before the date set forth in the notice, which shall be no 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.

(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.

Approved March 26, 2001.

CHAPTER 201
(H.B. No. 182)

AN ACT

RELATING TO SEARCH WARRANTS; AMENDING SECTION 19-4412, IDAHO CODE, TO EXTEND THE TIME WITHIN WHICH A SEARCH WARRANT MUST BE EXECUTED AND RETURNED TO THE ISSUING MAGISTRATE.

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

SECTION 1. That Section 19-4412, Idaho Code, be, and the same is hereby amended to read as follows:

19-4412. TIME FOR EXECUTING WARRANT. A search warrant must be executed and returned to the magistrate who issued it, within ~~ten~~ fourteen (~~10~~4) days after its date; after the expiration of this time the warrant, unless executed, is void.

Approved March 26, 2001.

CHAPTER 202
(S.B. No. 1063)

AN ACT

RELATING TO ATHLETE AGENTS; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 48, TITLE 54, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR ADMINISTRATION, SERVICE OF PROCESS AND ISSUANCE OF SUBPOENAS, TO REQUIRE REGISTRATION FOR ATHLETE AGENTS AND TO DECLARE CERTAIN CONTRACTS VOID, TO PROVIDE FOR REQUIREMENTS OF REGISTRATION FORMS FOR ATHLETE AGENTS, TO PROVIDE FOR CERTIFICATES OF REGISTRATION, TO PROVIDE FOR ISSUANCE OR DENIAL OF CERTIFICATES OF REGISTRATION AND TO PROVIDE FOR RENEWAL OF CERTIFICATES OF REGISTRATION, TO PROVIDE FOR SUSPENSION, REVOCATION OR REFUSAL TO RENEW REGISTRATIONS, TO PROVIDE FOR TEMPORARY REGISTRATION, TO PROVIDE FOR REGISTRATION AND RENEWAL FEES, TO PROVIDE FOR DEPOSIT AND APPROPRIATION OF FEES, TO PROVIDE FOR REQUIRED FORM OF CONTRACTS, TO PROVIDE FOR NOTICE TO EDUCATIONAL INSTITUTIONS, TO PROVIDE FOR A STUDENT-ATHLETE'S RIGHT TO CANCEL, TO REQUIRE THE RETENTION OF CERTAIN RECORDS, TO PROHIBIT CERTAIN CONDUCT, TO PROVIDE FOR CRIMINAL PENALTIES, TO PROVIDE FOR CIVIL REMEDIES, TO PROVIDE FOR AN ADMINISTRATIVE PENALTY, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE FOR ELECTRONIC SIGNATURES UNDER THE GLOBAL AND NATIONAL COMMERCE ACT AND TO PROVIDE FOR SEVERABILITY; AMENDING SECTION 67-2602, IDAHO CODE, TO PROVIDE AUTHORITY TO THE DEPARTMENT OF SELF-GOVERNING AGENCIES FOR THE ADMINISTRATION OF THE ATHLETE AGENTS ACT; AMENDING SECTION 67-2609, IDAHO CODE, TO INCREASE THE AMOUNT OF CIVIL FINES THE BUREAU OF OCCUPATIONAL LICENSES MAY COLLECT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 48, Title 54, Idaho Code, and to read as follows:

CHAPTER 48
UNIFORM ATHLETE AGENTS ACT

54-4801. SHORT TITLE. This chapter may be cited as the "Uniform Athlete Agents Act."

54-4802. DEFINITIONS. As used in this chapter:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional sports services contract or an endorsement contract.

(2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following or fame obtained because of athletic ability or performance.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency or instrumentality, public corporation or any other legal or commercial entity.

(8) "Professional sports services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) "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.

(10) "Registration" means registration as an athlete agent pursuant to this chapter.

(11) "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.

(12) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

54-4803. ADMINISTRATION -- SERVICE OF PROCESS — SUBPOENAS. (a) The department of self-governing agencies, by and through the bureau of occupational licenses, hereinafter referred to as the department, shall administer this chapter.

(b) By acting as an athlete agent in this state, a nonresident individual appoints the department as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

(c) The department may issue subpoenas for any material that is relevant to the administration of this chapter.

54-4804. ATHLETE AGENTS -- REGISTRATION REQUIRED -- VOID CONTRACTS. (a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section 54-4806 or 54-4808, Idaho Code.

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(2) Within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

(c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

54-4805. REGISTRATION AS ATHLETE AGENT -- FORM -- REQUIREMENTS. (a) An applicant for registration shall submit an application for registration to the department in a form prescribed by the department. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (b) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(1) The name of the applicant and the address of the applicant's principal place of business;

(2) The name of the applicant's business or employer, if applicable;

(3) Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;

(4) A description of the applicant's:

(A) Formal training as an athlete agent;

(B) Practical experience as an athlete agent; and

(C) Educational background relating to the applicant's activities as an athlete agent;

(5) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;

(6) The name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;

(7) The names and addresses of all persons who are:

(A) With respect to the athlete agent's business, if it is not a corporation, the partners, members, officers, managers, associates or profit sharers of the business; and

(B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;

(8) Whether the applicant or any person named pursuant to paragraph (7) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) of this subsection has made a false, misleading, deceptive or fraudulent representation;

(10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) of this subsection arising out of occupational or professional conduct; and

(12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) of this subsection as an athlete agent in any state.

(b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The department shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(1) Was submitted in the other state within six (6) months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(2) Contains information substantially similar to, or more comprehensive than, that required in an application submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

54-4806. CERTIFICATE OF REGISTRATION -- ISSUANCE OR DENIAL -- RENEWAL. (a) Except as otherwise provided in subsection (b) of this section, the department shall issue a certificate of registration to an

individual who complies with section 54-4805(a), Idaho Code, or whose application has been accepted under section 54-4805(b), Idaho Code.

(b) The department may refuse to issue a certificate of registration if the department determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the department may consider whether the applicant has:

(1) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(2) Made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent;

(3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) Engaged in conduct prohibited by section 54-4814, Idaho Code;

(5) Had a registration or licensure as an athlete agent suspended, revoked or denied, or been refused renewal of registration or licensure as an athlete agent in any state;

(6) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

(7) Engaged in conduct that significantly, adversely reflects on the applicant's credibility, honesty or integrity.

(c) In making a determination under subsection (b) of this section, the department shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred; and

(3) Any other relevant conduct of the applicant.

(d) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the department. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(e) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (d) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The department shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(1) Was submitted in the other state within six (6) months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(2) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

(f) A certificate of registration or a renewal of a registration is valid for two (2) years.

54-4807. SUSPENSION, REVOCATION OR REFUSAL TO RENEW REGISTRATION. (a) The department may suspend, revoke or refuse to renew a registration for conduct that would have justified denial of registration under section 54-4806(b), Idaho Code.

(b) The department may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing. The provisions of chapter 52, title 67, Idaho Code, shall apply to this chapter.

54-4808. TEMPORARY REGISTRATION. The department may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

54-4809. REGISTRATION AND RENEWAL FEES -- DEPOSIT -- APPROPRIATION. (1) An application for registration or renewal of registration must be accompanied by a fee, in an amount prescribed by the department but not to exceed two hundred fifty dollars ($250) for any registration period, for the following:

(a) An initial application for registration;

(b) An application for registration based upon a certificate of registration or licensure issued by another state;

(c) An application for renewal of registration; or

(d) An application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

(2) All fees received under the provisions of this chapter shall be deposited in the state treasury to the credit of the occupational licenses fund and all costs and expenses incurred by the department under the provisions of this chapter shall be a charge against and paid from said fund for such purposes. Notwithstanding the provisions of any other law, the funds collected hereunder shall be immediately available for the administration of this chapter. In no event will the occupational licenses fund be obligated to pay any claims which, in aggregate with claims already paid, exceed the income to the occupational licenses fund which has been derived by the application of this chapter.

(3) The money paid into the occupational licenses fund is continuously appropriated to the department for expenditure in the manner prescribed herein to defray the expenses of the department in carrying out and enforcing the provisions of this chapter.

54-4810. REQUIRED FORM OF CONTRACT. (a) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(b) An agency contract must state or contain:

(1) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(2) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(3) A description of any expenses that the student-athlete agrees to reimburse;

(4) A description of the services to be provided to the student-athlete;
(5) The duration of the contract; and
(6) The date of execution.

(c) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE
IF YOU SIGN THIS CONTRACT:
(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;
(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND
(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

54-4811. NOTICE TO EDUCATIONAL INSTITUTION. (a) Within seventy-two (72) hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(b) Within seventy-two (72) hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

54-4812. STUDENT-ATHLETE'S RIGHT TO CANCEL. (a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.

(b) A student-athlete may not waive the right to cancel an agency contract.

(c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

54-4813. REQUIRED RECORDS. (a) An athlete agent shall retain the following records for a period of five (5) years:

(1) The name and address of each individual represented by the athlete agent;
(2) Any agency contract entered into by the athlete agent; and
(3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
(b) Records required by subsection (a) of this section to be retained are open to inspection by the department during normal business hours.

54-4814. PROHIBITED CONDUCT. (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:
(1) Give any materially false or misleading information or make a materially false promise or representation;
(2) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
(3) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
(b) An athlete agent may not intentionally:
(1) Initiate contact with a student-athlete unless registered under this chapter;
(2) Refuse or fail to retain or permit inspection of the records required to be retained by section 54-4813, Idaho Code;
(3) Fail to register when required by section 54-4804, Idaho Code;
(4) Provide materially false or misleading information in an application for registration or renewal of registration;
(5) Predate or postdate an agency contract; or
(6) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

54-4815. CRIMINAL PENALTIES. An athlete agent who violates section 54-4814, Idaho Code, shall be guilty of a misdemeanor.

54-4816. CIVIL REMEDIES. (a) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
(b) Damages of an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this chapter or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.
(c) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(d) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(e) This chapter does not restrict rights, remedies or defenses of any person under law or equity.

54-4817. ADMINISTRATIVE PENALTY. The department may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars ($25,000) for a violation of this chapter.

54-4818. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

54-4819. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of section 102 of the electronic signatures in global and national commerce act, public law 106-229, 114 Stat. 464 (2000), and supersede, modify and limit the electronic signatures in global and national commerce act.

54-4820. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

SECTION 2. 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 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.

(3) The department of self-governing agencies, by and through the bureau of occupational licenses, shall be empowered to provide administrative or other services for the administration of chapter 48, title 54, Idaho Code, to issue, suspend, revoke or refuse to renew certificates of registration, to issue subpoenas, to prescribe and impose fees and to assess administrative penalties pursuant to the provisions of chapter 48, title 54.

SECTION 3. That Section 67-2609, Idaho Code, be, and the same is hereby amended to read as follows:

67-2609. REGISTRATION OF OCCUPATIONS. (a) The bureau of occupational licenses shall wherever the several laws regulating professions, trades and occupations which are devolved upon the bureau for administration so require or pursuant to written agreement as provided in section 67-2604, Idaho Code, exercise, in its name, or as authorized agent, but subject to the provisions of this chapter, the following powers:

(1) To conduct examinations to ascertain the qualifications and fitness of applicants to exercise the profession, trade or occupation for which an examination is held; to pass upon the qualifications of applicants for reciprocal licenses, certificates and authorities.

(2) To prescribe rules for a fair and wholly impartial method of examination of candidates to exercise the respective professions, trades or occupations.

(3) To prescribe rules defining, for the respective professions, trades and occupations, what shall constitute a school, college or university, or department of a university, or other institution, reputable and in good standing and to determine the reputability and good standing of a school, college or university, or department of a university, or other institution, by reference to a compliance with such rules.

(4) To establish a standard of preliminary education deemed requisite to admission to a school, college or university, and to require satisfactory proof of the enforcement of such standard by schools, colleges and universities.

(5) To conduct hearings on proceedings to revoke or refuse renewal of licenses, certificates or authorities of persons exercising the respective professions, trades or occupations, and to revoke or refuse to renew such licenses, certificates or authorities.

(6) To formulate rules for adoption by the boards allowing the boards to recover costs and fees incurred in the investigation and prosecution of a licensee in accordance with the contested case provisions of chapter 52, title 67, Idaho Code, for a violation of laws or rules of the boards.

(7) To formulate rules for adoption by the boards establishing a schedule of civil fines which may be imposed upon a licensee prosecuted in accordance with the contested case provisions of chapter 52, title 67, Idaho Code, for a violation of laws or rules of the boards. Any civil fine collected by a board for a violation of its laws or rules shall not exceed one thousand dollars ($1,000), unless otherwise provided by statute, and shall be deposited in the bureau of occupational licensing account.

(8) To formulate rules when required in any act to be administered.

(b) None of the above enumerated functions and duties shall be exercised by the bureau of occupational licenses except upon the action and report in writing of persons designated from time to time by the chief of the bureau of occupational licenses to take such action and to make such report, for the respective professions, trades and occupations.

SECTION 4. This act shall be in full force and effect on and after July 1, 2001.

Approved March 26, 2001.

CHAPTER 203
(S.B. No. 1119)

AN ACT

RELATING TO UNLAWFUL DETAINER; AMENDING SECTION 6-303, IDAHO CODE, TO PROVIDE THAT A TENANT OF REAL PROPERTY IS GUILTY OF UNLAWFUL DETAINER IF ANY PERSON UNLAWFULLY ENGAGES IN THE DELIVERY, PRODUCTION OR USE OF A CONTROLLED SUBSTANCE ON THE PREMISES OF THE LEASED PROPERTY DURING THE LEASE TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 6-310, IDAHO CODE, TO PROVIDE A CLAIM FOR RELIEF IN AN ACTION FOR POSSESSION BY A LANDLORD WHO HAS REASONABLE GROUNDS TO BELIEVE A TENANT OR OTHER PERSON IS ENGAGED IN THE UNLAWFUL DELIVERY, PRODUCTION OR USE OF A CONTROLLED SUBSTANCE ON THE LANDLORD'S LEASED PROPERTY DURING THE LEASE TERM; AMENDING SECTION 6-311, IDAHO CODE, TO LIMIT THE GRANT OF A CONTINUANCE IN CASES INVOLVING THE POSSESSION OF REAL PROPERTY IN ACTIONS WHERE THE LANDLORD HAS REASONABLE GROUNDS TO BELIEVE THAT A PERSON HAS BEEN ENGAGED IN THE UNLAWFUL DELIVERY, PRODUCTION OR USE OF CONTROLLED SUBSTANCES DURING THE LEASE TERM; AMENDING SECTION 6-311A, IDAHO CODE, TO PROVIDE THAT IN AN ACTION FOR POSSESSION OF REAL PROPERTY BASED UPON A COMPLAINT ALLEGING THAT THE LANDLORD HAS REASONABLE GROUNDS TO BELIEVE THAT A PERSON IS ENGAGED IN THE UNLAWFUL DELIVERY, PRODUCTION OR USE OF A CONTROLLED SUBSTANCE OR LEASED PREMISES DURING THE TERM OF THE LEASE, THE MATTER SHALL BE TRIED BEFORE THE COURT WITHOUT A JURY; AMENDING SECTION 6-311E, IDAHO CODE, TO PROVIDE THAT A LANDLORD MAY RECOVER DAMAGES FROM A TENANT IN AN ACTION FOR DAMAGES ARISING OUT OF THE UNLAWFUL PRODUCTION OF A CONTROLLED SUBSTANCE ON LEASED PREMISES DURING THE TERM OF THE LEASE AND TO CORRECT A CODIFIER'S ERROR; AND AMENDING SECTION 6-316, IDAHO CODE, TO PROVIDE FOR FORFEITURE OF THE LEASE AND FOR DAMAGES TO BE AWARDED TO A LANDLORD WHO HAS REASONABLE GROUNDS TO BELIEVE THAT A PERSON IS, OR HAS BEEN ENGAGED IN THE UNLAWFUL DELIVERY, PRODUCTION OR USE OF A CONTROLLED SUBSTANCE.

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

SECTION 1. That Section 6-303, Idaho Code, be, and the same is hereby amended to read as follows:

6-303. UNLAWFUL DETAINER DEFINED. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the €civil €code.

2. Where he continues in possession, in person or by subtenant, without permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three (3) days' notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a subtenant in actual occupation of the premises, also upon such subtenant. Such notice may be served at any time within one (1) year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty (60) days after the expiration of his term without any demand of possession or notice to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. Where he continues in possession in person, or by subtenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for payment of rent, and three (3) days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a subtenant in actual occupation of the premises, also upon such subtenant. Within three (3) days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture: provided, if the covenants and conditions of the lease, violated by the lessee, can not afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter, to obtain possession of premises let to an undertenant, in case of his unlawful detention of the premises underlet to him.

4. A tenant or subtenant, assigning or subletting, or committing waste upon, the demised premises contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three (3) days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this chapter.

5. If any person is, or has been, engaged in the unlawful delivery, production or use of a controlled substance on the premises of the leased property during the term for which the premises are let to the

tenant. For purposes of this chapter, the terms "delivery," "production," and "controlled substance" shall be defined as set forth in section 37-2701, Idaho Code.

SECTION 2. That Section 6-310, Idaho Code, be, and the same is hereby amended to read as follows:

6-310. ACTION FOR POSSESSION -- COMPLAINT -- SUMMONS. In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent, or on the grounds that a landlord has reasonable grounds to believe that any person is, or has been, engaged in the unlawful delivery, production or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, it is sufficient to state in the complaint:

(1) A descript~~ion of the~~ premises with convenient certainty;

(2) That the defendant is in possession of the premises;

(3) That the defendant entered upon the premises, holds the premises, and is in default of the payment of rent or that the landlord has reasonable grounds to believe that any person is, or has been, engaged in the unlawful delivery, production or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant;

(4) That all notices required by law have been served upon the defendant in the required manner; and

(5) That the plaintiff is entitled to the possession of the premises. Upon filing the complaint, a summons must be issued, served and returned as in other actions, provided, however, that at the time of issuance of the summons, the court shall schedule a trial within twelve (12) days from the filing of the complaint and the service of the summons, complaint and trial setting on the defendant shall be not less than five (5) days before the day of trial appointed by the court.

SECTION 3. That Section 6-311, Idaho Code, be, and the same is hereby amended to read as follows:

6-311. CONTINUANCE. In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent or if a landlord has alleged that the landlord has reasonable grounds to believe that any person, is or has been, engaged in the unlawful delivery, production, or use of a controlled substance during the term for which the premises are let to the tenant, no continuance shall be granted for a longer period than two (2) days unless the ~~defendant~~ applying therefor gives an undertaking to the adverse party with good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if judgment is rendered against the defendant.

SECTION 4. That Section 6-311A, Idaho Code, be, and the same is hereby amended to read as follows:

6-311A. JUDGMENT ON TRIAL BY COURT. In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent or on the grounds that the landlord has reasonable grounds to believe that a person is, or has been, engaged in the unlawful deliv-

ery, production, or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, the action shall be tried by the court without a jury. If, after hearing the evidence the court concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable. No provision of this law shall be construed to prevent the bringing of an action for damages.

SECTION 5. That Section 6-311E, Idaho Code, be, and the same is hereby amended to read as follows:

6-311E. ACTION FOR DAMAGES -- COMPLAINT -- SUMMONS. In an action for damages incurred as a result of failure to pay rent or damages as a result of the unlawful production of a controlled substance on the leased premises during the term for which the premises are let to the tenant, the plaintiff in his complaint must set forth the facts on which he seeks to recover. If the plaintiff combines his action for damages with an action for possession, the complaint shall also describe the premises with reasonable certainty and may set forth therein any circumstances which may have accompanied the alleged nonpayment of rent or the facts which are the basis for the landlord's reasonable grounds to believe that a person is, or has been, engaged in the unlawful production of a controlled substance on the leased premises during the term for which the premises are let to the tenant, and claim damages therefor; provided, however, that the early trial provision of section 6-310, Idaho Code, shall not be applicable when an action for damages is combined with an action for possession. In an action for damages, a summons must be issued returnable as in other cases upon filing the complaint.

SECTION 6. That Section 6-316, Idaho Code, be, and the same is hereby amended to read as follows:

6-316. JUDGMENT -- RESTITUTION. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent or based upon a finding that a landlord had reasonable grounds to believe that a person is, or has been, engaged in the unlawful distribution, production, or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, the judgment shall also declare the forfeiture of such lease or agreement. The jury, or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful

detainer be after default in the payment of rent or, after default, based upon a finding that a landlord had reasonable grounds to believe that a person is, or has been, engaged in the unlawful distribution, production, or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in payment of rent where the tract of land is larger than five (5) acres, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five (5) days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but if payment as here provided be not made within the five (5) days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

Approved March 26, 2001.

CHAPTER 204
(S.B. No. 1133)

AN ACT

RELATING TO GOVERNANCE OF SCHOOLS; AMENDING SECTION 33-512, IDAHO CODE, TO PROVIDE THAT THE REDUCTION IN INSTRUCTIONAL HOURS TO ACCOMMODATE STAFF DEVELOPMENT ACTIVITIES SHALL BE ON DAYS AS DEEMED APPROPRIATE BY THE LOCAL SCHOOL BOARD AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 33-512, Idaho Code, be, and the same is hereby amended to read as follows:

33-512. GOVERNANCE OF SCHOOLS. The board of trustees of each school district shall have the following powers and duties:

1. To fix the days of the year and the hours of the day when schools shall be in session. However:

(a) Each school district shall annually adopt and implement a school calendar which provides its students at each grade level with the following minimum number of instructional hours:

Grades	Hours
9-12	990
4-8	900
1-3	810
K	450

(b) School assemblies, testing and other instructionally related

activities involving students directly may be included in the required instructional hours.

(c) When approved by a local school board, annual instructional hour requirements stated in paragraph (a) may be reduced as follows:

(i) Up to a total of twenty-two (22) hours to accommodate staff development activities conducted on such days as the local school board deems appropriate.

(ii) Up to a total of eleven (11) hours of emergency school closures due to adverse weather conditions and facility failures.

However, transportation to and from school, passing times between classes, recess and lunch periods shall not be included.

(d) Student and staff activities related to the opening and closing of the school year, grade reporting, program planning, staff meetings, and other classroom and building management activities shall not be counted as instructional time or in the reductions provided in paragraph (c)(i) of this section.

(e) For multiple shift programs, this rule applies to each shift (i.e., each student must have access to the minimum annual required hours of instructions).

(f) The instructional time requirement for grade 12 students may be reduced by action of a local school board for an amount of time not to exceed eleven (11) hours of instructional time.

(g) The state superintendent of public instruction may grant an exemption from the provisions of this section for an individual building within a district, when the closure of that building, for unforeseen circumstances, does not affect the attendance of other buildings within the district.

2. To adopt and carry on, and provide for the financing of, a total educational program for the district. Such programs in other than elementary school districts may include education programs for out-of-school youth and adults; and such districts may provide classes in kindergarten;

3. To provide, or require pupils to be provided with, suitable textbooks and supplies, and for advice on textbook selections may appoint a textbook adoption committee as provided in section 33-512A, Idaho Code;

4. To protect the morals and health of the pupils;

5. To exclude from school, children not of school age;

6. To prescribe rules for the disciplining of unruly or insubordinate pupils, such rules to be included in a district discipline code adopted by the board of trustees and a summarized version thereof to be provided in writing at the beginning of each school year to the teachers and students in the district in a manner consistent with the student's age, grade and level of academic achievement;

7. To exclude from school, pupils with contagious or infectious diseases who are diagnosed or suspected as having a contagious or infectious disease or those who are not immune and have been exposed to a contagious or infectious disease; and to close school on order of the state board of health or local health authorities;

8. To equip and maintain a suitable library or libraries in the school or schools and to exclude therefrom, and from the schools, all books, tracts, papers, and catechisms of sectarian nature;

9. To determine school holidays. Any listing of school holidays

shall include not less than the following: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. Other days listed in section 73-108, Idaho Code, if the same shall fall on a school day, shall be observed with appropriate ceremonies; and any days the state board of education may designate, following the proclamation by the governor, shall be school holidays;

10. To erect and maintain on each schoolhouse or school grounds a suitable flagstaff or flagpole, and display thereon the flag of the United States of America on all days, except during inclement weather, when the school is in session; and for each Veterans Day, each school in session shall conduct and observe an appropriate program of at least one (1) class period remembering and honoring American veterans;

11. To prohibit entrance to each schoolhouse or school grounds, to prohibit loitering in schoolhouses or on school grounds and to provide for the removal from each schoolhouse or school grounds of any individual or individuals who disrupt the educational processes or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils. A person who disrupts the educational process or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils or who loiters in schoolhouses or on school grounds, is guilty of a misdemeanor.

12. To supervise and regulate, including by contract with established entities, those extracurricular activities which are by definition outside of or in addition to the regular academic courses or curriculum of a public school, and which extracurricular activities shall not be considered to be a property, liberty or contract right of any student, and such extracurricular activities shall not be deemed a necessary element of a public school education, but shall be considered to be a privilege.

13. To govern the school district in compliance with state law and rules of the state board of education.

14. To submit to the superintendent of public instruction not later than July 1 of each year documentation which meets the reporting requirements of the federal gun-free schools act of 1994 as contained within the federal improving America's schools act of 1994.

15. To require that all persons hired for the first time by the district or who have been in the employ of the district five (5) years or less, undergo a criminal history check as provided in section 33-130, Idaho Code. All such employees who are required to undergo a criminal history check shall obtain the history check within three (3) months of starting employment, or for employees with five (5) years or less with the district, within three (3) months from the date such employee is notified that he must undergo a criminal history check. Such employees shall pay the cost of the criminal history check. If the criminal history check shows that the employee has been convicted of a felony crime enumerated in section 33-1208, Idaho Code, it shall be grounds for immediate termination, dismissal or other personnel action of the district, except that it shall be the right of the school district to evaluate whether an individual convicted of one (1) of these crimes and having been incarcerated for that crime shall be hired. The district may require any or all persons who have been employed continuously with the same district for more than five (5) years, to undergo a criminal history check as provided in section 33-130, Idaho Code. If the district elects to require criminal history checks of such employees, the dis-

trict shall pay the costs of the criminal history check or reimburse employees for such cost. A substitute teacher who has undergone a criminal history check at the request of one (1) district in which he has been employed as a substitute shall not be required to undergo an additional criminal history check at the request of any other district in which he is employed as a substitute if the teacher has obtained a criminal history check within the previous three (3) years. If the district next employing the substitute still elects to require another criminal history check within the three (3) year period, that district shall pay the cost of the criminal history check or reimburse the substitute teacher for such cost.

16. Each board of trustees of a school district shall be responsible for developing a system for registering volunteers or contractors consistent with maintaining a safe environment for their students.

Approved March 26, 2001.

CHAPTER 205
(S.B. No. 1168)

AN ACT

RELATING TO THE MEDICAL ASSISTANCE PROGRAM; AMENDING SECTION 56-209d, IDAHO CODE, TO REQUIRE THAT CERTAIN BREAST AND CERVICAL CANCER-RELATED TREATMENT SERVICES BE PROVIDED.

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

SECTION 1. That Section 56-209d, Idaho Code, be, and the same is hereby amended to read as follows:

56-209d. MEDICAL ASSISTANCE PROGRAM -- SERVICES TO BE PROVIDED. Notwithstanding any other provision of this chapter, medical assistance shall increase:

(1) Payment as determined under rules established by the director from forty (40) days per fiscal year to unlimited days of inpatient hospital care per state fiscal year.

(2) Payment as determined under rules established by the director from thirty dollars ($30.00) per month to an unlimited amount of prescribed drugs for each recipient.

(3) Provision of eligibility for medical assistance for residents of skilled and intermediate care facilities who meet the medical criteria for medical assistance, from those with countable income of two hundred one and two-tenths percent (201.2%) to those with countable income of three hundred percent (300%) of the SSI standard.

(4) Payment, as authorized by title XIX of the social security act, as amended, and as determined under rules established by the director for:

(a) Durable medical equipment.
(b) Soft organ transplants.
(c) Adult dental services.
(d) Adult vision services.
(e) Adult hearing services.

(f) Prosthetics.
(g) Assistive and augmentative communication devices.
(5) Payment for breast and cervical cancer-related treatment services for persons who are eligible for screening for these cancers under the federal centers for disease control and prevention's national breast and cervical cancer early detection program, and are eligible for medical assistance pursuant to the provisions of the federal "Breast and Cervical Cancer Prevention and Treatment Act of 2000" (Pub.L. 106-354).

Approved March 26, 2001.

CHAPTER 206
(H.B. No. 43)

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-409, IDAHO CODE, TO PROVIDE FOR THE PURCHASE OF AN IDAHO NURSING HOME FACILITY RESIDENT FISHING PERMIT AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 36-416, IDAHO CODE, TO PROVIDE A FEE FOR A NURSING HOME FISHING PERMIT.

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

SECTION 1. That Section 36-409, Idaho Code, be, and the same is hereby amended to read as follows:

36-409. GAME TAGS -- 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 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 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) Game Tags Required. The appropriate tag must be had for the hunting or taking of each and every one (1) of the aforementioned wild-

life. 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.

(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 rule.

(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 as specified in section 36-416, Idaho Code.

(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 as specified in section 36-416, Idaho Code.

(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 as specified in section 36-416, Idaho Code.

(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 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.

(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 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.

(m) Idaho Nursing Home Facility Resident Fishing Permit. The commission may, under rules as it may prescribe, issue an Idaho nursing home facility resident fishing permit that must be purchased by an Idaho nursing home facility to allow residents of its facility to fish during the open season. Facilities eligible to purchase this permit are: intermediate care facilities providing twenty-four (24) hour skilled nursing care, assisted living facilities providing twenty-four (24) hour extensive assistance and skilled nursing facilities providing twenty-four (24) hour skilled nursing. By purchasing this permit the facility assumes full responsibility for and control over the facility residents while using the permit. All laws, rules and proclamations apply to the use of this permit and it is the responsibility of the facility to assure compliance with all laws, rules and proclamations. In case of a violation the facility shall be held accountable and any citations shall be issued to the facility. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

SECTION 2. That Section 36-416, Idaho Code, be, and the same is hereby amended 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
Nursing Home Fishing Permit	30.00	N/A

Approved March 26, 2001.

CHAPTER 207
(H.B. No. 174)

AN ACT

RELATING TO THE MINE LICENSE TAX; AMENDING SECTION 47-1201, IDAHO CODE, TO REDUCE THE MINE LICENSE TAX FROM TWO PERCENT TO ONE PERCENT OF THE NET VALUE OF ROYALTIES RECEIVED OR OF THE ORES MINED AND EXTRACTED AND TO MAKE A TECHNICAL CORRECTION.

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

SECTION 1. That Section 47-1201, Idaho Code, be, and the same is hereby amended to read as follows:

47-1201. LICENSE TAX TO BE MEASURED BY ~~TWO~~ ONE PERCENT OF THE NET VALUE OF ORES MINED -- DEFINITION OF ROYALTY. (a) Tax on mining or on receiving royalties. For the privilege of mining in this state, both placer and rock in place, every person, copartnership, company, joint stock company, trust, corporation or association, however and for whatever purpose organized, engaged in mining, upon or receiving royalties from any quartz vein or lode, or placer or rock in place mining claim, in this state containing gold, silver, copper, lead, zinc, coal, phosphate, limestone, or other precious and valuable metals or minerals, or metal or mineral deposits, shall pay to the state of Idaho, in addition to all other taxes provided by law, a license tax equal in amount to ~~two per-cent~~ one percent (~~2~~1%) of the net value of the royalties received or the ores mined or extracted as determined under section 47-1202, Idaho Code, said tax to accrue during the taxable year that the product is sold or used and shall on the last day of such taxable year become a lien on property in this state of such person, copartnership, company, joint stock company, trust, corporation, or association, said tax to be due and payable on or before the fifteenth day of the fourth month following the close of the taxable year.

(b) Definition of royalties. For the purpose of paragraph (a) of this section and chapter, the word "royalties" shall be construed to mean the amount in money or value of property received based upon the quantity or value of minerals extracted by any person, copartnership, company, joint stock company, trust, corporation, or association, having any right, title or interest in or to any tract of land, or any economic interest in minerals as defined by section 613 of the Internal Revenue Code, in this state for which permission has been given to another to explore, mine, take out and remove ore therefrom.

(c) Definition of taxable year. The term "taxable year" with respect to any taxpayer means the taxable year elected for income tax purposes under the provisions of section 63-3010, Idaho Code.

Approved March 26, 2001.

CHAPTER 208
(H.B. No. 205)

AN ACT

RELATING TO THE UNIFORM COMMERCIAL CODE; REPEALING CHAPTER 9, TITLE 28, IDAHO CODE; AMENDING TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 9, TITLE 28, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS AND AN INDEX OF DEFINITIONS, TO PROVIDE FOR A PURCHASE-MONEY SECURITY INTEREST, APPLICATION OF PAYMENTS AND THE BURDEN OF ESTABLISHING A PURCHASE-MONEY SECURITY INTEREST, TO PROVIDE FOR CONTROL OF A DEPOSIT ACCOUNT, TO PROVIDE FOR CONTROL OF ELECTRONIC CHATTEL PAPER, TO PROVIDE FOR CONTROL OF INVESTMENT PROPERTY, TO PROVIDE FOR CONTROL OF A LETTER OF CREDIT RIGHT, TO PROVIDE FOR THE SUFFICIENCY OF DESCRIPTION, TO PROVIDE FOR THE SCOPE OF THE CHAPTER, TO PROVIDE FOR SECURITY INTERESTS ARISING UNDER CHAPTER 2 OR CHAPTER 12, TITLE 28, IDAHO CODE, TO PROVIDE THE GENERAL EFFECTIVENESS OF A SECURITY AGREEMENT, TO PROVIDE THAT TITLE TO THE COLLATERAL IS IMMATERIAL, TO PROVIDE FOR ATTACHMENT AND ENFORCEABILITY OF A SECURITY INTEREST, TO PROVIDE FOR AFTER-ACQUIRED PROPERTY AND FUTURE ADVANCES, TO PROVIDE FOR USE OR DISPOSITION OF COLLATERAL, TO PROVIDE FOR A SECURITY INTEREST ARISING IN THE PURCHASE OR DELIVERY OF A FINANCIAL ASSET, TO PROVIDE THE RIGHTS AND DUTIES OF A SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL, TO PROVIDE ADDITIONAL DUTIES OF A SECURED PARTY HAVING CONTROL OF COLLATERAL, TO PROVIDE THE DUTIES OF A SECURED PARTY IF THE ACCOUNT DEBTOR HAS BEEN NOTIFIED OF AN ASSIGNMENT, TO PROVIDE FOR A REQUEST FOR AN ACCOUNTING AND A REQUEST REGARDING A LIST OF COLLATERAL OR STATEMENT OF ACCOUNT, TO PROVIDE THE LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS, TO PROVIDE THE LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS, TO PROVIDE THE LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY A CERTIFICATE OF TITLE, TO PROVIDE THE LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS, TO PROVIDE THE LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY, TO PROVIDE THE LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN LETTER OF CREDIT RIGHTS, TO PROVIDE FOR LOCATION OF DEBTOR, TO PROVIDE WHEN A SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED AND TO PROVIDE FOR CONTINUITY OF PERFECTION, TO PROVIDE WHEN A SECURITY INTEREST IS PERFECTED UPON ATTACHMENT, TO PROVIDE WHEN A FILING IS REQUIRED TO PERFECT A SECURITY INTEREST OR AGRICULTURAL LIEN AND TO PROVIDE EXCEPTIONS, TO PROVIDE FOR PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS AND TREATIES, TO PROVIDE FOR PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER OF CREDIT RIGHTS AND MONEY, TO PROVIDE FOR PERFECTION BY PERMISSIVE FILING AND FOR TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION, TO PROVIDE WHEN POSSESSION BY OR DELIVERY TO A SECURED PARTY PERFECTS A SECURITY INTEREST WITHOUT FILING, TO PROVIDE FOR PERFECTION BY CONTROL, TO PROVIDE A SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS, TO PROVIDE FOR CONTINUED PERFECTION OF A SECURITY INTEREST FOLLOWING A CHANGE IN GOVERNING LAW, TO PROVIDE THE INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF A SECURITY INTER-

EST OR AGRICULTURAL LIEN, TO PROVIDE WHEN A DEBTOR RETAINS NO INTEREST IN A RIGHT TO PAYMENT THAT IS SOLD AND TO PROVIDE THE RIGHTS AND TITLE OF A SELLER OF AN ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS, TO PROVIDE THE RIGHTS AND TITLE OF A CONSIGNEE WITH RESPECT TO CREDITORS AND PURCHASERS, TO PROVIDE WHEN A BUYER OF GOODS TAKES FREE OF A SECURITY INTEREST, TO PROVIDE FOR A LICENSEE OF A GENERAL INTANGIBLE AND A LESSEE OF GOODS IN THE ORDINARY COURSE OF BUSINESS, TO PROVIDE PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON THE SAME COLLATERAL, TO PROVIDE FOR SECURITY INTERESTS IN CROPS FOR PROVISION OF AGRICULTURAL CHEMICALS, TO PROVIDE FOR FUTURE ADVANCES, TO PROVIDE THE PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS, TO PROVIDE THE PRIORITY OF SECURITY INTERESTS IN TRANSFERRED COLLATERAL, TO PROVIDE THE PRIORITY OF SECURITY INTERESTS CREATED BY A NEW DEBTOR, TO PROVIDE THE PRIORITY OF SECURITY INTERESTS IN A DEPOSIT ACCOUNT, TO PROVIDE THE PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY, TO PROVIDE THE PRIORITY OF SECURITY INTERESTS IN A LETTER OF CREDIT RIGHT, TO PROVIDE THE PRIORITY OF A PURCHASER OF CHATTEL PAPER OR AN INSTRUMENT, TO PROVIDE THE PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, AND SECURITIES UNDER OTHER CHAPTERS AND THE PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER CHAPTER 8, TITLE 28, IDAHO CODE, TO PROVIDE FOR THE TRANSFER OF MONEY AND A TRANSFER OF FUNDS FROM A DEPOSIT ACCOUNT, TO PROVIDE THE PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW, TO PROVIDE THE PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS, TO PROVIDE FOR ACCESSIONS, TO PROVIDE FOR COMMINGLED GOODS, TO PROVIDE THE PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY A CERTIFICATE OF TITLE, TO PROVIDE THE PRIORITY OF A SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY A FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION, TO PROVIDE THAT PRIORITY IS SUBJECT TO SUBORDINATION BY AGREEMENT, TO PROVIDE THE EFFECTIVENESS OF A RIGHT OF RECOUPMENT OR SET-OFF AGAINST A DEPOSIT ACCOUNT, TO PROVIDE A BANK'S RIGHTS AND DUTIES WITH RESPECT TO A DEPOSIT ACCOUNT, TO PROVIDE FOR THE BANK'S RIGHT TO REFUSE TO ENTER INTO OR DISCLOSE THE EXISTENCE OF A CONTROL AGREEMENT, TO PROVIDE FOR ALIENABILITY OF DEBTOR'S RIGHTS, TO PROVIDE THAT A SECURED PARTY IS NOT OBLIGATED ON A CONTRACT OF THE DEBTOR OR IN TORT, TO PROVIDE FOR AN AGREEMENT NOT TO ASSERT DEFENSES AGAINST AN ASSIGNEE, TO PROVIDE FOR RIGHTS ACQUIRED BY AN ASSIGNEE AND CLAIMS AND DEFENSES AGAINST AN ASSIGNEE, TO PROVIDE FOR MODIFICATION OF AN ASSIGNED CONTRACT, TO PROVIDE FOR DISCHARGE OF THE ACCOUNT DEBTOR UPON PAYMENT TO THE ASSIGNOR, TO PROVIDE FOR NOTIFICATION OF THE ASSIGNMENT, TO PROVIDE IDENTIFICATION AND PROOF OF ASSIGNMENT AND TO PROVIDE FOR RESTRICTIONS ON ASSIGNMENT, TO PROVIDE FOR RESTRICTIONS ON THE CREATION OR ENFORCEMENT OF A SECURITY INTEREST IN A LEASEHOLD INTEREST OR IN THE LESSOR'S RESIDUAL INTEREST, TO PROVIDE WHEN RESTRICTIONS ON THE ASSIGNMENT OF PROMISSORY NOTES, HEALTH CARE INSURANCE RECEIVABLES AND CERTAIN INTANGIBLES IS INEFFECTIVE, TO PROVIDE WHEN RESTRICTIONS ON THE ASSIGNMENT OF LETTER OF CREDIT RIGHTS IS INEFFECTIVE, TO PROVIDE THE OFFICE FOR FILING A FINANCING STATEMENT, TO PROVIDE THE CONTENTS OF A FINANCING STATEMENT, TO PROVIDE FOR THE RECORD OF A MORTGAGE AS A FINANCING STATEMENT, TO PROVIDE FOR THE TIME OF FILING A FINANCING STATEMENT AND TO PROVIDE FOR A FINANCING STATEMENT COVERING FARM PRODUCTS, TO PROVIDE FOR SUFFICIENCY OF THE NAME OF THE

DEBTOR AND SECURED PARTY, TO PROVIDE FOR A SUFFICIENT INDICATION OF THE COLLATERAL, TO PROVIDE FOR FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS AND OTHER TRANSACTIONS, TO PROVIDE THE EFFECT OF ERRORS OR OMISSIONS, TO PROVIDE THE EFFECT OF CERTAIN EVENTS ON THE EFFECTIVENESS OF A FINANCING STATEMENT, TO PROVIDE THE EFFECTIVENESS OF A FINANCING STATEMENT IF A NEW DEBTOR BECOMES BOUND BY A SECURITY AGREEMENT, TO PROVIDE THE PERSONS ENTITLED TO FILE A RECORD, TO PROVIDE THE EFFECTIVENESS OF A FILED RECORD, TO PROVIDE FOR THE SECURED PARTY OF RECORD, TO PROVIDE FOR AMENDMENT OF A FINANCING STATEMENT, TO PROVIDE FOR A TERMINATION STATEMENT, TO PROVIDE FOR ASSIGNMENT OF THE POWERS OF A SECURED PARTY OF RECORD, TO PROVIDE THE DURATION AND EFFECTIVENESS OF A FINANCING STATEMENT AND THE EFFECT OF A LAPSED FINANCING STATEMENT, TO PROVIDE WHAT CONSTITUTES FILING AND THE EFFECTIVENESS OF FILING, TO PROVIDE THE EFFECT OF INDEXING ERRORS, TO PROVIDE FOR A CLAIM CONCERNING AN INACCURATE OR WRONGFULLY FILED RECORD, TO PROVIDE FOR NUMBERING, MAINTAINING AND INDEXING RECORDS AND COMMUNICATING INFORMATION PROVIDED IN RECORDS, TO PROVIDE FOR ACCEPTANCE OF AND A REFUSAL TO ACCEPT A RECORD BY A FILING OFFICE, TO PROVIDE THE UNIFORM FORMS FOR A WRITTEN FINANCING STATEMENT AND AN AMENDMENT, TO PROVIDE FOR MAINTENANCE AND DESTRUCTION OF RECORDS, TO PROVIDE FOR INFORMATION FROM A FILING OFFICE, TO PROVIDE FOR THE SALE OR LICENSE OF RECORDS AND TO PROVIDE FOR MASTER LISTS OF FARM PRODUCTS, TO PROVIDE FOR A DELAY BY A FILING OFFICE, TO PROVIDE FOR FEES, TO PROVIDE FOR PROMULGATION OF RULES BY THE SECRETARY OF STATE, TO PROVIDE FOR RIGHTS AFTER DEFAULT AND UPON JUDICIAL ENFORCEMENT, AND TO PROVIDE FOR CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES OR PROMISSORY NOTES, TO PROVIDE FOR WAIVER AND VARIANCE OF RIGHTS AND DUTIES, TO PROVIDE FOR AN AGREEMENT ON STANDARDS CONCERNING RIGHTS AND DUTIES, TO PROVIDE THE PROCEDURE IF A SECURITY AGREEMENT COVERS REAL PROPERTY OR FIXTURES, TO PROVIDE FOR AN UNKNOWN DEBTOR OR SECONDARY OBLIGOR, TO PROVIDE THE TIME OF DEFAULT FOR AN AGRICULTURAL LIEN, TO PROVIDE FOR COLLECTION AND ENFORCEMENT BY A SECURED PARTY, TO PROVIDE FOR APPLICATION OF THE PROCEEDS OF COLLECTION OR ENFORCEMENT AND TO PROVIDE THE LIABILITY FOR A DEFICIENCY AND RIGHT TO SURPLUS, TO PROVIDE THE SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER DEFAULT, TO PROVIDE FOR DISPOSITION OF COLLATERAL AFTER DEFAULT, TO PROVIDE FOR NOTIFICATION BEFORE DISPOSITION OF COLLATERAL, TO PROVIDE FOR TIMELINESS OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL, TO PROVIDE THE CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL IN GENERAL AND IN A CONSUMER GOODS TRANSACTION, TO PROVIDE FOR APPLICATION OF THE PROCEEDS OF DISPOSITION, TO PROVIDE THE LIABILITY FOR A DEFICIENCY AND THE RIGHT TO SURPLUS, TO PROVIDE FOR AN EXPLANATION OF THE CALCULATION OF A SURPLUS OR A DEFICIENCY, TO PROVIDE THE RIGHTS OF A TRANSFEREE OF COLLATERAL, TO PROVIDE THE RIGHTS AND DUTIES OF CERTAIN SECONDARY OBLIGORS, TO PROVIDE FOR A TRANSFER OF RECORD OR LEGAL TITLE, TO PROVIDE FOR ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF AN OBLIGATION AND FOR COMPULSORY DISPOSITION OF COLLATERAL, TO PROVIDE FOR NOTIFICATION OF A PROPOSAL TO ACCEPT COLLATERAL AND FOR THE EFFECT OF AN ACCEPTANCE OF COLLATERAL, TO PROVIDE FOR A RIGHT TO REDEEM COLLATERAL, TO PROVIDE FOR WAIVER OF A DISPOSITION NOTIFICATION OR A REDEMPTION RIGHT, TO PROVIDE REMEDIES FOR A SECURED PARTY'S FAILURE TO COMPLY WITH CHAPTER

9, TITLE 28, IDAHO CODE, TO PROVIDE FOR AN ACTION IN WHICH A DEFICIENCY OR SURPLUS IS IN ISSUE, TO PROVIDE FOR A DETERMINATION OF WHETHER CONDUCT WAS COMMERCIALLY REASONABLE, TO PROVIDE FOR NONLIABILITY AND A LIMITATION OF THE LIABILITY OF A SECURED PARTY AND FOR THE LIABILITY OF A SECONDARY OBLIGOR, TO PROVIDE A SAVINGS CLAUSE, TO PROVIDE FOR A SECURITY INTEREST PERFECTED BEFORE THE EFFECTIVE DATE OF THE ACT AND FOR A SECURITY INTEREST UNPERFECTED BEFORE THE EFFECTIVE DATE OF THE ACT, TO PROVIDE THE EFFECTIVENESS OF ACTION TAKEN BEFORE THE EFFECTIVE DATE OF THE ACT, TO PROVIDE WHEN AN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE THE EFFECTIVENESS OF A FINANCING STATEMENT, TO PROVIDE FOR PREEFFECTIVE-DATE FINANCING STATEMENT, TO PROVIDE THE PERSONS ENTITLED TO FILE AN INITIAL FINANCING STATEMENT OR A CONTINUATION STATEMENT AND TO PROVIDE FOR THE LAW GOVERNING PRIORITY; AMENDING SECTION 28-1-105, IDAHO CODE, TO PROVIDE APPROPRIATE CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-1-201, IDAHO CODE, TO REDEFINE "BUYER IN THE ORDINARY COURSE OF BUSINESS" AND "SECURITY INTEREST," TO INCLUDE A SECURITY INTEREST WITHIN THE DEFINITION OF "PURCHASE" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-2-103, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-2-210, IDAHO CODE, TO PROVIDE THAT A SECURITY INTEREST IN THE SELLER'S INTEREST UNDER A CONTRACT IS NOT A PROHIBITED TRANSFER UNLESS ENFORCEMENT RESULTS IN A DELEGATION OF MATERIAL PERFORMANCE, TO PROVIDE THE SELLER'S LIABILITY IN THAT EVENT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-2-326, IDAHO CODE, TO DELETE OBSOLETE PROVISIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-2-502, IDAHO CODE, TO PROVIDE THE BUYER'S RIGHT TO GOODS ON THE SELLER'S REPUDIATION AND FAILURE TO DELIVER AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-2-716, IDAHO CODE, TO PROVIDE WHEN THE BUYER'S RIGHT OF REPLEVIN VESTS IN THE CASE OF GOODS BOUGHT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES; AMENDING SECTION 28-4-210, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING PART 1, CHAPTER 5, TITLE 28, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 28-5-120, IDAHO CODE, TO PROVIDE FOR THE SECURITY INTEREST OF AN ISSUER OR NOMINATED PERSON IN A DOCUMENT; AMENDING SECTION 28-7-209A, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 28-7-503, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-8-103, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 28-8-106, IDAHO CODE, TO PROVIDE THAT A PURCHASER HAS CONTROL OF A SECURITY ENTITLEMENT IF ANOTHER PERSON HAS CONTROL OF THE SECURITY ENTITLEMENT ON BEHALF OF THE PURCHASER AND TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 28-8-110, IDAHO CODE, TO PROVIDE FOR A SECURITIES INTERMEDIARY'S JURISDICTION IN PARTICULAR CIRCUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-8-301, IDAHO CODE, TO PROVIDE ADDITIONAL CIRCUMSTANCES WHEN A SECURITIES INTERMEDIARY ACTING ON BEHALF OF THE PURCHASER ACQUIRES POSSESSION OF A SECURITY CERTIFICATE; AMENDING SECTION 28-8-302, IDAHO CODE, TO DELETE THE REQUIREMENT FOR DELIVERY BEFORE A PURCHASER ACQUIRES RIGHTS IN A CERTIFICATED OR UNCERTIFICATED SECURITY; AMENDING SECTION 28-8-510, IDAHO CODE, TO PROVIDE FOR APPLICATION OF THE SECTION IN CASES NOT COVERED BY THE PRIORITY RULES OF CHAPTER 9, TITLE 28, IDAHO CODE, TO PROVIDE FOR PRIORITY WITH RESPECT TO PURCHASERS OF A SECURITY ENTITLEMENT HAVING

CONTROL AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 28-12-103, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-12-303, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES, TO DELETE OBSOLETE PROVISIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-12-307, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO PROVIDE WHEN A LESSEE TAKES A LEASEHOLD INTEREST SUBJECT TO A SECURITY INTEREST HELD BY A LESSOR'S CREDITOR; AMENDING SECTION 28-12-309, IDAHO CODE, TO PROVIDE CORRECT NOMENCLATURE AND CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 28-50-116, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING CHAPTER 3, TITLE 45, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 45-318, IDAHO CODE, TO PROVIDE APPLICABILITY OF THE UNIFORM COMMERCIAL CODE; AMENDING SECTION 8-506A, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 31-2402, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 45-1909, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AMENDING SECTION 49-120, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING CHAPTER 2, TITLE 57, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 57-232, IDAHO CODE, TO PROVIDE FOR THE CREATION AND PERFECTION OF GOVERNMENT SECURITY INTERESTS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Chapter 9, Title 28, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 9, Title 28, Idaho Code, and to read as follows:

CHAPTER 9
SECURED TRANSACTIONS

PART 1.
GENERAL PROVISIONS

28-9-101. SHORT TITLE. This chapter may be cited as "Uniform Commercial Code -- Secured Transactions."

28-9-102. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this chapter:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance: (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a charter or other contract; (vii)

arising out of the use of a credit or charge card or information contained on or for use with the card; or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or a person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include: (i) rights to payment evidenced by chattel paper or an instrument; (ii) commercial tort claims; (iii) deposit accounts; (iv) investment property; (v) letter of credit rights or letters of credit; or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.
(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.
(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include: (i) charters or other contracts involving the use or hire of a vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.
(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:
(A) proceeds to which a security interest attaches;
(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
(C) goods that are the subject of a consignment.
(13) "Commercial tort claim" means a claim arising in tort with respect to which:
(A) the claimant is an organization; or
(B) the claimant is an individual and the claim:
(i) arose in the course of the claimant's business or profession; and
(ii) does not include damages arising out of personal injury to or the death of an individual.
(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.
(17) "Commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(24) "Consumer goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.

(26) "Consumer transaction" means a transaction in which: (i) an individual incurs an obligation primarily for personal, family or household purposes; (ii) a security interest secures the obligation; and (iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing

statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in section 28-7-201(2).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to section 28-9-519(a).

(37) "Filing office" means an office designated in section 28-9-501 as the place to file a financing statement.

(38) "Filing office rule" means a rule adopted pursuant to section 28-9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 28-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real prop-

erty law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter of credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes: (i) fixtures; (ii) standing timber that is to be cut and removed under a conveyance or contract for sale; (iii) the unborn young of animals; (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines or bushes; and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if: (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter of credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include: (i) investment property; (ii) letters of credit; or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.
(51) "Letter of credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.
(52) "Lien creditor" means:
(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
(B) an assignee for benefit of creditors from the time of assignment;
(C) a trustee in bankruptcy from the date of the filing of the petition; or
(D) a receiver in equity from the time of appointment.
(53) "Manufactured home" means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.
(54) "Manufactured home transaction" means a secured transaction:
(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.
(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.
(56) "New debtor" means a person that becomes bound as debtor under section 28-9-203(d) by a security agreement previously entered into by another person.
(57) "New value" means: (i) money; (ii) money's worth in property, services or new credit; or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.
(58) "Noncash proceeds" means proceeds other than cash proceeds.
(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral: (i) owes payment or other performance of the obligation; (ii) has provided property other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable in whole or in part for payment or other performance of

the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in section 28-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 28-9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A) of this paragraph;

(D) the spouse of an individual described in subparagraph (A), (B) or (C) of this paragraph; or

(E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) of this paragraph and shares the same home with the individual.

(64) "Proceeds" means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 28-9-620, 28-9-621 and 28-9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under section 28-2-401, 28-2-505, 28-2-711(3), 28-4-210, 28-5-120 or 28-12-508(5).

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A) of this paragraph.

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any ter-

ritory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter of credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas or water.

(b) The following definitions in other chapters apply to this chapter:

"Applicant"	section 28-5-102.
"Beneficiary"	section 28-5-102.
"Broker"	section 28-8-102.
"Certificated security"	section 28-8-102.
"Check"	section 28-3-104.
"Clearing corporation"	section 28-8-102.
"Contract for sale"	section 28-2-106.
"Customer"	section 28-4-104.
"Entitlement holder"	section 28-8-102.
"Financial asset"	section 28-8-102.
"Holder in due course"	section 28-3-302.
"Issuer" (with respect to a letter of credit or letter of credit right)	section 28-5-102.
"Issuer" (with respect to a security)	section 28-8-201.
"Lease"	section 28-12-103.
"Lease agreement"	section 28-12-103.
"Lease contract"	section 28-12-103.
"Leasehold interest"	section 28-12-103.
"Lessee"	section 28-12-103.
"Lessee in ordinary course of business"	section 28-12-103.
"Lessor"	section 28-12-103.
"Lessor's residual interest"	section 28-12-103.
"Letter of credit"	section 28-5-102.
"Merchant"	section 28-2-104.
"Negotiable instrument"	section 28-3-104.
"Nominated person"	section 28-5-102.
"Note"	section 28-3-104.
"Proceeds of a letter of credit"	section 28-5-114.

"Prove"	section 28-3-103.
"Sale"	section 28-2-106.
"Securities account"	section 28-8-501.
"Securities intermediary"	section 28-8-102.
"Security"	section 28-8-102.
"Security certificate"	section 28-8-102.
"Security entitlement"	section 28-8-102.
"Uncertificated security"	section 28-8-102.

(c) Chapter 1, title 28, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

28-9-103. PURCHASE-MONEY SECURITY INTEREST -- APPLICATION OF PAYMENTS -- BURDEN OF ESTABLISHING. (a) In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) If the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a

timely manifestation of the obligor's intention, in the following order:

(A) to obligations that are not secured; and

(B) if more than one (1) obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) A purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated or restructured.

(g) A secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

28-9-104. CONTROL OF DEPOSIT ACCOUNT. (a) A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) A secured party that has satisfied subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

28-9-105. CONTROL OF ELECTRONIC CHATTEL PAPER. A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subsections (4), (5) and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

28-9-106. CONTROL OF INVESTMENT PROPERTY. (a) A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 28-8-106.

(b) A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

28-9-107. CONTROL OF LETTER OF CREDIT RIGHT. A secured party has control of a letter of credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 28-5-114(3) or otherwise applicable law or practice.

28-9-108. SUFFICIENCY OF DESCRIPTION. (a) Except as otherwise provided in subsections (c), (d) and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Except as otherwise provided in subsection (d) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in the uniform commercial code;

(4) Quantity;

(5) Computational or allocational formula or procedure; or

(6) Except as otherwise provided in subsection (c) of this section, any other method, if the identity of the collateral is objectively determinable.

(c) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) Except as otherwise provided in subsection (e) of this section, a description of a security entitlement, securities account or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) A description only by type of collateral defined in the uniform commercial code is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account or a commodity account.

28-9-109. SCOPE. (a) Except as otherwise provided in subsections (c) and (d), this chapter applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles or promissory notes;
(4) A consignment;
(5) A security interest arising under section 28-2-401, 28-2-505, 28-2-711(3) or 28-12-508(5), as provided in section 28-9-110; and
(6) A security interest arising under section 28-4-210 or 28-5-120.
(b) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.
(c) This chapter does not apply to the extent that:
(1) A statute, regulation, or treaty of the United States preempts this chapter;
(2) Another statute of this state expressly governs the creation, perfection, priority or enforcement of a security interest created by this state or a governmental unit of this state;
(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority or enforcement of a security interest created by the state, country or governmental unit; or
(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 28-5-114.
(d) This chapter does not apply to:
(1) A landlord's lien, other than an agricultural lien;
(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 28-9-333 applies with respect to priority of the lien;
(3) An assignment of a claim for wages, salary or other compensation of an employee;
(4) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;
(5) An assignment of accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only;
(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
(7) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care insurance receivable and any subsequent assignment of the right to payment, but sections 28-9-315 and 28-9-322 apply with respect to proceeds and priorities in proceeds;
(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
(10) A right of recoupment or set-off, but:
(A) section 28-9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
(B) section 28-9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) liens on real property in sections 28-9-203 and 28-9-308;

(B) fixtures in section 28-9-334;

(C) fixture filings in sections 28-9-501, 28-9-502, 28-9-512, 28-9-516 and 28-9-519; and

(D) security agreements covering personal and real property in section 28-9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 28-9-315 and 28-9-322 apply with respect to proceeds and priorities in proceeds; or

(13) A claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. section 104(a)(1), as amended from time to time.

28-9-110. SECURITY INTERESTS ARISING UNDER CHAPTER 2 OR 12, TITLE 28, IDAHO CODE. A security interest arising under section 28-2-401, 28-2-505, 28-2-711(3) or 28-12-508(5) is subject to this chapter. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if section 28-9-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by chapter 2 or 12, title 28, Idaho Code; and

(4) The security interest has priority over a conflicting security interest created by the debtor.

PART 2.
EFFECTIVENESS OF SECURITY AGREEMENT --
ATTACHMENT OF SECURITY INTEREST --
RIGHTS OF PARTIES TO SECURITY AGREEMENT

28-9-201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT. (a) Except as otherwise provided in the uniform commercial code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) A transaction subject to this chapter is subject to any applicable rule of law which establishes a different rule for consumers, to the Idaho credit code, chapters 41 through 49, title 28, Idaho Code, and any rules promulgated thereunder and to the Idaho credit union act, chapter 21, title 26, Idaho Code, and any rules promulgated thereunder.

(c) In case of conflict between this chapter and a rule of law, statute or rule described in subsection (b) of this section, the rule of law, statute or rule controls. Failure to comply with a statute or rule described in subsection (b) of this section has only the effect the statute or rule specifies.

(d) This chapter does not:

(1) Validate any rate, charge, agreement or practice that violates a rule of law, statute or rule described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute or rule to a transaction not otherwise subject to it.

28-9-202. TITLE TO COLLATERAL IMMATERIAL. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles or promissory notes, the provisions of this chapter with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

28-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST -- PROCEEDS -- SUPPORTING OBLIGATIONS -- FORMAL REQUISITES. (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One (1) of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under section 28-9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 28-8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, or letter of credit rights, and the secured party has control under section 28-9-104, 28-9-105, 28-9-106 or 28-9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) of this section is subject to section 28-4-210 on the security interest of a collecting bank, section 28-5-120 on the security interest of a letter of credit issuer or nominated person, section 28-9-110 on a security interest arising under chapter 2 or 12, title 28, and section 28-9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 28-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

28-9-204. AFTER-ACQUIRED PROPERTY -- FUTURE ADVANCES. (a) Except as otherwise provided in subsection (b) of this section, a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten (10) days after the secured party gives value; or

(2) A commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

28-9-205. USE OR DISPOSITION OF COLLATERAL PERMISSIBLE. (a) A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) use, commingle or dispose of all or part of the collateral, including returned or repossessed goods;

(B) collect, compromise, enforce or otherwise deal with collateral;

(C) accept the return of collateral or make repossessions; or

(D) use, commingle or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection or enforcement of a security interest depends upon possession of the collateral by the secured party.

28-9-206. SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL ASSET. (a) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities inter-

mediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) The security interest described in subsection (a) of this section secures the person's obligation to pay for the financial asset.

(c) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

(A) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) The security interest described in subsection (c) of this section secures the obligation to make payment for the delivery.

28-9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL. (a) Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under section 28-9-104, 28-9-105, 28-9-106 or 28-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

28-9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL. (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under section 28-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under section 28-9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under section 28-9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under section 28-8-106(4)(b) or 28-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter of credit right under section 28-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

28-9-209. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR HAS BEEN NOTIFIED OF ASSIGNMENT. (a) Except as otherwise provided in subsection (c), this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 28-9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) This section does not apply to an assignment constituting the sale of an account, chattel paper or payment intangible.

28-9-210. REQUEST FOR ACCOUNTING -- REQUEST REGARDING LIST OF COLLATERAL OR STATEMENT OF ACCOUNT. (a) In this section:

(1) "Request" means a record of a type described in paragraph (2), (3) or (4) of this subsection.

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to subsections (c), (d), (e) and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen (14) days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen (14) days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing

address of any assignee of or successor to the recipient's interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one (1) response to a request under this section during any six (6) month period. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response.

PART 3.
PERFECTION AND PRIORITY

28-9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. Except as otherwise provided in sections 28-9-303 through 28-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4) of this section, while negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

28-9-302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS. While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

28-9-303. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY A CERTIFICATE OF TITLE. (a) This section

applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

28-9-304. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS. (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this chapter, or the uniform commercial code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

28-9-305. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. (a) Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in section 28-8-110(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in section 28-8-110(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this chapter, or the uniform commercial code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs apply, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs apply, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

28-9-306. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN LETTER OF CREDIT RIGHTS. (a) Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter of credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter of credit right as provided in section 28-5-116.

(c) This section does not apply to a security interest that is perfected only under section 28-9-308(d).

28-9-307. LOCATION OF DEBTOR. (a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one (1) place of business is located at its place of business.

(3) A debtor that is an organization and has more than one (1) place of business is located at its chief executive office.

(c) Subsection (b) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch or agency designates, if the law of the United States authorizes the registered organization, branch or agency to designate its state of location; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) of this subsection applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:

(1) The suspension, revocation, forfeiture or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the

branch or agency is licensed, if all branches and agencies of the bank are licensed in only one (1) state.

(j) A foreign air carrier under the federal aviation act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

28-9-308. WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED -- CONTINUITY OF PERFECTION. (a) Except as otherwise provided in this section and section 28-9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 28-9-310 through 28-9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 28-9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one (1) method under this chapter and is later perfected by another method under this chapter, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

28-9-309. SECURITY INTEREST PERFECTED UPON ATTACHMENT. The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in section 28-9-311(b) with respect to consumer goods that are subject to a statute or treaty described in section 28-9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health care insurance receivable to the provider of the health care goods or services;

(6) A security interest arising under section 28-2-401, 28-2-505, 28-2-711(3) or 28-12-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under section 28-4-210;

(8) A security interest of an issuer or nominated person arising under section 28-5-120;

(9) A security interest arising in the delivery of a financial asset under section 28-9-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

28-9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN -- SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY. (a) Except as otherwise provided in subsection (b) of this section and section 28-9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under section 28-9-308(d), (e), (f) or (g);

(2) That is perfected under section 28-9-309 when it attaches;

(3) In property subject to a statute, regulation or treaty described in section 28-9-311(a);

(4) In goods in possession of a bailee which is perfected under section 28-9-312(d)(1) or (2);

(5) In certificated securities, documents, goods or instruments which is perfected without filing or possession under section 28-9-312(e), (f) or (g);

(6) In collateral in the secured party's possession under section 28-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 28-9-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter of credit rights which is perfected by control under section 28-9-314;

(9) In proceeds which is perfected under section 28-9-315; or

(10) That is perfected under section 28-9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

28-9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS AND TREATIES. (a) Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the

rights of a lien creditor with respect to the property preempt section 28-9-310(a);

(2) Section 49-510, Idaho Code; or

(3) A certificate of title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in subsection (d) of this section and sections 28-9-313 and 28-9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) of this section and section 28-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation or treaty described in subsection (a) of this section are governed by the statute, regulation or treaty. In other respects, the security interest is subject to this chapter.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

28-9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER OF CREDIT RIGHTS AND MONEY -- PERFECTION BY PERMISSIVE FILING -- TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. (a) A security interest in chattel paper, negotiable documents, instruments or investment property may be perfected by filing.

(b) Except as otherwise provided in section 28-9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under section 28-9-314;

(2) And except as otherwise provided in section 28-9-308(d), a security interest in a letter of credit right may be perfected only by control under section 28-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under section 28-9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a

nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal or registration of transfer.

(h) After the twenty (20) day period specified in subsection (e), (f) or (g) of this section expires, perfection depends upon compliance with this chapter.

28-9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. (a) Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 28-8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 28-9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of

the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 28-8-301, and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or section 28-8-301(1), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees, or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees, or law other than this chapter otherwise provides.

28-9-314. PERFECTION BY CONTROL. (a) A security interest in investment property, deposit accounts, letter of credit rights, or electronic chattel paper may be perfected by control of the collateral under section 28-9-104, 28-9-105, 28-9-106 or 28-9-107.

(b) A security interest in deposit accounts, electronic chattel paper, or letter of credit rights is perfected by control under section 28-9-104, 28-9-105 or 28-9-107, when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 28-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One (1) of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

28-9-315. SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS. (a) Except as otherwise provided in this chapter and in section 28-2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by section 28-9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this chapter with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within twenty (20) days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) of this section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under section 28-9-515 or is terminated under section 28-9-513; or

(2) The twenty-first day after the security interest attaches to the proceeds.

28-9-316. CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING CHANGE IN GOVERNING LAW. (a) A security interest perfected pursuant to the law of the jurisdiction designated in section 28-9-301(1) or 28-9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four (4) months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one (1) year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) of this sec-

tion becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one (1) jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 28-9-311(b) or 28-9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four (4) months after the goods had become so covered.

(f) A security interest in deposit accounts, letter of credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four (4) months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

28-9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN. (a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 28-9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one (1) of the conditions specified in section 28-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 28-9-320 and 28-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

28-9-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT IS SOLD -- RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS. (a) A debtor that has sold an account, chattel paper, payment intangible or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

28-9-319. RIGHTS AND TITLE OF CONSIGNEE WITH RESPECT TO CREDITORS AND PURCHASERS. (a) Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than this chapter determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have

priority over the rights of the creditor.

28-9-320. BUYER OF GOODS. (a) Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. A buyer who, in the ordinary course of business, buys farm products from a person engaged in farming operations or a commission merchant or selling agent who in the ordinary course of business sells farm products for a person engaged in farming operations shall take and sell free of a security interest created by his seller, even though the security interest is perfected and the buyer or commission merchant or selling agent knows of the existence of such interest, if he has registered with the secretary of state pursuant to section 28-9-523(h) and the security interest is not listed on the most recent master list or cumulative supplement distributed by the secretary of state pursuant to section 28-9-523(i), unless he has received written notification, as that term is used in applicable federal law and regulation, of the security interest from the secretary of state, his seller or the secured party.

(b) Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 28-9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) of this section do not affect a security interest in goods in the possession of the secured party under section 28-9-313.

28-9-321. LICENSEE OF GENERAL INTANGIBLE AND LESSEE OF GOODS IN ORDINARY COURSE OF BUSINESS. (a) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is

perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

28-9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL. (a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under section 28-9-327, 28-9-328, 28-9-329, 28-9-330 or 28-9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are cash proceeds or of the same type as the collateral; and

(C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter of credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property or letter of credit rights.

(f) Subsections (a) through (e) of this section are subject to:

(1) Subsection (g) of this section and the other provisions of this part;

(2) Section 28-4-210 with respect to a security interest of a collecting bank;

(3) Section 28-5-120 with respect to a security interest of an issuer or nominated person; and

(4) Section 28-9-110 with respect to a security interest arising under chapter 2 or 12.

(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

28-9-322A. SECURITY INTERESTS IN CROPS FOR PROVISION OF AGRICULTURAL CHEMICALS. (a) As used in this section:

(1) "Agricultural chemical" means fertilizers and other chemicals applied to crops or land which is to be used for the raising of crops, including pesticides, soil amendments and plant regulators.

(2) "Fall agricultural chemical security interest" means a security interest in specific crops growing or to be grown granted by a grower to a supplier to secure the grower's obligation to repay value given by the supplier to enable the grower to purchase from the supplier (A) agricultural chemicals to apply to such crops or to land on which such crops will be grown, and (B) application of such agricultural chemicals if such application is performed by the supplier. To qualify as a fall agricultural chemical security interest, the security interest must also satisfy the following conditions:

(i) Before supplying the agricultural chemicals to the grower, the supplier and grower provide the lender with a notification statement and opportunity to respond in accordance with this section;

(ii) The security interest is perfected within twenty (20) days after the agricultural chemicals are delivered to the grower; and

(iii) The agricultural chemicals are actually applied to the grower's land or crops during the period September 1 through December 15.

(3) "Grower" shall mean a specified debtor of a lender.

(4) "Lender" shall mean the holder of an existing perfected security interest in crops of a grower.

(5) "Letter of response" shall mean a statement by a lender containing the information specified in subsection (j) of this section.

(6) "Notification statement" shall mean a statement by a supplier containing the information specified in subsection (h) of this section.

(7) "Supplier" shall mean a person who supplies agricultural chemicals to a grower.

(b) A supplier may obtain a fall agricultural chemical security interest as provided in this section. To the extent not otherwise expressly provided in this section, the provisions of this chapter apply to a fall agricultural chemical security interest. The amount secured by a fall agricultural security interest shall be the lesser of: (i) the agreed charges for the agricultural chemicals and application costs provided pursuant to the notification statement; or (ii) the amount of the

anticipated charges as reflected in the notification statement.

(c) A fall agricultural chemical security interest attaches to the existing crops upon the land where the agricultural chemical is applied, or if crops are not planted at the time of the application, to the next production crop from that land. It does not attach to crops already harvested or which are harvested before December 15 from such land, or to crops to be grown on such land after the next production crop, or to crops grown on other land than that identified in the notification statement.

(d) A fall agricultural chemical security interest is perfected by filing a financing statement.

(e) A fall agricultural chemical security interest shall have priority over a conflicting security interest in the same crops and identifiable proceeds thereof except for a prior perfected fall agricultural chemical security interest. In the event of any commingling of crops or proceeds covered by a fall agricultural chemical security interest with other crops or proceeds, the burden of proving the applicability of the fall agricultural chemical security interest to any particular crops or proceeds is on the supplier asserting it.

(f) Nothing in this section is intended to limit the priority of agricultural liens established by the statutes creating such liens, and a perfected agricultural lien shall have priority over a conflicting security interest (including a fall agricultural chemical security interest) if the statute creating the agricultural lien provides such priority.

(g) A supplier may notify the lender that the supplier intends to supply agricultural chemicals to the grower and that the supplier requests the lender to issue a letter of response. In order to so notify the lender, the supplier shall provide a notification statement to the lender in an envelope marked CROP SECURITY INTEREST NOTIFICATION STATEMENT, sent by certified mail addressed to the lender at the address for such lender shown on such lender's most recently filed UCC-1F financing statement regarding that grower.

(h) A notification statement shall contain:

(1) The name, address and signature of the supplier providing the notification statement;

(2) The date the notification statement was prepared;

(3) The name and address of the lender;

(4) The name and address of the person to whom the lender's response to the supplier should be addressed;

(5) A description and anticipated date of the application of agricultural chemicals and the anticipated charges for the agricultural chemicals, including anticipated application costs;

(6) The name, address and signature of the grower to whom the supplier furnished or intends to furnish agricultural chemicals;

(7) A reasonable description of the real estate sufficient to identify the same where the agricultural chemicals are to be applied;

(8) The name and address of the owner (if other than the grower) of such real property;

(9) A description of the crops growing or to be grown on such real property as to which the supplier intends to supply agricultural chemicals and upon which the supplier claims or intends to obtain a security interest;

(10) The social security number or federal tax identification number

of the grower to whom the supplier intends to provide agricultural chemicals; and

(11) The social security number or federal tax identification number of the supplier providing the notice.

(i) Within fifteen (15) days after actual receipt of a notification statement, the lender shall deposit in the U.S. mail, certified, a letter of response to the supplier. A copy of the lender's letter of response shall be sent to the grower.

(j) A letter of response shall contain the name, address and signature of the lender, and either

(1) A statement by the lender that there is an outstanding commitment for operating financing from the lender to the grower, and that the lender shall reserve the amount in the notification statement for the purpose of honoring drafts or other demands for payment by the supplier accompanied by invoices signed by the grower or other proof of delivery signed by the grower; or

(2) A statement by the lender that the lender shall subordinate the priority of its security interest in specified crops of the grower to the priority of the security interest in such crops obtained or to be obtained by the supplier, and specifying that the maximum amount of such subordination shall be the amount stated in the notification statement; or

(3) A statement by the lender that it declines to either reserve funds or subordinate its security interest.

(k) If the lender's letter of response states that the lender declines to either reserve funds or subordinate its security interest, the respective rights of the lender and the supplier are not affected by this section and the relative priority between the lender's security interest in crops, and any security interest obtained by the supplier in such crops, shall be determined according to the ordinary rules governing the priority of conflicting security interests in the same collateral, unless the supplier's security interest is a fall agricultural chemical security interest.

(1) If the lender does not mail its letter of response to the supplier within fifteen (15) days after receiving the notification statement, and the supplier has perfected a security interest in such crops or perfects such security interest within ten (10) days after the expiration of the fifteen (15) day period for the lender to respond, the supplier's perfected security interest in such crops shall take priority over the lender's perfected security interest in such crops, but only to the extent of the lesser of (1) the amount stated in the notification statement, or (2) the unpaid agreed charges for the agricultural chemicals identified in the notification statement and actually applied to, or for the benefit of, such crops.

(m) Any amounts repaid by any person on the grower's obligation for which the supplier has obtained an agricultural chemical security interest shall reduce the value of the agricultural chemical security interest on a dollar-for-dollar basis, and amounts may not be reborrowed or readvanced under the same notification statement. If the supplier receives proceeds of any collateral of the lender (other than proceeds of the crops covered by the fall agricultural security interest), such proceeds shall be turned over to the lender. In order to obtain the benefits of this section, any additional sales of agricultural chemicals not included in the original notification statement must be the subject

of a new notification statement, to which the lender may issue a new letter of response.

(n) No one but the supplier shall be entitled to rely on a letter of response. Rights (if any) under a letter of response are not assignable, except in connection with an assignment by the supplier of the entire security interest to which such letter of response relates. By issuing a letter of response and performing thereunder, the lender does not become a partner, joint venturer or fiduciary of either the grower or the supplier.

(o) (1) The secretary of state shall publish a form substantially as follows:

Name of supplier.....
Address.....
SSN/TIN.....
Date notification statement was prepared.....

Name of lender.....
Address.....

Name of person to whom lender's response to supplier should be addressed.....
Address.....

Description and anticipated date of the application of agricultural chemicals.....

Anticipated charges for the agricultural chemicals.....

Anticipated charges for application, if not included in charges for chemicals.....

Name of grower.....
Address.....
SSN/TIN.....

Reasonable description of the real estate where the agricultural chemicals are to be applied.....
.....

Name of owner of real property (if other than grower).....
.....
Address.....

Crops growing or to be grown on such real property as to which the supplier intends to supply agricultural chemicals and upon which supplier intends to obtain a security interest.....
.....

Signature of supplier.....

Signature of grower.....

(2) On the reverse side of the form described in subsection (1) of this section, the secretary of state shall provide a form for the

lender's letter of response, substantially as follows:

Name of lender.....
Address.....

Lender responds to notification statement as follows (choose one):

☐ An outstanding commitment for operating financing exists for this grower. Of that commitment, lender hereby reserves the amount specified in the notification statement for the purpose of honoring drafts or other demands for payment by supplier, accompanied by invoices signed by grower or other proof of delivery signed by grower.

☐ Lender hereby subordinates the priority of its security interest in (specify crops) ..... of grower to the priority of the security interest in such crops obtained or to be obtained by supplier, such subordination to be in the amount specified in the notification statement.

☐ Lender declines to either reserve funds or subordinate its security interest.

Signature of lender.....

(3) Suppliers and lenders are required to use the form published by the secretary of state.

28-9-323. FUTURE ADVANCES. (a) Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under section 28-9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) under section 28-9-309 when it attaches; or

(B) temporarily under section 28-9-312(e), (f) or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 28-9-309 or 28-9-312(e), (f) or (g).

(b) Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five (45) days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in subsection (e) of this section,

a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) Forty-five (45) days after the purchase.

(e) Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five (45) day period.

(f) Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) Forty-five (45) days after the lease contract becomes enforceable.

(g) Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five (45) day period.

28-9-324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS. (a) Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods and, except as otherwise provided in section 28-9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter.

(b) Subject to subsection (c) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 28-9-330, and, except as otherwise provided in section 28-9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subsections (b)(2) through (b)(4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 28-9-312(f), before the beginning of the twenty (20) day period thereunder.

(d) Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock and, except as otherwise provided in section 28-9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six (6) months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Subsections (d)(2) through (d)(4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 28-9-312(f), before the beginning of the twenty (20) day period thereunder.

(f) Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral and, except as otherwise provided in section 28-9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one (1) security interest qualifies for priority in the same collateral under subsection (a), (b), (d) or (f) of this section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, section 28-9-322(a) applies to the qualifying security interests.

28-9-325. PRIORITY OF SECURITY INTERESTS IN TRANSFERRED COLLATERAL. (a) Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under section 28-9-322(a) or 28-9-324; or

(2) Arose solely under section 28-2-711(3) or 28-12-508(5).

28-9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR. (a) Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 28-9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 28-9-508.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under section 28-9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

28-9-327. PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNT. The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under section 28-9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in subsections (3) and (4) of this section, security interests perfected by control under section 28-9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in subsection (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under section 28-9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

28-9-328. PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under section 28-9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subsections (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under section 28-9-106 rank according to priority in time of:

(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a secu-

rities account and:

(i) if the secured party obtained control under section 28-8-106(4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under section 28-8-106(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under section 28-8-106(4)(c), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 28-9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under section 28-9-313(a) and not by control under section 28-9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary or commodity intermediary which are perfected without control under section 28-9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by sections 28-9-322 and 28-9-323.

28-9-329. PRIORITY OF SECURITY INTERESTS IN LETTER OF CREDIT RIGHT. The following rules govern priority among conflicting security interests in the same letter of credit right:

(1) A security interest held by a secured party having control of the letter of credit right under section 28-9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under section 28-9-314 rank according to priority in time of obtaining control.

28-9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT. (a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 28-9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 28-9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in section 28-9-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

(1) Section 28-9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in section 28-9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

28-9-331. PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS AND SECURITIES UNDER OTHER CHAPTERS -- PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER CHAPTER 8. (a) This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in chapters 3, 7 and 8.

(b) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under chapter 8.

(c) Filing under this chapter does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section.

28-9-332. TRANSFER OF MONEY -- TRANSFER OF FUNDS FROM DEPOSIT ACCOUNT. (a) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

28-9-333. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW. (a) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

28-9-334. PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS. (a) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

(b) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subsections (d) through (h) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty (20) days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or

(4) The security interest is:

(A) created in a manufactured home in a manufactured home transaction; and

(B) perfected pursuant to a statute described in section 28-9-311(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under subsection (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

28-9-335. ACCESSIONS. (a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in subsections (d) and (g) of this section, the other provisions of this part determine the priority of a security interest in an accession.

(d) Except as otherwise provided in subsection (g) of this section, a security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate of title statute under section 28-9-311(b).

(e) After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

(g) A security interest in an accession has priority over a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under subsection (b) of section 28-9-311, Idaho Code, if the security interest in the accession is a purchase money security interest that is perfected when the debtor receives possession of the accession or within twenty (20) days thereafter.

28-9-336. COMMINGLED GOODS. (a) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) Except as otherwise provided in subsection (f) of this section, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) If more than one (1) security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one (1) security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

28-9-337. PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY CERTIFICATE OF TITLE. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the

buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 28-9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

28-9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 28-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

28-9-339. PRIORITY SUBJECT TO SUBORDINATION. This article does not preclude subordination by agreement by a person entitled to priority.

28-9-340. EFFECTIVENESS OF RIGHT OF RECOUPMENT OR SET-OFF AGAINST DEPOSIT ACCOUNT. (a) Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Except as otherwise provided in subsection (c) of this section, the application of this chapter to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under section 28-9-104(a)(3), if the set-off is based on a claim against the debtor.

28-9-341. BANK'S RIGHTS AND DUTIES WITH RESPECT TO DEPOSIT ACCOUNT. Except as otherwise provided in section 28-9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended or modified by:

(1) The creation, attachment or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

28-9-342. BANK'S RIGHT TO REFUSE TO ENTER INTO OR DISCLOSE EXISTENCE OF CONTROL AGREEMENT. This chapter does not require a bank to enter into an agreement of the kind described in section 28-9-104(a)(2),

even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

PART 4.
RIGHTS OF THIRD PARTIES

28-9-401. ALIENABILITY OF DEBTOR'S RIGHTS. (a) Except as otherwise provided in subsection (b) of this section and sections 28-9-406, 28-9-407, 28-9-408 and 28-9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this chapter.

(b) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

28-9-402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR OR IN TORT. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

28-9-403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE. (a) In this section, "value" has the meaning provided in section 28-3-303(1).

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 28-3-305(1).

(c) Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 28-3-305(2).

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(f) Except as otherwise provided in subsection (d) of this section,

this section does not displace law other than this chapter which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

28-9-404. RIGHTS ACQUIRED BY ASSIGNEE -- CLAIMS AND DEFENSES AGAINST ASSIGNEE. (a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e) of this section, the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subsection (c) of this section and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health care insurance receivable.

28-9-405. MODIFICATION OF ASSIGNED CONTRACT. (a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d) of this section.

(b) Subsection (a) of this section applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 28-9-406(a).

(c) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) This section does not apply to an assignment of a health care insurance receivable.

28-9-406. DISCHARGE OF ACCOUNT DEBTOR — NOTIFICATION OF ASSIGNMENT -- IDENTIFICATION AND PROOF OF ASSIGNMENT -- RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES AND PROMISSORY NOTES INEFFECTIVE. (a) Subject to subsections (b) through (i) of this section, an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Except as otherwise provided in subsection (e) of this section and sections 28-9-407 and 28-12-303, and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible or promissory note.

(e) Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in sections 28-9-407 and 28-12-303 and subject to subsections (h) and (i) of this section, a rule of law,

statute, rule or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, rule or regulation:

(1) Prohibits, restricts or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account or chattel paper.

(g) Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) This section does not apply to an assignment of a health care insurance receivable, an award of compensation made pursuant to the crime victims compensation act, chapter 10, title 72, Idaho Code, or a lottery prize subject to the provisions of chapter 74, title 67, Idaho Code.

28-9-407. RESTRICTIONS ON CREATION OR ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL INTEREST. (a) Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in section 28-12-303(7), a term described in subsection (a)(2) of this section is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 28-12-303(4) unless, and then only to the extent that, enforcement actually results

in a delegation of material performance of the lessor.

28-9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH CARE INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE. (a) Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(b) Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, rule or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute or regulation:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute or regulation described in subsection (c) of this section would be effective under law other than this chapter but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

28-9-409. RESTRICTIONS ON ASSIGNMENT OF LETTER OF CREDIT RIGHTS INEFFECTIVE. (a) A term in a letter of credit or a rule of law, statute, rule, regulation, custom or practice applicable to the letter of credit which prohibits, restricts or requires the consent of an applicant, issuer or nominated person to a beneficiary's assignment of or creation of a security interest in a letter of credit right is ineffective to the extent that the term or rule of law, statute, rule, regulation, custom or practice:

(1) Would impair the creation, attachment or perfection of a security interest in the letter of credit right; or

(2) Provides that the assignment or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter of credit right.

(b) To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter of credit right:

(1) Is not enforceable against the applicant, issuer, nominated person or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

PART 5.
FILING

28-9-501. FILING OFFICE. (a) Except as otherwise provided in subsection (b) of this section, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the secretary of state or any office duly authorized by the secretary of state, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become a fixture.

28-9-502. CONTENTS OF FINANCING STATEMENT -- RECORD OF MORTGAGE AS FINANCING STATEMENT -- TIME OF FILING FINANCING STATEMENT -- FARM PRODUCTS. (a) Subject to subsection (b) of this section, a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in section 28-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(e) A financing statement covering farm products is sufficient if it contains the following information:

(1) The name and address of the debtor;

(2) The debtor's signature;

(3) The name, address and signature of the secured party;
(4) The social security number of the debtor, or in the case of a debtor doing business other than as an individual, the debtor's internal revenue service taxpayer identification number;
(5) A description by category of the farm products subject to the security interest and the amount of such products, where applicable;
(6) A reasonable description of the real estate where the farm products are produced or located. This provision may be satisfied by a designation of the county or counties, and a legal description is not required.

(f) A financing statement described in subsection (e) of this section must be amended in writing within three (3) months, and similarly signed and filed, to reflect any material changes. In the event such form is not incorporated within the financing statement, the effectiveness and continuation of that form is to be treated as if it were a part of the financing statement with which it is filed.

28-9-503. NAME OF DEBTOR AND SECURED PARTY. (a) A financing statement sufficiently provides the name of the debtor:
(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;
(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
(A) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one (1) or more of the same settlors; and
(B) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and
(4) In other cases:
(A) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and
(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates or other persons comprising the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:
(1) A trade name or other name of the debtor; or
(2) Unless required under subsection (a)(4)(B) of this section, names of partners, members, associates or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one (1) debtor and the name of more than one (1) secured party.

28-9-504. INDICATION OF COLLATERAL. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to section 28-9-108; or

(2) An indication that the financing statement covers all assets or all personal property.

28-9-505. FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS, AND OTHER TRANSACTIONS. (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 28-9-311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."

(b) This part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under section 28-9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner or buyer which attaches to the collateral is perfected by the filing or compliance.

28-9-506. EFFECT OF ERRORS OR OMISSIONS. (a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 28-9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 28-9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of section 28-9-508(b), the "debtor's correct name" in subsection (c) of this section means the correct name of the new debtor.

28-9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT. (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) of this section

and section 28-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 28-9-506.

(c) If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 28-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four (4) months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four (4) months after the change.

28-9-508. EFFECTIVENESS OF FINANCING STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT. (a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under section 28-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four (4) months after, the new debtor becomes bound under section 28-9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four (4) months after the new debtor becomes bound under section 28-9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 28-9-507(a).

28-9-509. PERSONS ENTITLED TO FILE A RECORD. (a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under section 28-9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under section 28-9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 28-9-315(a)(2).

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 28-9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one (1) secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section.

28-9-510. EFFECTIVENESS OF FILED RECORD. (a) A filed record is effective only to the extent that it was filed by a person that may file it under section 28-9-509.

(b) A record authorized by one (1) secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six (6) month period prescribed by section 28-9-515(d) is ineffective.

28-9-511. SECURED PARTY OF RECORD. (a) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 28-9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 28-9-514(b), the assignee named in the amendment is a secured party of record.

(c) A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

28-9-512. AMENDMENT OF FINANCING STATEMENT. (a) Subject to section 28-9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in section 28-9-501(a)(1), provides the information specified in section 28-9-502(b).

(b) Except as otherwise provided in section 28-9-515, the filing of

an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

28-9-513. TERMINATION STATEMENT. (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one (1) month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty (20) days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subsection (a) of this section, within twenty (20) days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in section 28-9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 28-9-510, for purposes of sections 28-9-519(g), 28-9-522(a) and 28-9-523(c), the filing with the

filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

28-9-514. ASSIGNMENT OF POWERS OF SECURED PARTY OF RECORD. (a) Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 28-9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the uniform commercial code.

28-9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT -- EFFECT OF LAPSED FINANCING STATEMENT. (a) Except as otherwise provided in subsections (b), (e), (f) and (g) of this section, a filed financing statement is effective for a period of five (5) years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f) and (g) of this section, an initial financing statement filed in connection with a public finance transaction or manufactured home transaction is effective for a period of thirty (30) years after the date of filing if it indicates that it is filed in connection with a public finance transaction or manufactured home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six (6) months before the expiration of the five (5) year period specified in subsection (a) of this section or the thirty (30) year period specified in subsection (b) of this section, whichever is applicable.

(e) Except as otherwise provided in section 28-9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five (5) years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five (5) year period, the financing statement lapses in the same manner as pro-

vided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 28-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

28-9-516. WHAT CONSTITUTES FILING -- EFFECTIVENESS OF FILING. (a) Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or correction statement, the record:

(i) does not identify the initial financing statement as required by section 28-9-512 or 28-9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under section 28-9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) in the case of a record filed, or recorded, in the filing office described in section 28-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the debtor is an individual or an organization; or

(C) if the financing statement indicates that the debtor is an organization, provide:

(i) a type of organization for the debtor;

(ii) a jurisdiction of organization for the debtor; or

(iii) an organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under section 28-9-514(a) or an amendment filed under section 28-9-514(b), the record does not provide a name and mailing address for the assignee;

(7) In the case of a continuation statement, the record is not filed within the six (6) month period prescribed by section 28-9-515(d);

(8) In the case of a financing statement covering farm products, the financing statement does not contain all of the information specified in section 28-9-502(e) and does not conform to the official form for farm products financing statements published by the secretary of state; or

(9) In the case of an amendment or correction statement relating to a financing statement covering farm products, the amendment or correction statement does not conform to the official form for amendment or correction statements relating to financing statements covering farm products published by the secretary of state.

(c) For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 28-9-512, 28-9-514 or 28-9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

28-9-517. EFFECT OF INDEXING ERRORS. The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

28-9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD. (a) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

28-9-519. NUMBERING, MAINTAINING, AND INDEXING RECORDS -- COMMUNICATING INFORMATION PROVIDED IN RECORDS. (a) For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d) and (e) of this section.

(b) A file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single digit or transpositional error.

(c) Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 28-9-514(a) or an amendment filed under section 28-9-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing

statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one (1) year after the effectiveness of a financing statement naming the debtor lapses under section 28-9-515 with respect to all secured parties of record.

(h) The filing office shall perform the acts required by subsections (a) through (e) of this section at the time and in the manner prescribed by filing office rule, but not later than two (2) business days after the filing office receives the record in question.

(i) Subsections (b) and (h) of this section do not apply to a filing office described in section 28-9-501(a)(1).

28-9-520. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD. (a) A filing office shall refuse to accept a record for filing for a reason set forth in section 28-9-516(b) and may refuse to accept a record for filing only for a reason set forth in section 28-9-516(b).

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing office rule but, in the case of a filing office described in section 28-9-501(a)(2), in no event more than two (2) business days after the filing office receives the record.

(c) A filed financing statement satisfying section 28-9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a) of this section. However, section 28-9-338 applies to a filed financing statement providing information described in section 28-9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) If a record communicated to a filing office provides information that relates to more than one (1) debtor, this part applies as to each debtor separately.

28-9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT. (a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in section 28-9-516(b):

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR 1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

1c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

1d. TAX ID #: SSN OR EIN | ADDL INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION | 1f. JURISDICTION OF ORGANIZATION | 1g. ORGANIZATIONAL ID #, if any | NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

2d. TAX ID #: SSN OR EIN | ADDL INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any | NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR 3b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

3c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR | CONSIGNEE/CONSIGNOR | BAILEE/BAILOR | SELLER/BUYER | AG. LIEN | NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional) | All Debtors | Debtor 1 | Debtor 2

8. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

11c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any
				☐ NONE

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

12c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98)

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in section 28-9-516(b):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c.

☐ DELETE name: Give record name to be deleted in item 6a or 6b.

☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

7d. TAX ID #: SSN OR EIN	ADDL INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
				☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

10. OPTIONAL FILER REFERENCE DATA

NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 07/29/98)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

NATIONAL UCC FINANCING STATEMENT AMENDMENT ADDENDUM (FORM UCC3Ad) (REV. 07/29/98)

28-9-522. MAINTENANCE AND DESTRUCTION OF RECORDS. (a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one (1) year after the effectiveness of the financing statement has lapsed under section 28-9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section.

28-9-523. INFORMATION FROM FILING OFFICE -- SALE OR LICENSE OF RECORDS -- FARM PRODUCTS -- MASTER LISTS. (a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 28-9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to section 28-9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to section 28-9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three (3) business days before the filing office receives the request, any financing statement that:

(A) designates a particular debtor;

(B) has not lapsed under section 28-9-515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under section 28-9-515 and a record of which is maintained by the filing office under section 28-9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(e) The filing office shall perform the acts required by subsections (a) through (d) of this section at the time and in the manner pre-

scribed by filing office rule, but in the case of a filing office described in section 28-9-501(a)(2), not later than two (2) business days after the filing office receives the request.

(f) At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

(g) The secretary of state shall maintain a central filing system containing the information filed with his office pursuant to section 28-9-502(e). Under this system the secretary shall record the date and time of filing and compile the information into a master list organized according to farm products. The list shall be organized within each farm product category in alphabetical order according to the last name of the borrower or, in the case of borrowers doing business other than as individuals, the first word in the name of such borrower. The list shall be further organized according to and contain information required by federal law and regulation. The secretary of state shall, by duly adopted administrative rule, designate the categories of farm products to be used in compiling the master list. The secretary of state may establish and maintain, pursuant to duly adopted administrative rule, a separate system for filing of financing statements and search, retrieval and dissemination of information relating to financing statements for farm products, and require separate search requests for such information pursuant to a fee schedule to be established in such administrative rule.

(h) The secretary of state shall maintain a list of all buyers of farm products, commission merchants, and selling agents who register with the secretary of state indicating an interest in receiving the lists described in subsection (i) of this section.

(i) The secretary of state shall distribute complete master lists for each farm product category at least quarterly to each buyer, commission merchant and selling agent registered under subsection (h) of this section and distribute either complete lists or cumulative supplements, which supplements shall be issued not less frequently than semimonthly, of financing statements covering farm products filed subsequent to the last date of filing for financing statements on the last preceding quarterly master list, which the buyer, commission merchant or selling agent has requested. The date of receipt for lists and supplements shall be the third calendar day following the date of mailing by the secretary of state, or in the event the mail is not delivered on that day, the first day thereafter on which mail is delivered.

(j) Upon the request of any person the secretary of state shall provide, within twenty-four (24) hours, an oral confirmation of the filing of the financing statement covering farm products followed by a written confirmation.

(k) Upon request of any person, the filing officer shall furnish copies of particular filed financing statements covering farm products or statements of assignment covering farm products at a uniform cost of one dollar ($1.00) per page if the requestor provides the filing officer with the file numbers of the statement to be copied.

28-9-524. DELAY BY FILING OFFICE. Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or

other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances.

28-9-525. FEES. (a) Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in section 28-9-502(c), is:

(1) Six dollars ($6.00) if the record is communicated in writing and consists of one (1) or two (2) pages;

(2) Twelve dollars ($12.00) if the record is communicated in writing and consists of more than two (2) pages; and

(3) Three dollars ($3.00) if the record is communicated by another medium authorized by filing office rule.

(b) Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing an initial financing statement of the kind described in section 28-9-502(c) is the amount specified in subsection (c) of this section, if applicable.

(c) The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is twelve dollars ($12.00).

(e) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 28-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) The secretary of state shall, by administrative rule, establish a fee schedule for filing and indexing and other matters relating to filing of financing statements covering farm products and for public access to the secretary of state's files which are open to public inspection. A secured party shall provide an itemization of fees paid by the secured party for filing, searches or other matters related to filing of financing statements covering farm products pertaining to that debtor.

28-9-526. FILING OFFICE RULES. (a) The secretary of state shall promulgate rules to implement this chapter. The filing office rules must be:

(1) Consistent with this chapter; and

(2) Promulgated in accordance with the administrative procedure act, chapter 52, title 67, Idaho Code.

(b) To keep the filing office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the secretary of state, so far as is consistent with the purposes, policies and provisions of this chapter, in adopting, amending and repealing filing office rules, shall:

(1) Consult with filing offices in other jurisdictions that enact

substantially this part; and

(2) Consult the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

PART 6.
DEFAULT

28-9-601. RIGHTS AFTER DEFAULT -- JUDICIAL ENFORCEMENT -- CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES OR PROMISSORY NOTES. (a) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 28-9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under section 28-9-104, 28-9-105, 28-9-106 or 28-9-107 has the rights and duties provided in section 28-9-207.

(c) The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) of this section and section 28-9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Except as otherwise provided in section 28-9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

28-9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES. Except as otherwise provided in section 28-9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) Section 28-9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) Section 28-9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Section 28-9-607(c), which deals with collection and enforcement of collateral;

(4) Sections 28-9-608(a) and 28-9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 28-9-608(a) and 28-9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 28-9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 28-9-610(b), 28-9-611, 28-9-613 and 28-9-614, which deal with disposition of collateral;

(8) Section 28-9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) Section 28-9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) Sections 28-9-620, 28-9-621 and 28-9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) Section 28-9-623, which deals with redemption of collateral;

(12) Section 28-9-624, which deals with permissible waivers; and

(13) Sections 28-9-625 and 28-9-626, which deal with the secured party's liability for failure to comply with this chapter.

28-9-603. AGREEMENT ON STANDARDS CONCERNING RIGHTS AND DUTIES. (a) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 28-9-602 if the standards are not manifestly unreasonable.

(b) Subsection (a) of this section does not apply to the duty under section 28-9-609 to refrain from breaching the peace.

28-9-604. PROCEDURE IF SECURITY AGREEMENT COVERS REAL PROPERTY OR FIXTURES. (a) If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the

debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

28-9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR. A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

28-9-606. TIME OF DEFAULT FOR AGRICULTURAL LIEN. For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

28-9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY. (a) If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under section 28-9-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under section 28-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under section 28-9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise, under subsection (a)(3) of this section, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

28-9-608. APPLICATION OF PROCEEDS OF COLLECTION OR ENFORCEMENT -- LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. (a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 28-9-607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subsection (1)(C) of this section.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 28-9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes, the debtor is not enti-

tled to any surplus, and the obligor is not liable for any deficiency.

28-9-609. SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER DEFAULT. (a) After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 28-9-610.

(b) A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

28-9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT. (a) After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one (1) or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subsection (e) of this section if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

28-9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL. (a) In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under section 28-9-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

(c) To comply with subsection (b) of this section, the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, ten (10) days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, ten (10) days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 28-9-311(a).

(d) Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) of this section if:

(1) Not later than twenty (20) days or earlier than thirty (30) days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B) of this section; and

(2) Before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

28-9-612. TIMELINESS OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL. (a) Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) A notification of disposition sent after default and ten (10) days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

28-9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL -- GENERAL. Except in a consumer goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in subsection (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in subsection (1) of this section are sufficient, even if the notification includes:

(A) Information not specified by subsection (1) of this section; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in section 28-9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: .....(Name of debtor, obligor, or other person to which the notification is sent).....

From: .....(Name, address, and telephone number of secured party).....

Name of Debtor(s): .....(Include only if debtor(s) are not an addressee).....

(For a public disposition:)

We will sell (or lease or license, as applicable) the .....(describe collateral)..... (to the highest qualified bidder) in public as follows:

Day and Date: .....

Time: .....

Place: .....

(For a private disposition:)

We will sell (or lease or license, as applicable) the .....(describe collateral)..... privately sometime after .....(day and date).....

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of $.....). You may request an accounting by calling us at .....(telephone number).....

28-9-614. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL -- CONSUMER GOODS TRANSACTION. In a consumer goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in section 28-9-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 28-9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

.....(Name and address of secured party).....
.....(Date).....

NOTICE OF OUR PLAN TO SELL PROPERTY

.....(Name and address of any obligor who is also a debtor).....
Subject: .....(Identification of Transaction).....

We have your .....(describe collateral)....., because you broke promises in our agreement.

(For a public disposition:)

We will sell .....(describe collateral)..... at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: .....
Time: .....
Place: .....

You may attend the sale and bring bidders if you want.

(For a private disposition:)

We will sell .....(describe collateral)..... at private sale sometime after .....(date)..... A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you .....(will or will not, as applicable)..... still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at .....(telephone number).....

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at .....(telephone number)..... (or write us at .....(secured party's address).....) and request a written explanation. (We will charge you $..... for the explanation if we sent you another written explanation of the amount you owe us within the last six months.)

If you need more information about the sale call us at .....(telephone number)..... (or write us at .....(secured party's address).....). We are sending this notice to the following other people who have an interest in .....(describe collateral)..... or who owe money under your agreement: .....(Names of all other debtors and obligors, if any).....

(4) A notification in the form of subsection (3) of this section is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of subsection (3) of this section is sufficient, even if it includes errors in information not required by subsection (1) of this section, unless the error is misleading with respect to rights arising under this chapter.

(6) If a notification under this section is not in the form of subsection (3) of this section, law other than this chapter determines the effect of including information not required by subsection (1) of this section.

28-9-615. APPLICATION OF PROCEEDS OF DISPOSITION -- LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. (a) A secured party shall apply or pay over for application the cash proceeds of disposition under section 28-9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3) of this section.

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under section 28-9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subsection (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

28-9-616. EXPLANATION OF CALCULATION OF SURPLUS OR DEFICIENCY. (a) In this section:

(1) "Explanation" means a writing that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) authenticated by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under section 28-9-610.

(b) In a consumer goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 28-9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) within fourteen (14) days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen (14) days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with subsection (a)(1)(B) of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than thirty-five (35) days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five (35) days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one (1) response to a request under this section during any six (6) month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response.

28-9-617. RIGHTS OF TRANSFEREE OF COLLATERAL. (a) A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;
(2) Discharges the security interest under which the disposition is made; and
(3) Discharges any subordinate security interest or other subordinate lien.
(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this chapter or the requirements of any judicial proceeding.
(c) If a transferee does not take free of the rights and interests described in subsection (a) of this section, the transferee takes the collateral subject to:
(1) The debtor's rights in the collateral;
(2) The security interest or agricultural lien under which the disposition is made; and
(3) Any other security interest or other lien.

28-9-618. RIGHTS AND DUTIES OF CERTAIN SECONDARY OBLIGORS. (a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:
(1) Receives an assignment of a secured obligation from the secured party;
(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
(3) Is subrogated to the rights of a secured party with respect to collateral.
(b) An assignment, transfer or subrogation described in subsection (a) of this section:
(1) Is not a disposition of collateral under section 28-9-610; and
(2) Relieves the secured party of further duties under this chapter.

28-9-619. TRANSFER OF RECORD OR LEGAL TITLE. (a) In this section, "transfer statement" means a record authenticated by a secured party stating:
(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;
(2) That the secured party has exercised its postdefault remedies with respect to the collateral;
(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
(4) The name and mailing address of the secured party, debtor and transferee.
(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate of title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:
(1) Accept the transfer statement;
(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) of this section or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

28-9-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF OBLIGATION — COMPULSORY DISPOSITION OF COLLATERAL. (a) A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;

(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:

(A) a person to which the secured party was required to send a proposal under section 28-9-621; or

(B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal; and

(3) Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 28-9-624.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection authenticated by the debtor within twenty (20) days after the proposal is sent.

(d) To be effective under subsection (a)(2) of this section, a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to section 28-9-621, within twenty (20) days after notification was sent to that person; and

(2) In other cases:

(A) within twenty (20) days after the last notification was

sent pursuant to section 28-9-621; or

(B) if a notification was not sent, before the debtor consents to the acceptance under subsection (c) of this section.

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 28-9-610 within the time specified in subsection (f) of this section if:

(1) Sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(f) To comply with subsection (e) of this section, the secured party shall dispose of the collateral:

(1) Within ninety (90) days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

28-9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL. (a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, ten (10) days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, ten (10) days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 28-9-311(a).

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section.

28-9-622. EFFECT OF ACCEPTANCE OF COLLATERAL. (a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) A subordinate interest is discharged or terminated under sub-

section (a) of this section, even if the secured party fails to comply with this chapter.

28-9-623. RIGHT TO REDEEM COLLATERAL. (a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in section 28-9-615(a)(1).

(c) A redemption may occur at any time before a secured party:

(1) Has collected collateral under section 28-9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under section 28-9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under section 28-9-622.

28-9-624. WAIVER. (a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 28-9-611 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under section 28-9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 28-9-623 only by an agreement to that effect entered into and authenticated after default.

28-9-625. REMEDIES FOR SECURED PARTY'S FAILURE TO COMPLY WITH CHAPTER. (a) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c) and (d) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in section 28-9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event, an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time price differential plus ten percent (10%) of the cash price.

(d) A debtor whose deficiency is eliminated under section 28-9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 28-9-626 may not otherwise recover under subsection (b) of this section for noncompliance with the provisions of this part relating to

collection, enforcement, disposition or acceptance.

(e) In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor or person named as a debtor in a filed record, as applicable, may recover one hundred dollars ($100) in each case from a person that:

(1) Files a record that the person is not entitled to file under section 28-9-509(a);

(2) Fails to cause the secured party of record to file or send a termination statement as required by section 28-9-513(a) or (c).

(f) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 28-9-210, the secured party may claim a security interest only as shown in the statement included in the request as against a person that is reasonably misled by the failure.

28-9-626. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN ISSUE. In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(a) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition or acceptance was conducted in accordance with this part.

(c) Except as otherwise provided in section 28-9-628, if a secured party fails to prove that the collection, enforcement, disposition or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses and attorney's fees exceeds the greater of:

(1) The proceeds of the collection, enforcement, disposition or acceptance; or

(2) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition or acceptance.

(d) For purposes of subsection (c)(2) of this section, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses and attorney's fees unless the secured party proves that the amount is less than that sum.

(e) If a deficiency or surplus is calculated under section 28-9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

28-9-627. DETERMINATION OF WHETHER CONDUCT WAS COMMERCIALLY REASONABLE. (a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition or acceptance at a different time

or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition or acceptance is not commercially reasonable.

28-9-628. NONLIABILITY AND LIMITATION ON LIABILITY OF SECURED PARTY -- LIABILITY OF SECONDARY OBLIGOR. (a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and

(2) The secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under section 28-9-625(c)(2) for its failure to comply with section 28-9-616.

(e) A secured party is not liable under section 28-9-625(c)(2) more than once with respect to any one (1) secured obligation.

PART 7.
TRANSITION

28-9-701. [RESERVED.]

28-9-702. SAVINGS CLAUSE. (a) Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) Except as otherwise provided in subsection (c) of this section and sections 28-9-703 through 28-9-709:

(1) Transactions and liens that were not governed by former chapter 9, title 28, Idaho Code, were validly entered into or created before this act takes effect, and would be subject to this act if they had been entered into or created after this act takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this act takes effect; and

(2) The transactions and liens may be terminated, completed, consummated and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) This act does not affect an action, case or proceeding commenced before this act takes effect.

28-9-703. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE. (a) A security interest that is enforceable immediately before this act takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act if, when this act takes effect, the applicable requirements for enforceability and perfection under this act are satisfied without further action.

(b) Except as otherwise provided in section 28-9-705, if, immediately before this act takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this act are not satisfied when this act takes effect, the security interest:

(1) Is a perfected security interest for one (1) year after this act takes effect;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under section 28-9-203 before the year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under this act are satisfied before the year expires.

28-9-704. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is enforceable immediately before this act takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one (1) year after this act takes effect;

(2) Remains enforceable thereafter if the security interest becomes enforceable under section 28-9-203 when this act takes effect or within one (1) year thereafter; and

(3) Becomes perfected:

(A) Without further action, when this act takes effect if the applicable requirements for perfection under this act are satisfied before or at that time; or

(B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

28-9-705. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE. (a) If action, other than the filing of a financing statement, is taken before this act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect, the action is effective to perfect a security interest that attaches under this act within one (1) year after this act takes effect. An attached security interest becomes unperfected one (1) year after this act takes effect unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 28-9-103. However, except as otherwise provided in subsections (d) and (e) of this section and section 28-9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(e) Subsection (c)(2) of this section applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 28-9-103 only to the extent that part 3 provides that the law of a jurisdiction other than jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies

the requirements of part 5 for an initial financing statement.

28-9-706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT. (a) The filing of an initial financing statement in the office specified in section 28-9-501 continues the effectiveness of a financing statement filed before this act takes effect if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this act;

(2) The preeffective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the preeffective-date financing statement:

(1) If the initial financing statement is filed before this act takes effect, for the period provided in former section 28-9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed after this act takes effect, for the period provided in section 28-9-515 with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of part 5 for an initial financing statement;

(2) Identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the preeffective-date financing statement remains effective.

28-9-707. AMENDMENT OF PREEFFECTIVE-DATE FINANCING STATEMENT. A person may file an initial financing statement or a continuation statement under this part if:

(a) In this section, "preeffective-date financing statement" means a financing statement filed before this act takes effect.

(b) After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

28-9-708. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed

before this act takes effect; or

(B) To perfect or continue the perfection of a security interest.

28-9-709. PRIORITY. (a) This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this act takes effect, former chapter 9, title 28, determines priority.

(b) For purposes of section 28-9-322(a), the priority of a security interest that becomes enforceable under section 28-9-203 of this act dates from the time this act takes effect if the security interest is perfected under this act by the filing of a financing statement before this act takes effect which would not have been effective to perfect the security interest under former chapter 9, title 28. This subsection does not apply to conflicting security interests, each of which is perfected by the filing of such a financing statement.

SECTION 3. That Section 28-1-105, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-105. TERRITORIAL APPLICATION OF THE ACT — PARTIES' POWER TO CHOOSE APPLICABLE LAW. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this state.

(2) Where one (1) of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, ~~(~~including the conflict of laws rules~~)~~, so specified:

Rights of creditors against sold goods. Section 28-2-402.

Applicability of the chapter on ~~L~~leases. Sections 28-12-105 and 28-12-106.

Applicability of the chapter on ~~B~~bank ~~D~~deposits and ~~C~~collections. Section 28-4-102.

Governing law in the part on ~~F~~funds ~~T~~transfers. Section 28-4-638.

Letters of ~~C~~credit. Section 28-5-116.

Applicability of the chapter on ~~I~~investment ~~S~~securities. Section 28-8-110.

~~Policy and scope of the chapter on Secured Transactions. Sections 28-9-102 and 28-9-103.~~

Law governing perfection, the effect of perfection or nonperfection, the priority of security interests and agricultural liens. Sections 28-9-301 through 28-9-307.

SECTION 4. That Section 28-1-201, Idaho Code, be, and the same is hereby amended to read as follows:

28-1-201. GENERAL DEFINITIONS. Subject to additional definitions contained in the subsequent chapters of this act which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this act:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in

which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (sections 28-1-205 and 28-2-208). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (section 28-1-103). (Compare "contract.")

(4) "Bank" means any person engaged in the business of banking, including any insured bank, whether chartered by federal or state law, any insured savings and loan association, whether insured by federal or state law, and any insured credit union, whether chartered by federal or state law, offering deposit or other accounts on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others, including demand deposits, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person ~~who~~ that buys goods in good faith, ~~and~~ without knowledge that the sale ~~to him is in violation of~~ violates the ~~ownership~~ rights ~~or security interest~~ of ~~a third party another person~~ in the goods, and ~~buys~~ in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. ~~but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons~~ A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. ~~"Buying"~~ A buyer in ordinary course of business may ~~be~~ buy for cash, ~~or~~ by exchange of other property, or on secured or unsecured credit, and ~~includes receiving may~~ acquire goods or documents of title under a ~~pre-existing~~ preexisting contract for sale. ~~but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.~~ Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2, title 28, Idaho Code, may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as

security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous." A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law. (Compare "agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they

become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two (2) or more nations.

(25) A person has "notice" of a fact when:

(a) ~~h~~He has actual knowledge of it; or

(b) ~~h~~He has received a notice or notification of it; or

(c) ~~f~~From all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) ~~i~~It comes to his attention; or

(b) ~~i~~It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this act.

(30) "Person" includes an individual or an organization (See section 28-1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. ~~The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 28-2-401) is limited in effect to a reservation of a "security interest."~~ The term also includes any interest of a consignor and a buyer of accounts, ~~or~~ chattel paper, ~~which~~ a payment intangible, or a promissory note in a transaction that is subject to chapter 9, title 28, Idaho Code. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 28-2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with chapter 9, title 28, Idaho Code. ~~Unless a consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment in any event is subject to the provisions on consignment sales (section 28-2-326).~~ Except as otherwise provided in section 28-2-205, the right of a seller or lessor of goods under chapter 2 or chapter 12, title 28, Idaho Code, to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with chapter 9, title 28, Idaho Code. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 28-2-401) is limited in effect to a reservation of a "security interest."

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) ~~t~~The original term of the lease is equal to or greater than the remaining economic life of the goods; or

(b) ~~t~~The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods; or

(c) ~~t~~The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) ~~t~~The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) ~~t~~The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into; or

(b) ~~t~~The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods; or

(c) ~~t~~The lessee has an option to renew the lease or to become the owner of the goods; or

(d) ~~t~~The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(e) ~~t~~The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

"Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

"Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28-3-303, 28-4-208 and 28-4-209) a person gives "value" for rights if he acquires them:

(a) ~~i~~In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) ~~a~~As security for or in total or partial satisfaction of a ~~pre-~~

~~existing~~ preexisting claim; or

(c) ~~b~~By accepting delivery pursuant to a ~~pre-existing~~ preexisting contract for purchase; or

(d) ~~g~~Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

SECTION 5. That Section 28-2-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-103. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this chapter unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this chapter or to specified ~~P~~parts thereof, and the sections in which they appear are:

"Acceptance." Section 28-2-606.
"Banker's credit." Section 28-2-325.
"Between merchants." Section 28-2-104.
"Cancellation." Section 28-2-106.
"Commercial unit." Section 28-2-105.
"Confirmed credit." Section 28-2-325.
"Conforming to contract." Section 28-2-106.
"Contract for sale." Section 28-2-106.
"Cover." Section 28-2-712.
"Entrusting." Section 28-2-403.
"Financing agency." Section 28-2-104.
"Future goods." Section 28-2-105.
"Goods." Section 28-2-105.
"Identification." Section 28-2-501.
"~~Instalment~~Installment contract." Section 28-2-612.
"Letter of credit." Section 28-2-325.
"Lot." Section 28-2-105.
"Merchant." Section 28-2-104.
"Overseas." Section 28-2-323.
"Person in position of seller." Section 28-2-707.
"Present sale." Section 28-2-106.
"Sale." Section 28-2-106.
"Sale on approval." Section 28-2-326.
"Sale or return." Section 28-2-326.
"Termination." Section 28-2-106.

(3) The following definitions in other chapters apply to this chapter:

"Check." Section 28-3-104.
"Consignee." Section 28-7-102.
"Consignor." Section 28-7-102.
"Consumer goods." Section 28-9-1092.

"Dishonor." Section 28-3-50~~7~~2.
"Draft." Section 28-3-104.
(4) In addition, chapter 1, title 28, Idaho Code, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 6. That Section 28-2-210, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-210. DELEGATION OF PERFORMANCE -- ASSIGNMENT OF RIGHTS. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in section 28-9-406, u~~U~~nless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection and enforcement of the security interest remain effective, but: (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer; and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(~~4~~5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances, ~~(~~as in an assignment for security~~)~~, indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(~~5~~6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 28-2-609).

SECTION 7. That Section 28-2-326, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-326. SALE ON APPROVAL AND SALE OR RETURN — ~~CONSIGNMENT SALES AND~~ RIGHTS OF CREDITORS. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) ~~a~~A "sale on approval" if the goods are delivered primarily for use~~,~~; and

(b) ~~a~~A "sale or return" if the goods are delivered primarily for resale.

(2) ~~Except--as--provided-in-subsection-(3),-g~~Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) ~~Where--goods-are-delivered-to-a-person-for-sale-and-such-person maintains-a-place-of-business-at-which-he-deals-in--goods--of--the--kind involved,--under--a-name-other-than-the-name-of-the-person-making-delivery,-then-with-respect-to-claims-of-creditors-of-the--person--conducting the--business--the--goods-are-deemed-to-be-on-sale-or-return.-The-provisions-of-this-subsection-are-applicable-even-though--an--agreement--purports--to--reserve--title-to-the-person-making-delivery-until-payment-or resale-or-uses-such-words-as-"on-consignment"-or-"on--memorandum."--However,-this-subsection-is-not-applicable-if-the-person-making-delivery~~

~~(a)--complies--with--an--applicable--law-providing-for-a-consignor's interest-or-the-like-to-be-evidenced-by-a-sign,-or~~

~~(b)--establishes-that-the-person-conducting-the-business--is--generally--known--by-his-creditors-to-be-substantially-engaged-in-selling the-goods-of-others,-or~~

~~(c)--complies-with-the-filing-provisions-of-the-chapter--on--Secured Transactions-(chapter-9).~~

~~(4)~~ Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (section 28-2-201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (section 28-2-202).

SECTION 8. That Section 28-2-502, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-502. BUYER'S RIGHT TO GOODS ON SELLER'S REPUDIATION, FAILURE TO DELIVER, OR INSOLVENCY. (1) Subject to subsections (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of ~~the--immediately-preceding~~ section 28-2-501, may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) In the case of goods bought for personal, family or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within ten (10) days after receipt of the first ~~instalment~~ installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not

then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

SECTION 9. That Section 28-2-716, Idaho Code, be, and the same is hereby amended to read as follows:

28-2-716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR CLAIM AND DELIVERY. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right to maintain a claim and delivery action for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

SECTION 10. That Section 28-4-210, Idaho Code, be, and the same is hereby amended to read as follows:

28-4-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) ~~i~~In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) ~~i~~In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(c) ~~i~~If it makes an advance on or against the item.

(2) If credit given for several items received at one (1) time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to the provisions of chapter 9, title 28, Idaho Code, but:

(a) ~~n~~No security agreement is necessary to make the security interest enforceable (section 28-9-203(~~1~~b)(3)(~~a~~A));

(b) ~~n~~No filing is required to perfect the security interest; and

(c) ~~t~~The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

SECTION 11. That Chapter 5, Part 1, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 28-5-120, Idaho Code, and to read as follows:

28-5-120. SECURITY INTEREST OF ISSUER OR NOMINATED PERSON. (a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to chapter 9, title 28, Idaho Code, but:

(1) A security agreement is not necessary to make the security interest enforceable under section 28-9-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document. This act applies to a letter of credit that is issued on or after the effective date of this act. This act does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before the effective date of this act.

SECTION 12. That Section 28-7-209A, Idaho Code, be, and the same is hereby amended to read as follows:

28-7-209A. LIENS OF AGRICULTURAL COMMODITY WAREHOUSEMEN. (1) An agricultural commodity warehouseman, as such term is defined in subsection (2) of this section has a lien, dependent upon possession, upon any agricultural commodity deposited with the warehouseman, or stored in or upon the warehouseman's premises, and any proceeds of sale of such agricultural commodity, which lien shall secure payment of any and all lawful charges incurred or payable for the storage, preservation, transportation, labor, weighing, testing, processing, milling, improvement, sale or similar expense incurred with regard to such agricultural commodity.

(2) As used in this section, the term "agricultural commodity warehouseman" shall include any person, partnership, corporation or other lawful business organization which owns or operates a warehousing, storage, weighing, milling or processing facility which is predominantly employed for the purpose of storing, keeping, preserving, processing, milling, cleaning, bagging, boxing or otherwise handling any agricultural commodity for or to the benefit of the owner or depositor thereof.

(3) Notwithstanding the provisions of section 28-7-209, Idaho Code, or any of the provisions of chapters 7 or 9, title 28, Idaho Code, the lien created in favor of an agricultural commodity warehouseman in this section shall have the priority conferred upon other statutory liens under section 28-9-3~~10~~33, Idaho Code.

(4) If the charges secured by the lien conferred in this section

shall not have been paid by or before the date called for by any contract, agreement or document to title between the agricultural commodity warehouseman and the owner or depositor of such agricultural commodity, or thirty (30) days after written demand for payment shall have been made upon the owner or depositor, whichever shall be earlier, the lien may be enforced in the manner specified in section 28-7-210(1), Idaho Code.

(5) The provisions of this section and the lien created hereby shall be applicable to any agricultural commodity deposited or stored with any agricultural commodity warehouseman within this state after March 1, 1992.

SECTION 13. That Section 28-7-503, Idaho Code, be, and the same is hereby amended to read as follows:

28-7-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) ~~d~~Delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (section 28-7-403) or with power of disposition under this act (sections 28-2-403 and 28-9-3~~0~~720) or other statute or rule of law; nor

(b) ~~a~~Acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under ~~the next~~ section 28-7-504, Idaho Code, to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with ~~P~~part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

SECTION 14. That Section 28-8-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-8-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is

not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this chapter and not by chapter 3, title 28, even though it also meets the requirements of chapter 3, title 28. However, a negotiable instrument governed by chapter 3, title 28, is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(6) A commodity contract, as defined in section 28-9-1~~1~~502(a)(15), is not a security or a financial asset.

SECTION 15. That Section 28-8-106, Idaho Code, be, and the same is hereby amended to read as follows:

28-8-106. CONTROL. (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(a) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) The uncertificated security is delivered to the purchaser; or

(b) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) The purchaser becomes the entitlement holder; ~~or~~

(b) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(c) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)~~(b)~~ or (4)~~(b)~~ of this section has control, even if the registered owner in the case of subsection (3)~~(b)~~ of this section, or the entitlement holder in the case of subsection (4)~~(b)~~ of this section, retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an

agreement of the kind described in subsection (3)(b) or (4)(b) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

SECTION 16. That Section 28-8-110, Idaho Code, be, and the same is hereby amended to read as follows:

28-8-110. APPLICABILITY AND CHOICE OF LAW. (1) The local law of the issuer's jurisdiction, as specified in subsection (4) of this section, governs:

(a) The validity of a security;

(b) The rights and duties of the issuer with respect to registration of transfer;

(c) The effectiveness of registration of transfer by the issuer;

(d) Whether the issuer owes any duties to an adverse claimant to a security; and

(e) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5) of this section, governs:

(a) Acquisition of a security entitlement from the securities intermediary;

(b) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsections (1)(b) through (1)(e) of this section.

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder ~~specifies--that--it-is-governed-by-the-law-of-a particular-jurisdiction~~ governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this chapter,

or this act, that jurisdiction is the securities intermediary's jurisdiction.

(b) If paragraph (a) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If neither paragraph (a) nor paragraph (b) of this section applies and an agreement between the securities intermediary and its entitlement holder ~~does not specify the governing law as provided in paragraph (a) of this subsection, but~~ governing the securities account expressly ~~specifies~~ provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(~~c~~d) If ~~an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (a) or (b) of this subsection~~ none of the preceding paragraphs apply, the securities intermediary's jurisdiction is the jurisdiction in which ~~is located~~ the office identified in an account statement as the office serving the entitlement holder's account is located.

(~~d~~e) If ~~an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (a) or (b) of this subsection, and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (c) of this subsection~~ none of the preceding paragraphs apply, the securities intermediary's jurisdiction is the jurisdiction in which ~~is located~~ the chief executive office of the securities intermediary is located.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other ~~record keeping~~ recordkeeping concerning the account.

SECTION 17. That Section 28-8-301, Idaho Code, be, and the same is hereby amended to read as follows:

28-8-301. DELIVERY. (1) Delivery of a certificated security to a purchaser occurs when:

(a) The purchaser acquires possession of the security certificate;

(b) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and ~~has been~~ is: (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

SECTION 18. That Section 28-8-302, Idaho Code, be, and the same is hereby amended to read as follows:

28-8-302. RIGHTS OF PURCHASER. (1) Except as otherwise provided in subsections (2) and (3) of this section, ~~upon delivery~~ a purchaser of a certificated or uncertificated security ~~to a purchaser, the purchaser~~ acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

SECTION 19. That Section 28-8-510, Idaho Code, be, and the same is hereby amended to read as follows:

28-8-510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER. (1) In a case not covered by the priority rules in chapter 9, title 28, Idaho Code, or the rules stated in subsection (3) of this section, a~~A~~n action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under section 28-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in chapter 9, title 28, Idaho Code, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (4) of this section, p~~P~~urchasers who have control rank ~~equally, except that a~~ according to priority in time of:

(a) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 28-8-106(4)(a);

(b) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements

carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 28-8-106(4)(b); or

(c) If the purchaser obtained control through another person under section 28-8-106(4)(c), the time on which priority would be based under this subsection if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

SECTION 20. That Section 28-12-103, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-103. DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a ~~pre-existing~~ preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars ($25,000).

(f) "Fault" means wrongful act, omission, breach or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the

lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

a. Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;

b. That the lessee is entitled under this ~~article~~ chapter to the promises and warranties, including those of any third party, provided to the lessor by ~~the~~ person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

c. That the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 28-12-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results

from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a ~~pre-existing~~ preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one (1) or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions." Section 28-12-310(1).

"Construction mortgage." Section 28-12-309(1)(d).

"Encumbrance." Section 28-12-309(1)(e).

"Fixtures." Section 28-12-309(1)(a).

"Fixture filing." Section 28-12-309(1)(b).

"Purchase money lease." Section 28-12-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

"Account." Section 28-9-106(a)(2).

"Between merchants." Section 28-2-104(3).

"Buyer." Section 28-2-103(1)(a).

"Chattel paper." Section 28-9-105(a)(11).

"Consumer goods." Section 28-9-109(a)(23).

"Document." Section 28-9-105(a)(30).

"Entrusting." Section 28-2-403(3).

"General intangibles." Section 28-9-106(a)(42).

"Good faith." Section 28-1-201(19).

"Instrument." Section 28-9-105(a)(47).

"Merchant." Section 28-2-104(1).

"Mortgage." Section 28-9-105(a)(55).

"Pursuant to commitment." Section 28-9-105(a)(68).

"Receipt." Section 28-2-103(1)(c).

"Sale." Section 28-2-106(1).

"Sale on approval." Section 28-2-326.

"Sale or return." Section 28-2-326.

"Seller." Section 28-2-103(1)(d).

(4) In addition, chapter 1, title 28, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SECTION 21. That Section 28-12-303, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR ~~OR~~ OF LESSOR'S RESIDUAL INTEREST IN GOODS -- DELEGATION OF PERFORMANCE -- TRANSFER OF RIGHTS. (1) As used in this section, "creation of a security ~~interest~~" includes the sale of a lease contract that is subject to chapter 9, title 28, Idaho Code, secured transactions, by reason of section 28-9-109(a)(63).

(2) Except as provided in subsections (3) ~~and (4)~~ of this section and section 28-9-407, a provision in a lease agreement which: (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) ~~A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the~~

~~goods,-or-(ii)-makes-such--a--transfer--an--event--of--default,--is--not enforceable-unless,-and-then-only-to-the-extent-that,-there-is-an-actual transfer-by-the-lessee-of-the-lessee's-right-of-possession-or-use-of-the goods--in--violation-of-the-provision-or-an-actual-delegation-of-a-material-performance-of-either-party-to-the-lease-contract-in--violation--of the--provision.--Neither--the-granting-nor-the-enforcement-of-a-security interest-in-(i)-the--lessor's--interest--under--the--lease--contract--or (ii)-the--lessor's--residual--interest--in--the-goods-is-a-transfer-that materially-impairs-the-prospect--of--obtaining--return--performance--by, materially--changes--the--duty-of,-or-materially-increases-the-burden-or risk-imposed-on,-the-lessee-within-the-purview-of-subsection-(5)-of-this section-unless,-and-then-only-to-the-extent-that,--there--is--an--actual delegation-of-a-material-performance-of-the-lessor.~~

~~(4)~~ A provision in a lease agreement which: (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (~~5~~4) of this section.

(~~5~~4) Subject to the provisions of subsections (3) ~~and (4)~~ of this section and section 28-9-407:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 28-12-501(2);

(b) If paragraph (a) of this subsection is not applicable and if a transfer is made that: (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(~~6~~5) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(~~7~~6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(~~8~~7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of

default, the language must be specific, by a writing, and conspicuous.

SECTION 22. That Section 28-12-307, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS. (1) Except as otherwise provided in section 28-12-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) ~~and (4)~~ of this section and in sections 28-12-306 and 28-12-308, a creditor of a lessor takes subject to the lease contract unless~~:~~

~~(a) T~~the creditor holds a lien that attached to the goods before the lease contract became enforceable~~;~~

~~(b) The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or~~

~~(c) The creditor holds a security interest in the goods which was perfected (section 28-9-303) before the lease contract became enforceable.~~

~~(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (section 28-9-303) and the lessee knows of its existence.~~

~~(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five (45) days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five (45) day period.~~

(3) Except as otherwise provided in sections 28-9-317, 28-9-321 and 28-9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

SECTION 23. That Section 28-12-309, Idaho Code, be, and the same is hereby amended to read as follows:

28-12-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES. (1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) A "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section 28-9-~~4~~502(~~5~~a) and (b);

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the

recorded writing so indicates; and

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this chapter a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(3) The provisions of this chapter do not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten (10) days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) The interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding the provisions of subsection (4)(a) of this section but otherwise subject to the provisions of subsections (4) and (5) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may: (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter, or (ii) if necessary to enforce his other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on secured transactions (chapter 9, title 28, Idaho Code).

SECTION 24. That Section 28-50-116, Idaho Code, be, and the same is hereby amended to read as follows:

28-50-116. TRANSFERABLE RECORD. (a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under chapter 3, title 28, Idaho Code (uniform commercial code -- negotiable instruments) or a document under chapter 7, title 28, Idaho Code (uniform commercial code -- warehouse receipts, bills of lading and other documents of title) if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5) and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable

record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 28-1-201(20), Idaho Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chapters 1 through 12, title 28, Idaho Code (uniform commercial code), including, if the applicable statutory requirements under section 28-3-302(1), 28-7-501 or 28-9-~~308~~30, Idaho Code, are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapters 1 through 12, title 28, Idaho Code (uniform commercial code).

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

SECTION 25. That Chapter 3, Title 45, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 45-318, Idaho Code, and to read as follows:

45-318. APPLICABILITY OF UNIFORM COMMERCIAL CODE. The liens provided for by this chapter are "agricultural liens" as defined in section 28-9-102, Idaho Code. The perfection and effect of perfection or nonperfection of the liens provided by this chapter are governed by uniform commercial code article 9, secured transactions (chapter 9, title 28, Idaho Code). In the event of any conflict between the provisions of this chapter relating to perfection and the effect of perfection or nonperfection of any lien provided by this chapter and the provisions of chapter 9, title 28, Idaho Code, relating to those same issues, the provisions of chapter 9, title 28, Idaho Code, shall prevail.

SECTION 26. That Section 8-506A, Idaho Code, be, and the same is hereby amended to read as follows:

8-506A. ATTACHMENT OF A DEBTOR'S INTEREST IN PERSONAL PROPERTY SUBJECT TO SECURITY AGREEMENT -- ATTACHMENT OF DEFENDANT'S INTEREST IN MORTGAGE OR TRUST DEED -- ATTACHMENT OF DEFENDANT'S INTEREST IN SECURITY AGREEMENT. Personal property subject to a security interest, a defendant's equity of redemption in personal property and a defendant's interest in a real estate mortgage or deed of trust or as secured party under a security agreement may be attached by the following methods, and no other:

(a) Personal property capable of manual delivery may be attached by taking possession, provided all secured parties with a perfected security interest therein under the Idaho ~~U~~uniform ~~C~~commercial ~~C~~code consent thereto in writing, and the attachment shall be subject to the rights of any secured party under a perfected security agreement, but otherwise would be to the same effect and in the same manner as if the property were not subject to the security agreement.

(b) If any secured party with a perfected security interest does not consent in writing that the sheriff take possession of the personal property, the attaching creditor must pay or tender to the secured party the amount due on the security agreement before the officer may take the property into possession. The attaching creditor upon so redeeming shall be subrogated to the rights of the secured party under the security agreement, and the secured party shall, upon payment or tender assign the security agreement, note or notes so paid, and any filed financing statements to the attaching creditor. Upon any sale by judicial proceedings, any amounts owing to the attaching creditor on the security agreement so redeemed, with lawful interest thereon, shall first be paid to the attaching creditor.

(c) If the attaching creditor so elects and instructs the sheriff, the equity of redemption of the defendant in the personal property subject to a perfected security agreement shall be attached. Such attachment is made by serving upon the secured party, upon the defendant, and upon the person in possession of the property, if other than the defendant or secured party, if said parties can be found within the county where the property is situated, a copy of the writ of attachment, together with a notice signed by the sheriff, describing the property attached, giving the name of the secured party, and stating the interest of the defendant in the property attached, and by causing the notice to be filed in the office where a security agreement or financing statement on said property should be filed to perfect the security according to the Idaho ~~U~~uniform ~~C~~commercial ~~C~~code or other applicable law. The sheriff shall make the filing by mail if in an office outside his county, and shall also file with the notice in any office where a financing statement should be filed for the property, a financing statement describing the property attached, the prior security agreement, and signed by the attaching creditor or his agent as secured party and for the defendant as debtor by the sheriff. The filing officer shall receive and file the financing statement and index the same pursuant to part 5, chapter 9, title 28, ~~chapter 9, part 4,~~ Idaho Code. Service and filing as above provided shall operate as an attachment of the property described in the notice, subject to the prior rights of the secured party under the security agreement; possession of the property shall not be taken by the sheriff. Compliance with the foregoing is constructive notice to the world of the attachment. Provided, however, that this section shall not be constructive notice to a bona fide purchaser for value

of any motor vehicle who has actual or constructive possession of the vehicle and who has relied on the certificate of title for determination by said purchaser as to secured parties shown thereon; nothing in this section shall relieve any person from complying with section 49-504, Idaho Code.

When the sale of such property attached under this ~~subdivision~~ subsection (c) is made on writ of execution obtained by such creditor, the proceeds must be applied as in the case of any other execution sale. The purchaser at any such sale acquires all title and rights of the judgment debtor in the property sold, as of the time the attachment was levied, subject to the perfected security agreement including all liens if any thereunder, securing obligations to be created after the security agreement was made in cases where such obligations have actually been created, and are by law entitled to priority over attaching creditors, and is entitled to the possession of such property subject, however, to the rights of the secured party.

Any transfer of encumbrance of the attached interest of the debtor-defendant is void as against the attaching creditor, but this provision shall not be construed as forbidding or invalidating any transfer or disposition of the property lawfully made pursuant to the prior security agreement, or any other right exercised or acquired thereunder.

(d) Any interest of the defendant as mortgagee of a real estate mortgage or beneficiary of a trust deed on real estate whether held directly or as an assignee, may be attached. The sheriff must record with the county recorder where the real property is located a copy of the writ along with a notice in writing, naming the defendant, describing the real property, and identifying the recording information on the real estate mortgage or trust deed, and stating that the defendant's interest therein is attached, and by serving copies of the notice and writ upon the defendant and upon the mortgagor of the mortgage or trustor of the trust deed if they can be located within the county where the property is located. The recorder shall index the same as an assignment of the defendant's interest in the mortgage or deed of trust, and it shall be constructive notice to the world of the attachment. The attachment shall be subject to the rights of a holder in due course of a note or notes secured by the mortgage or trust deed, whether acquired before or after the attachment.

(e) Any interest of the defendant as secured party of a security agreement, whether held directly or as an assignee, shall be attached by the sheriff filing with the filing office where the security agreement or financing statement pursuant thereto is or should by law be filed, a copy of the writ along with a notice in writing, naming the defendant, describing the property listed in the financing statement or filed security statement, identifying the parties to the security agreement, and stating that the defendant's interest therein is attached. The sheriff shall serve a copy of the notice and writ upon the defendant and upon the debtor under the security agreement, if they can be located within the county where the property is located. The sheriff may file the copy of the writ or notice by mail if the filing officer is outside the county. The filing officer shall index the same as an assignment of the defendant's interest in the security agreements, and it shall be constructive notice to the world. The attachment shall be subject to the rights of a holder in due course of a note or notes secured by the security agreement, whether acquired before or after the attachment.

SECTION 27. That Section 31-2402, Idaho Code, be, and the same is hereby amended to read as follows:

31-2402. INSTRUMENTS TO BE RECORDED. He must, upon the payment of his fees for the same, record separately, in large and well-bound separate books, in legible handwriting, typewriting or by photographic reproduction:

1. Deeds, grants, transfers and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate and leases which have been acknowledged or proved and transcripts of judgments or decrees which affect the title or possession of real property, including water rights, any part of which is situate in the county of which the person is the recorder.

2. Certificates of marriage and marriage contracts.

3. Wills admitted to probate.

4. Official bonds.

5. Notices of mechanics' liens.

6. Transcripts of judgments which by law are made liens upon real estate.

7. Notices of attachments upon real estate.

8. Notices of the pendency of an action affecting real estate, the title thereto or possession thereof.

9. Instruments describing or relating to the separate property of married women.

10. Notices of preemption claims.

11. Certified copies of any petitions, with the schedules omitted, filed in, and certified copies of any order or decree made or entered in, any proceeding under the ~~N~~national ~~B~~bankruptcy ~~A~~act.

12. Financing statements under the ~~U~~uniform ~~C~~commercial ~~C~~code which cover timber to be cut, minerals or the like (including oil and gas), ~~accounts subject to subsection (5) of~~ pursuant to section 28-9-~~10~~301, Idaho Code, or fixtures.

13. Notice of order of a general adjudication in conformance with section 42-1408~~A~~, Idaho Code.

14. Such other writings as are required or permitted by law to be recorded.

SECTION 28. That Section 45-1909, Idaho Code, be, and the same is hereby amended to read as follows:

45-1909. DUTIES OF SECRETARY OF STATE. (1) The secretary of state shall maintain notices of state lien in his information management system in a form that permits them to be reduced to written form.

(2) The secretary of state will provide information concerning state liens on the same conditions and in the same form as he provides information on financing statements pursuant to ~~subsections (2) and (7) of~~ section 28-9-~~407~~523, Idaho Code.

(3) The secretary of state will compile and publish a list of all effective notices of state lien which the filing agencies have identified as pertaining to debtors who are agricultural producers. The list will be published on the same schedule and conditions as the list of liens in farm crops which is published pursuant to section 45-312, Idaho Code. The list of notices of state lien may be appended to the list of liens in farm crops, and no fee shall be charged in addition to the fee

for the list of liens in farm crops. Failure of a filing agency to identify a debtor as an agricultural producer shall not adversely affect perfection of a state lien for any purpose.

SECTION 29. 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 28-9-1052, 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. 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 30. That Chapter 2, Title 57, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 57-232, Idaho Code, and to read as follows:

57-232. CREATION AND PERFECTION OF GOVERNMENT SECURITY INTERESTS. (1) The revenues, fees, rents, charges, taxes or other property pledged by a governmental unit for the purpose of securing its bonds, which pledge is hereby authorized, are immediately subject to the lien of the pledge, and the lien shall be a perfected lien upon the effective date of the security agreement. No physical delivery of any security agreement or any other act is required. Neither the security agreement nor a financing statement need be filed or recorded under the uniform commercial code or otherwise. The lien of any pledge is valid, binding, perfected and enforceable from the time the pledge is made. The lien of the pledge shall have priority based on the time of the creation of the pledge unless otherwise provided in the security agreement. The lien of the pledge shall have priority as against all parties having claims of any kind in tort, contract, or otherwise against the governing body, irrespective of whether the parties have notice of the lien. Each pledge and security agreement made for the benefit or security of any of the bonds shall continue to be effective until the principal, interest, and premium, if any, on the bonds have been fully paid or provision for payment has been made, or until the lien created by the security agreement has been released by agreement of the parties in interest or as provided by the security agreement that created the lien.

(2) As used in this section:

(a) "Bonds" means any bond, note, lease or other obligation of a governmental unit;

(b) "Governmental unit" has the meaning assigned in section 28-9-102, Idaho Code;

(c) "Pledge" means the creation of a security interest of any kind;

(d) "Property" means any property or interests therein, other than real property; and

(e) "Security agreement" means any resolution, ordinance, indenture, document, or other agreement or instrument under which the revenues, fees, rents, charges, taxes or other property are pledged to secure the bonds.

(3) This section expressly governs the creation, perfection, priority and enforcement of a security interest created by the state or a governmental unit of the state, notwithstanding any provisions in chapter 9, title 28, Idaho Code, to the contrary.

SECTION 31. This act shall be in full force and effect on and after July 1, 2001.

Approved March 26, 2001.